

CAP MEETING – 10 JULY 2024**ITEM 8.1**

DEVELOPMENT NO.:	23028717
APPLICANT:	Jamie Burt
ADDRESS:	7 YAPPO RD ALDGATE SA 5154
NATURE OF DEVELOPMENT:	Privacy screen
ZONING INFORMATION:	Zones: <ul style="list-style-type: none"> • Rural Neighbourhood Subzones: <ul style="list-style-type: none"> • Adelaide Hills Overlays: <ul style="list-style-type: none"> • Hazards (Bushfire - Medium Risk) • Mount Lofty Ranges Water Supply Catchment (Area 2) • Native Vegetation • Prescribed Water Resources Area • Regulated and Significant Tree Technical Numeric Variations (TNVs): <ul style="list-style-type: none"> • Minimum Site Area (Minimum site area is 2,000 sqm)
LODGEMENT DATE:	5 Oct 2023
RELEVANT AUTHORITY:	Assessment Panel at Adelaide Hills Council
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) - Version 2023.13 - 31/08/2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Doug Samardzija Senior Statutory Planner
REFERRALS STATUTORY:	None
REFERRALS NON-STATUTORY:	None

CONTENTS:

ATTACHMENT 1:	Application Documents	ATTACHMENT 4:	Representations
ATTACHMENT 2:	Subject Land/Representor Map	ATTACHMENT 5:	Response to Representations
ATTACHMENT 3:	Zoning Map	ATTACHMENT 6:	Relevant P&D Code Policies

DETAILED DESCRIPTION OF PROPOSAL:

The purpose of this application is to erect a privacy screen comprising of untreated trellis slats and timber posts in a staggered design of 4 panels. The post heights range from 3.4m to 3.8m above ground level and the trellis panels range in height between 2.5m and 3.3m and are 3.9m above natural ground level (retrospective). The total length of the structure is 11.1m.

The structure is proposed to be setback 5.2m from the southern boundary being the closest boundary and 10m from the closest point of the house. The structure will also incorporate landscaping in the form of planted native creepers, and tall evergreen bushes such as a variety of acacias, grevilleas.

The subject land is located within the Rural Neighbourhood Zone where the proposal is a performance assessed development. One representation in opposition and three representations in support to the proposal were received during the public notification period.

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The main issue relating to the proposal is the appropriateness of the proposal in particular its scale, height and appearance.

Whilst the development is partially retrospective, it should be noted that the commencement of work without development approval first being obtained is not a relevant consideration in the assessment of a proposal and therefore should not be a contributing factor in reaching a decision on the proposal.

BACKGROUND:

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
11/11/2011	473/926/11	Inground swimming pool
27/04/2011	473/268/11	Domestic outbuilding (measuring 4.5m x 3.02m x 2.7m)
02/03/2010	473/185/10	Removal of Significant Tree x 1 Eucalyptus obliqua (stringy bark)
12/05/2009	473/572/08	Removal of twenty three (23) significant trees

SUBJECT LAND & LOCALITY:

Location reference: 7 YAPPO RD ALDGATE SA 5154

Title ref.: CT 5818/423

Plan Parcel: F11876 AL6

Council: ADELAIDE HILLS COUNCIL

Site Description:

The subject land is an irregular shaped allotment of approximately 4300m² with a gentle slope in the rear yard and a steep slope in the front yard from northwest to southeast. Existing site improvements include a dwelling located roughly central to the site, a swimming pool located in the northwest corner of the allotment and associated domestic structures including 3 water storage tanks along the southern boundary of the allotment. The rear yard of the property predominantly consists of established gardens with existing fences along the common property often being a combination of open style fences or trellis fencing of a similar style to the screening proposed.

Locality

The locality is characterised by generous size residential allotments of steep nature with well-established gardens both along the front and the rear of the dwellings which reinforce the wooded character of the locality. Dwellings range in size from single to two storeys in nature with varying setback from front, side and rear boundaries.

Yappo Road which services the majority of the residential properties is a narrow sealed road connecting Old Mount Barker Road and Kanmantoo Road.

CONSENT TYPE REQUIRED:

Planning Consent

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CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Other - Residential - trellis screen 3.5m high: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
Privacy screen is not listed in Table 5 as a form of development exempt from notification and, in this instance is not the type of development that the relevant authority can consider to be minor in nature or one that would not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.

Public Notification period – 10 April 2024 to 1 May 2024

• LIST OF REPRESENTATIONS

Four representations in total were received during the public notification period. Of those, three (3) representations were received in support of the proposal and one (1) representation was received opposing the proposal. The representation opposing the proposal was from the adjoining land which has direct view of the privacy screen.

Representor Name	Representor's Property Address	Wishes to be heard (Y/N)	Nominated Speaker (if relevant)
Fiona Kerr	5 Yappo Road, Aldgate	Yes	Fiona Kerr
Grant and Cheryl Brooks	9 Yappo Road, Aldgate	No	
Ruth Brokelbank	16 Yappor Road, Aldgate	No	
Arcady Turczynowicz	12 Yappo Road, Aldgate	No	

SUMMARY

The main points of concern are:

- The size of the structure
- The appearance
- Not in keeping with the locality

Copies of the representations are included as **Attachment 4 – Representations** and the applicant's response is provided in **Attachment 5 – Response to Representations**.

AGENCY REFERRALS

None

INTERNAL REFERRALS

None

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PLANNING ASSESSMENT

Desired outcomes

Desired outcomes are policies designed to aid the interpretation of performance outcomes by setting a general policy agenda for a zone, subzone, overlay or general development policies module. Where a relevant authority is uncertain as to whether or how a performance outcome applies to a development, the desired outcome(s) may inform its consideration of the relevance and application of a performance outcome, or assist in assessing the merits of the development against the applicable performance outcomes collectively.

Performance outcomes

Performance outcomes are policies designed to facilitate assessment according to specified factors, including land use, site dimensions and land division, built form, character and hazard risk minimisation.

Designated performance features

In order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the corresponding performance outcome (a designated performance feature or DPF). A DPF provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome, and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies.

A detailed assessment of the application has taken place against the relevant provisions of the Planning and Design Code (P & D Code) and this is provided below under a series of headings. A Policy Enquiry extract containing the relevant provisions of the P & D Code is contained in **Attachment 6 – Relevant P & D Code Policies**.

Rural Neighbourhood Zone

Desired Outcome	
DO1	Housing on large allotments in a spacious rural setting, often together with large outbuildings. Easy access and parking for cars. Considerable space for trees and other vegetation around buildings, as well as on-site wastewater treatment where necessary. Limited goods, services and facilities that enhance rather than compromise rural residential amenity.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Land Use & Intensity PO 1.1 & DTS/DPF 1.1	
Building Height PO 2.1	
Primary Street Setback PO 3.1 & DTS/DPF 3.1	
Side Boundary Setback PO 5.1 & DTS/DPF 5.1	
Rear Boundary Setback PO 6.1 & DTS/DPF 6.1	

The privacy screen is proposed in association with an existing residential use of the land and therefore the proposal satisfies PO 1.1.

At its highest point the structure is 3.9m in height which is well within the accepted parameters for the zone. PO 2.1 seeks that buildings contribute to low-rise residential character and complement the height of nearby buildings. Corresponding DPF as a guide envisages buildings of up to 2 storeys, 9m and wall heights no greater than 7m.

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The structure is ancillary and located at the rear of the dwelling. The setback from the southern boundary is 5.2m whilst the setback from the rear boundary is 16.3m. The proposal satisfies all the quantitative requirements relating to front, side and rear setbacks. More specifically given that the biggest concern is from the neighbour to the south, the setback from this boundary is 3.2m greater than that specified in DPF 5.1.

When considering the setback together with the maximum allowable height, the proposed structure is considered to be of low profile which is consistent with typical single level buildings and has a greater setback than the provisions of the zone seek.

Adelaide Hills Subzone

Desired Outcome	
DO1	Additional residential and tourist accommodation that retains and embraces the values of the established mature vegetation as a defining characteristic of the area.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Land Use & Intensity PO 1.1 & DTS/DPF 1.1	

The Adelaide Hills Subzone doesn't provide any specific guidance on privacy screens, however, it does provide specific policies on envisaged land divisions, residential development with a limited range of additional accommodation options and, more specifically supported accommodation and tourist accommodation. With that being said, given that residential use is envisaged in the subzone and the proposed screen is associated with existing residential use, the proposal is not considered to be contrary to the intent of the subzone. Desired Outcome 1 of the Subzone envisages additional residential accommodation that retains and embraces the values of the established mature vegetation as a defining characteristic of the area. In the recent Supreme Court case *Geber Super Pty Ltd v The Barossa Assessment Panel [2023] SASC 154* the judgment concluded that Desired Outcomes assist in the interpretation of Performance Outcomes; but they are not policies in their own right. Rather, they set a general policy agenda which informs the Performance Outcomes. Given that the Subzone lacks any significant Performance Outcomes relevant to the proposed development it is the view of planning staff that the Subzone in this instance has little work to do apart from outlining that the privacy screen is associated with an existing and envisaged land use.

Overlays

Hazards (Bushfire – Medium Risk) Overlay

Desired Outcome	
DO 1	Development, including land division responds to the medium level of bushfire risk and potential for ember attack and radiant heat by siting and designing buildings in a manner that mitigates the threat and impact of bushfires on life and property taking into account the increased frequency and intensity of bushfires as a result of climate change.
DO 2	To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Siting PO 1.1	
Built Form PO 2.1	

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Given the nature of the proposed structure it is considered that this overlay has very little work to do with the only relevant policies relating to the location and the design of the building. The structure is proposed adjacent to the existing water tanks and within close proximity of the dwelling and well away from any hazardous vegetation which satisfies PO 1.1.

Given that the structure is similar to a fence and whilst it is elevated above ground it actually presents very minimal opportunity for burning debris to be trapped between the ground the bottom portion of the structure. This therefore satisfies PO 2.1.

Hazards (Flooding – Evidence Required) Overlay

Desired Outcome	
DO 1	Development adopts a precautionary approach to mitigate potential impacts on people, property, infrastructure and the environment from potential flood risk through the appropriate siting and design of development.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Flood Resilience PO 1.1 & DTS/DPF 1.1	

The subject land is not registered as flood prone and there is no evidence on site to suggest any flooding of land has occurred. As such, no further investigation is required.

Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay

Desired Outcome	
DO 1	Safeguard Greater Adelaide's public water supply by ensuring development has a neutral or beneficial effect on the quality of water harvested from secondary reservoirs or diversion weir catchments from the Mount Lofty Ranges.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Landscapes and Natural Features PO4.1	

The proposal is not requiring any earthworks apart from the footings for the timber posts. As such, there will be no need for modification of landscape or natural features in accordance with PO 4.1.

Native Vegetation Overlay

Desired Outcome	
DO 1	Areas of native vegetation are protected, retained and restored in order to sustain biodiversity, threatened species and vegetation communities, fauna habitat, ecosystem services, carbon storage and amenity values.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Environmental Protection PO 1.1 & DTS/DPF 1.1, PO 1.2, PO 1.4	

The proposal does not require removal of any native vegetation. A Native Vegetation Declaration has also been signed by the applicant to that effect.

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Prescribed Water Resources Area Overlay

Desired Outcome	
DO 1	Sustainable water use in prescribed water resources areas maintains the health and natural flow paths of surface water, watercourses and wells.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
N/A	

This Overlay is not relevant to the proposal as it relates to water taking activities such as horticulture and intensive animal husbandry or the alteration to a water body.

Regulated and Significant Tree Overlay

Desired Outcome	
DO 1	Conservation of regulated and significant trees to provide aesthetic and environmental benefits and mitigate tree loss.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Tree Retention and Health PO 1.1, PO 1.4	
Ground Work Affecting Trees PO 2.1	

As is the case with native vegetation, the privacy screen is not proposed in a location which requires removal of any regulated or significant trees nor is the earthwork associated with the building of the screen proposed in vicinity of regulated and significant trees and as such, it will not result in any form of tree damaging activity.

General Development Policies

Clearance from Overhead Powerlines

Desired Outcomes	
DO1	Protection of human health and safety when undertaking development in the vicinity of overhead transmission powerlines.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 DPFs: 1.1	

A Powerline Declaration form has been signed and submitted with the application stating that proposed development will involve the construction of a building which would, if constructed in accordance with the plans submitted, not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996. The proposal is therefore consistent with DO 1 and PO and DPF 1.1.

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Design

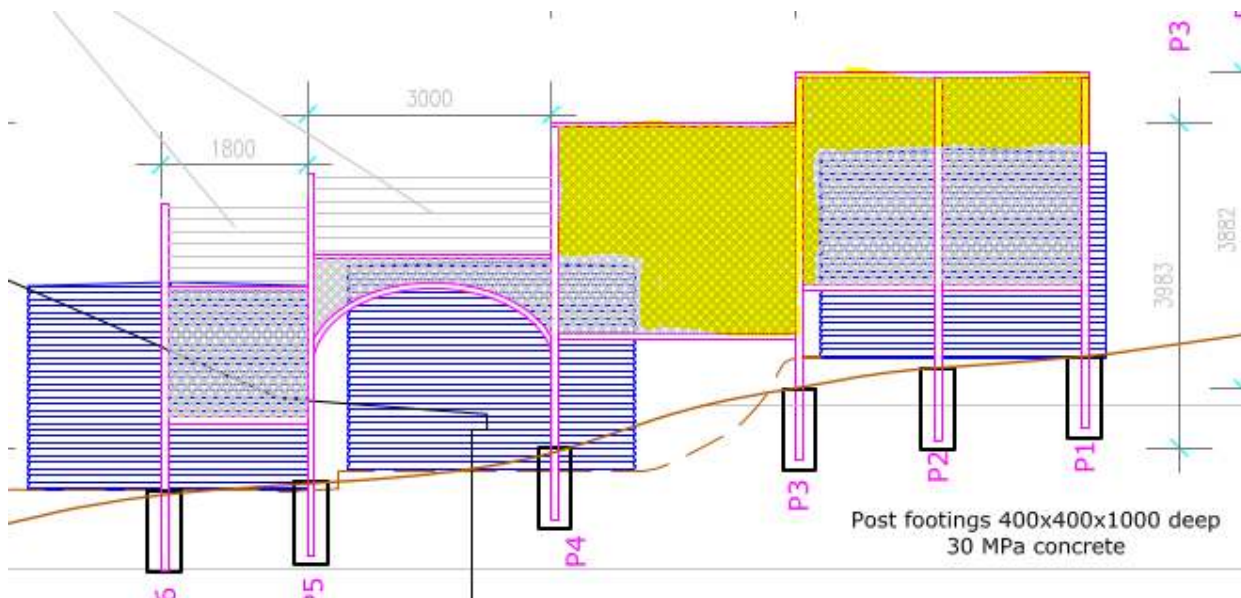
Desired Outcomes	
DO1	Development is: a) contextual - by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributes to the character of the immediate area b) durable - fit for purpose, adaptable and long lasting c) inclusive - by integrating landscape design to optimise pedestrian and cyclist usability, privacy and equitable access, and promoting the provision of quality spaces integrated with the public realm that can be used for access and recreation and help optimise security and safety both internally and within the public realm, for occupants and visitors d) sustainable - by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimise energy consumption.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 8.1, 9.1, 13.1, 13.2, 15.1 and 22.2	
DPFs: 8.1, 13.1 and 13.2	

Apart from the footing excavation the proposed works do not require any other earthworks and therefore satisfy PO 8.1.

PO 9.1 envisages fences of sufficient height to maintain privacy and security without unreasonably impacting the visual amenity and adjoining lands access to sunlight. The Applicant has advised that the screen has been proposed to provide a level of screening to their property from neighbouring residence's upper-level window. Whilst the proposed structure is not classified as a fence but rather a screen, the two are very similar in nature. Existing fences in the locality are predominantly open style fences which allow for clear views into neighbouring properties with small examples of trellis fencing as proposed with the privacy screen. Whilst the proposed screen is of a higher nature, it is not dissimilar to typical good neighbour fences that are erected between neighbouring properties, albeit they predominantly tend to be Colorbond material up to 2.1m in height. By contrast, the proposal includes a 3.9m timber trellis screen which has the post heights ranging in height from 3.4m to 3.8m above ground level and the trellis panels range in height between 2.5m and 3.3m and are 3.9m above natural ground level. Given its size and location some parts of the screen will present as a large visual element when viewed from a section of the neighbouring property, however, because the proposed screen is constructed using a natural finish, this will complement the natural landscape and the wooded character of the locality. The proposal is considered to be accepted and the visual impacts on the adjoining property are considered to be minimal in nature.

Residential ancillary buildings and structures are sited and designed to not detract from the appearance of buildings on the site or neighbouring properties whilst PO 15.1 seeks that the visual mass of larger buildings is reduced when viewed from adjoining allotments or public streets. The privacy screen is proposed at a distance of 5.2m from the closest neighbouring property with 3 large tanks located between the screen and the fence line. Through amendments to the design, the majority of the proposed screen will be located behind the water tanks with only the middle and rear top section visible from the neighbouring property are illustrated in yellow below. Additionally, the applicant is proposing to landscape the area by growing shrubs and creepers over and around the trellis screen and adding supporting wires to have a green wall on the top of the two lower slope panels. A condition reinforcing this requirement is proposed (refer Condition 3). Given the above it is considered that the overall mass of the building has been reduced minimising the extent of the structure that is visible from neighbouring property. Its overall scale will further be reduced once the nominated landscaping takes effect.

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Interface between Land Uses

Desired Outcomes	
DO1	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 3.1, 3.2 and 3.3	
DPFs: 3.1 and 3.2	

Whilst the posts range in height from 3.4m to 3.8m above ground level and the trellis panels range in height between 2.5m and 3.3m and are 3.9m above natural ground level, it does not present any overshadowing concerns for the neighbouring property. Firstly, the structure is set 5.2m from the closest side boundary with water storage tanks located between the screen and the boundary. Secondly, the location of the structure in relation to the neighbouring property is adjacent to an area that could be more commonly described as a driveway and access area rather than a private open space and, there is no overshadowing of outdoor living areas given the location of neighbouring dwelling.

Transport, Access and Parking

Desired Outcomes	
DO1	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 5.1	
DPFs: 5.1	

The proposal does not compromise existing available on-site parking spaces and therefore ensures that existing use continues to satisfy PO 5.1 and DPF 5.1 and Table 1- General Off-Street Car Parking Requirements.

CONSIDERATION OF SERIOUSLY AT VARIANCE

The proposal is not considered to be seriously at variance with the provisions of the P & D Code. Whilst the Rural Neighbourhood Zone doesn't specifically list privacy screens as an envisaged use, the policies envisage buildings that contribute to the low-rise residential character and complement the height of nearby buildings. The proposal being

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3.9m high trellis screen with a 5.2m setback from the closest boundary in a well-established gardens satisfies the building profile and setback requirements of the Zone.

Given the unique nature of the proposal, large portions of the Code in both the Overlays as well as the General Development Policies section, are silent on the proposed development. That being said, the policies that have been deemed as relevant to the proposal, as outlined in the report above, have been satisfied.

CONCLUSION

The proposed privacy screen will provide the applicants with privacy from the adjoining allotment. Whilst the structure is of a higher nature than fencing generally, there have been changes to the proposal from the original submission reducing the overall bulk and scale. The height of the front trellis has been reduced and supporting wires added to have a green wall on the top of the two lower slope panels. Considering the changes made, the fact that the large portion of the structure is behind the water tanks, and the fact that it is of nature finish which will also be further landscaped and is also set over 5m from the common boundary, the impacts are considered to be of minimal nature. On balance it is deemed that the proposal addresses any character and amenity concerns and therefore warrants planning consent.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

- 1) Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and**
- 2) Development Application Number 23028717 by Jamie Burt for Privacy Screen at 7 Yappo Road, Aldgate is granted Planning Consent subject to the following conditions:**

CONDITIONS

Planning Consent

- 1) The development granted shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.**
- 2) The external finishes to the structure herein approved shall be as follows.
SCREEN: Natural timber finish or similar
POSTS: Natural timber finish or similar**
- 3) Landscaping consisting of shrubs, vines and creepers shall be planted on both sides of the screen for the full length of the screen, within (3) three months of development approval. All plants shall be maintained in good health and condition at all times with any dead or diseased plants being replaced in the next planting season.**

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ADVISORY NOTES

General Notes

- 1) No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.**
- 2) Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.**
- 3) This Planning Consent is valid for a period of twenty-four (24) months commencing from the date of the decision, subject to the below or subject to an extension having been granted by the relevant authority. If applicable, Building Consent must be obtained prior to expiration of the Planning Consent.**
- 4) Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).**

OFFICER MAKING RECOMMENDATION

Name: Doug Samardzija

Title: Senior Statutory Planner