



**I hereby give notice that a Limestone Coast Southern Regional Assessment Panel will be held on:**

**Date:** Thursday, 21 March 2024  
**Time:** 5.00 p.m.  
**Location:** Council Chamber  
Civic Centre  
10 Watson Terrace  
Mount Gambier

# **AGENDA**

## **Limestone Coast Southern Regional Assessment Panel 21 March 2024**

A handwritten signature in black ink, appearing to read "Tracy Tzioutziouklaris".

**Tracy Tzioutziouklaris  
Assessment Manager  
15 March 2024**

**Order Of Business**

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**1 ACKNOWLEDGEMENT OF COUNTRY**

**WE ACKNOWLEDGE THE BOANDIK PEOPLES AS THE TRADITIONAL CUSTODIANS OF THE LAND WHERE WE MEET TODAY. WE RESPECT THEIR SPIRITUAL RELATIONSHIP WITH THE LAND AND RECOGNISE THE DEEP FEELINGS OF ATTACHMENT OUR FIRST NATIONS PEOPLES HAVE WITH THE LAND.**

**2 APOLOGY(IES)**

Nil

**3 CONFIRMATION OF MINUTES**

Limestone Coast Southern Regional Assessment Panel - 15 February 2024

**RECOMMENDATION**

That the minutes of the Limestone Coast Southern Regional Assessment Panel meeting held on 15 February 2024 be confirmed as an accurate record of the proceedings of the meeting.

**4 QUESTIONS WITHOUT NOTICE**

**5 INVITEES**

**Invitees for Item 6.1 – Unit 2, 6 Jardine Street, Mount Gambier**

The Applicant – Carol Smith

**Invitees for Item 6.2 – 4 Fitzgibbon Court, Suttontown**

The Applicant – Hotondo Homes

**Invitees for Item 6.3 – 4 Scott Court, Mount Gambier**

The Applicant – Mr Dean Linder-Leighton

The Representor – Michael Parker

## 6 REPORTS

### 6.1 DA:24000959 - UNIT 2, 6 JARDINE STREET, MOUNT GAMBIER - CHANGE OF USE FOR SHORT TERM TOURIST ACCOMMODATION – REPORT NO. AR24/13659

<b>Development No:</b>	<b>DA:24000959</b>
<b>Applicant:</b>	<b>Carol Smith</b>
<b>Property Address:</b>	<b>Unit 2, 6 Jardine Street, Mount Gambier</b>
<b>Property Owner:</b>	<b>Carol Smith</b>
<b>Report No:</b>	<b>AR24/13659</b>
<b>CM9 Reference:</b>	<b>AF22/276</b>
<b>Author:</b>	<b>Roslyn Snaauw, Senior Planner</b>
<b>Authoriser:</b>	<b>Tracy Tzioutziouklaris, Assessment Manager</b>
<b>Nature of Development:</b>	<b>Change of Use for Short Term Tourist Accommodation</b>
<b>Description:</b>	<b>Change of Use for Short Term Tourist Accommodation</b>
<b>Zoning:</b>	<b>Suburban Neighbourhood</b>
<b>Policy Area:</b>	<b>City Of Mount Gambier</b>
<b>Heritage:</b>	<b>Heritage Adjacency</b>

#### REPORT RECOMMENDATION

1. That Limestone Coast Southern Regional Assessment Panel Report No. AR24/13659 titled 'DA:24000959 - Unit 2, 6 Jardine Street, Mount Gambier - Change of use for short term tourist accommodation' as presented on 21 March 2024 be noted.
2. The Limestone Coast Southern Regional Assessment Panel, 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, resolve that the development application is NOT seriously at variance with the Planning and Design Code, for the following reasons:
  - a) The proposed land use is not prejudicial to residential forms of development.
  - b) The identified departures from the Planning and Design Code are not considered to be "important or grave". Specifically, it is of a suitable scale when considering other development within the subject locality.
  - c) The proposed development is for a residential type purpose albeit for short term periods.
3. That the Limestone Coast Southern Regional Assessment Panel resolve that:
  - (a) Pursuant to Section 107(2) of the *Planning, Development and Infrastructure Act 2016*, and having undertaken an assessment of the application, determined the development is not at variance to the provisions of the Planning and Design Code and Planning Consent be granted subject to the following conditions:

#### Conditions

Condition 1





The development granted *Planning Consent* shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

Condition 2

The buildings/and surrounding shall be maintained in a state of good repair and tidy condition at all times.

Condition 3

At all times whomsoever may be occupying the property, shall take all measures to ensure that the residential amenity of the immediate area is not affected by nuisance or disturbance associated with the operation of the '*Short Term Tourist Accommodation*'.

Condition 4

All waste materials and refuse accumulated on the property shall be removed on a regular basis to ensure that the property is maintained in a clean and sanitary condition.

Condition 5

The maximum number of people to be accommodated within the Short Term Accommodation shall be six (6) people, not including children under the age of two (2) years.



**BACKGROUND**

The subject land is located within an area of Community Title allotments comprising twelve (12) allotments relating to 6 Jardine Street and four (4) double storey dwellings associated with 2 Jardine Street.

The subject land has been used for short term tourist accommodation without planning consent.

As of 13 March, 2024 there were 32 days left on the clock.

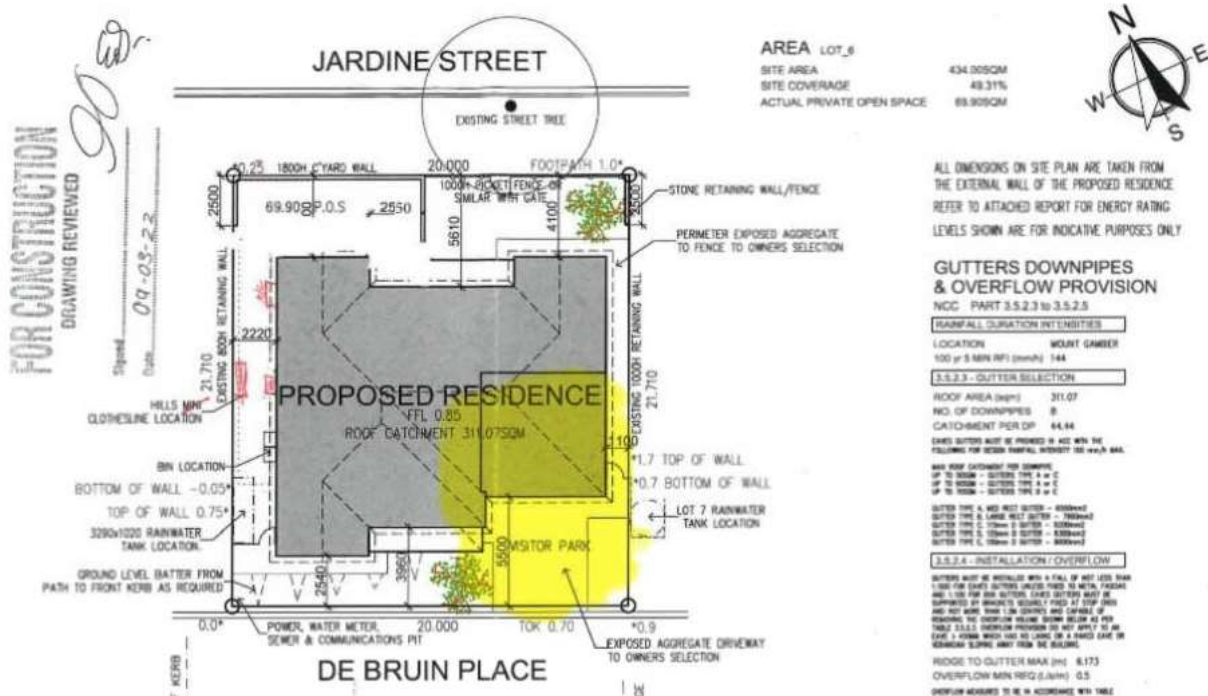
**PROPOSED DEVELOPMENT**

This application is for retrospective change of use of an existing dwelling, to be used for short term tourist accommodation.

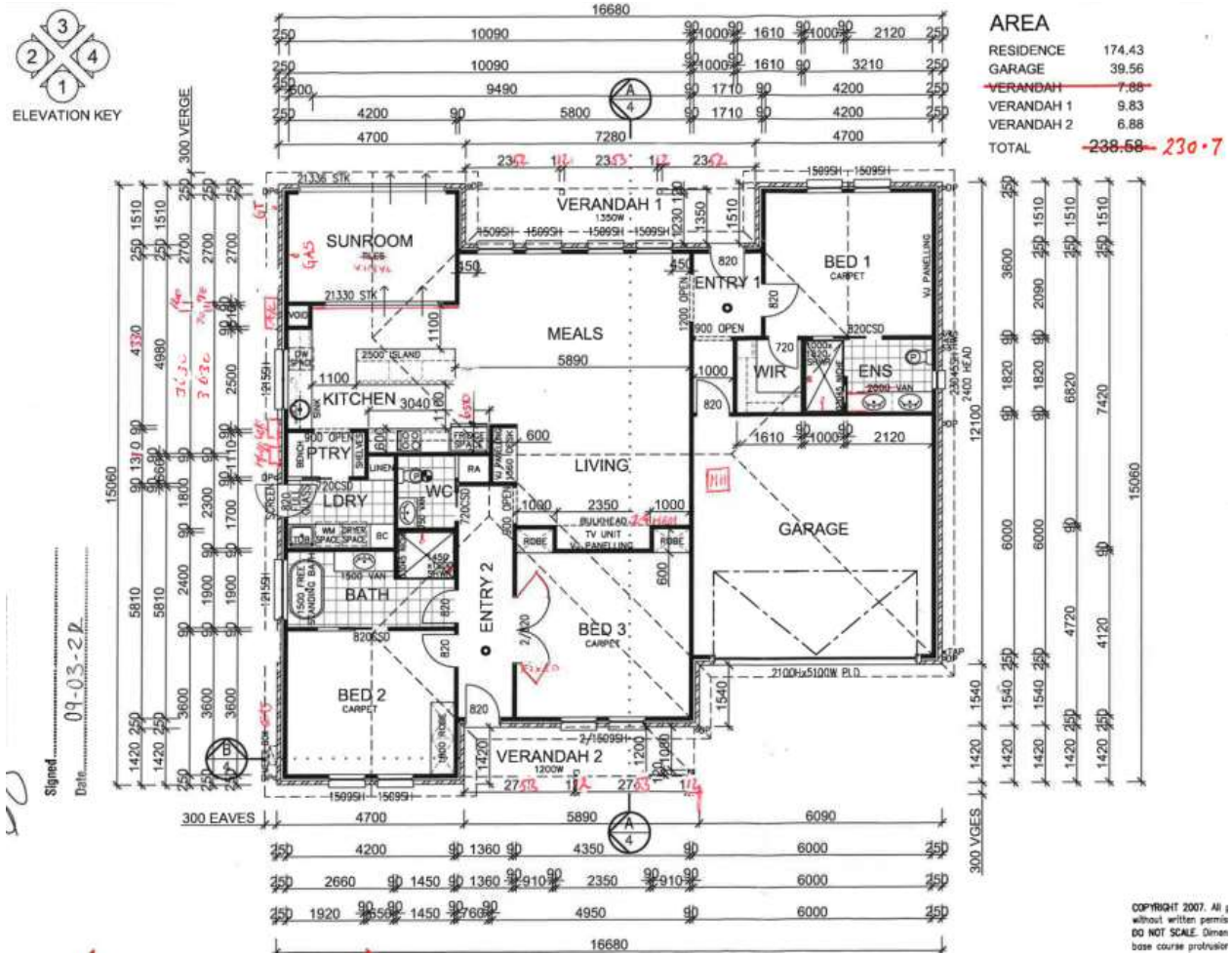
No external or internal works are proposed with the dwelling containing three (3) bedrooms.

Access to the subject land is existing and from the internal common driveway within De Bruin Place with the provision of two (2) car spaces within a garage under the same roofline as the dwelling and a further two (2) tandem car spaces located on site directly in front of the garage.

The site plan of the dwelling is shown below.



The floor plan is provided below.



**LOCATION OF DEVELOPMENT:**

The subject land has a square configuration and is located within the Suburban Neighbourhood Zone as identified by the Planning and Design Code (Code) (in effect) Version 2023.19 - 21 December 2023 the subject land having a total area of approximately 434 square metres.

The subject land is also located within the Heritage Adjacency Overlay with land to the north affected by the Local Heritage Place Overlay and land further to the south being affected by the Local Heritage Place and State Heritage Area Overlay.

Access to the subject site is from De Bruin Place to the south with frontage to the north to Jardine Street. The allotments within the community title land division are developed with single storey and double storey dwellings on small allotments. A large percentage of the land is not development with residential dwellings.

The subject land has a total area of approximately 434 square metres.



Figure 2: Map showing the Zoning and Overlays of the area

**Location reference:** UNIT 2, 6 JARDINE ST MOUNT GAMBIER SA 5290

**Title ref.:** CT 6242/915 **Plan Parcel:** C26542 FL6 **Council:** CITY OF MOUNT GAMBIER

**PUBLIC NOTIFICATION**

Public notification was required pursuant to Table 5 – Procedural Matters (PM) – Notification of the Planning and Design Code, as short-term tourist accommodation is not identified as being excluded from notification.

The application was placed on public notification with 29 owners/occupiers notified of the change of use.

Two (2) Representations were received opposing the changed of use which are summarised as follows:

**Representations**

A full detailed copy of the Representations are provided in the Attachments.

NAME	ADDRESS	STAKEHOLDER POSITION	ISSUES	REQUEST TO BE HEARD
Kerry Holmes	Unit 8, 6 Jardine Street, Mount Gambier	Opposes the development	<ul style="list-style-type: none"> <li>In excess of six (6) people staying at any one time</li> <li>Subject land not maintained in a state of good repair and tidy condition at all times.</li> <li>the residential amenity of the immediate area is being affected by nuisance or disturbance associated</li> </ul>	No



			with the operation of the <i>Short Term Tourist Accommodation</i> .	
			<ul style="list-style-type: none"> <li>Excessive number of Short Term Tourist accommodation within the community title.</li> </ul>	
Scott Longhurst	1 Jardine Street, Mount Gambier	Opposed the development	<ul style="list-style-type: none"> <li>In excess of ten (10) people staying at any one time including adults and children.</li> <li>Occupants need to be respectful of the permanent residents in the street and surrounding area</li> </ul>	No

### Applicant Response to Representations

The Applicant has responded to these concerns stating:

- No more than 6 people are guests at any one time.
- No complaints have been received personally.
- Due to one occurrence with a guest going to the wrong house, an illuminated sign has since been installed.
- Subject land is landscaped with rocks, weed mat and fake turf for low maintenance

### AGENCY REFERRALS

N/A

### INTERNAL REFERRALS

N/A

### PLANNING & DESIGN CODE POLICIES

In assessing the merits of the proposal, I have reviewed the Zone, Overlays, and General Development policies as contained within the P&D Code (in effect) Version 2023.19 - 21 December 2023.

### SERIOUSLY AT VARIANCE

Section 107(2)(c) of the Act requires the Relevant Authority to determine whether the development is seriously at variance with the Planning and Design Code (The Code), Disregarding minor variations. A development that is seriously at variance with the Code must not be granted consent.

The Supreme Court previously explained:

*“The expression “seriously at variance with the Development Plan” refers to that which is an important or grave departure in either quantity or degree from the Development Plan) It denotes something which is plainly not light or trifling. It is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it (Mar Mina SA Pty Ltd v City of Marion [008] SASC 120).”*

A more recent judgment of the Supreme Court has confirmed that planning authorities are to approach the ‘seriously at variance question’ in the same way it was approached under





the predecessor act (para 74 of Geber Super Pty Ltd c the Barossa Assessment Panel [2023] SASC 154).

It is recommended that the Panel determines the proposed development is not seriously at variance with the Planning and Design Code.

The subject site is located within the Suburban Neighbourhood Zone. The use of the existing dwelling as short term tourist accommodation, remains for a residential type purpose albeit for short term periods.

## **PLANNING ASSESSMENT**

This application is for a retrospective change of use from a dwelling to a dwelling used for tourist accommodation. Tourist accommodation is required to be 'Performance Assessed' pursuant to the Code. Tourist accommodation is defined as *temporary or short-term accommodation that is provided to travellers on a commercial basis*.

### **Approach to Planning Assessment**

Part 1 of the Code is titled 'Rules of Interpretation' which sets out how the Code implements the requirements of section 66 of the *Planning, Development and Infrastructure Act 2016* (the Act). It includes the following information on the role of Designated Performance Features:

#### ***Policies – Desired Outcomes and Performance Outcomes***

*Zone, subzone, overlay and general development policies are comprised of Desired Outcomes (DO) and Performance Outcomes (PO). These are applicable to performance assessed development and to restricted development.*

#### ***Desired Outcome (DO)***

*Desired outcomes are policies designed to aid the interpretation of performance outcomes by setting a general policy agenda for zone, subzone, overlay or general development policies. 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 Outcome (PO)***

*Performance outcomes are policies designated 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 (DPF)***

*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 another way, or from the need to assess development on its merits against all relevant policies.*

## **Land Use**

The following provisions of the P&D Code (in effect) Version 2023.19 - 21 December 2023 when this application was received are as follows:



## Part 2 - Zones and Sub Zones

### Suburban Neighbourhood Zone

#### Assessment Provisions (AP)

#### Desired Outcome (DO)

Desired Outcome	
DO 1	Low density housing is consistent with the existing local context and development pattern. Services and community facilities contribute to making the neighbourhood a convenient place to live without compromising residential amenity and character.

#### Performance Outcomes (PO) and Deemed to Satisfy (DTS) / Designated Performance Feature (DPF) Criteria

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<small>Land Use and Intensity</small>	
<p><b>PO 1.1</b></p> <p>Predominantly low density residential development with complementary non-residential uses compatible with a low density residential character.</p>	<p><b>DTS/DPF 1.1</b></p> <p>Development comprises one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) Ancillary accommodation</li> <li>(b) Child care facility</li> <li>(c) Community facility</li> <li>(d) Consulting room</li> <li>(e) Dwelling</li> <li>(f) Educational facility</li> <li>(g) Office</li> <li>(h) Place of Worship</li> <li>(i) Recreation area</li> <li>(j) Shop</li> <li>(k) Supported accommodation.</li> </ul>

## Part 4 - General Development Policies

### Design

#### Assessment Provisions (AP)

#### Desired Outcome (DO)

Desired Outcome	
DO 1	<p>Development is:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) durable - fit for purpose, adaptable and long lasting</li> <li>(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</li> <li>(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.</li> </ul>

#### Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)



<p><b>PO 19.2</b></p> <p>Uncovered parking spaces are of a size and dimensions to be functional, accessible and convenient.</p>	<p><b>DTS/DPF 19.2</b></p> <p>Uncovered car parking spaces have:</p> <ul style="list-style-type: none"> <li>(a) a minimum length of 5.4m</li> <li>(b) a minimum width of 2.4m</li> <li>(c) a minimum width between the centre line of the space and any fence, wall or other obstruction of 1.5m</li> </ul>
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### Interface between Land Uses

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
General Land Use Compatibility	
<p><b>PO 1.1</b></p> <p>Sensitive receivers are designed and sited to protect residents and occupants from adverse impacts generated by lawfully existing land uses (or lawfully approved land uses) and land uses desired in the zone.</p>	<p><b>DTS/DPF 1.1</b></p> <p>None are applicable.</p>

### Tourism Development

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Tourism development is built in locations that cater to the needs of visitors and positively contributes to South Australia's visitor economy.





Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<b>General</b>	
<b>PO 1.1</b> Tourism development complements and contributes to local, natural, cultural or historical context where: (a) It supports Immersive natural experiences (b) It showcases South Australia's landscapes and produce (c) Its events and functions are connected to local food, wine and nature.	<b>DTS/DPF 1.1</b> None are applicable.
<b>PO 1.2</b> Tourism development comprising multiple accommodation units (including any facilities and activities for use by guests and visitors) is clustered to minimise environmental and contextual impact.	<b>DTS/DPF 1.2</b> None are applicable.
<b>Caravan and Tourist Parks</b>	
<b>PO 2.1</b> Potential conflicts between long-term residents and short-term tourists are minimised through suitable siting and design measures.	<b>DTS/DPF 2.1</b> None are applicable.

### Transport, Access and Parking

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
<b>DO 1</b>	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Table 1 - General Off-Street Car Parking Requirements

The following parking rates apply and if located in an area where a lawfully established carparking fund operates, the number of spaces is reduced by an amount equal to the number of spaces offset by contribution to the fund.

Class of Development	Car Parking Rate (unless varied by Table 2 onwards)
Where a development comprises more than one development type, then the overall car parking rate will be taken to be the sum of the car parking rates for each development type.	
<b>Tourist</b>	
Tourist accommodation other than a caravan and tourist park	1 car parking space per accommodation unit / guest room.

The subject land is located within the Suburban Neighbourhood Zone which has a Desired Outcome of *low density housing is consistent with existing local context and development pattern. Services and community facilities contribute to making the neighbourhood a convenient place to live without*



*compromising residential amenity and character.* The use of the land for Short Term Tourist Accommodation, remains for residential purposes albeit for short term periods.

The dwelling is existing with no proposed external works proposed and as such, remains contextual and compatible with the low density residential character of this area. The subject land is also affected by the Heritage Adjacency Overlay with Local and State Heritage Overlays located to the north and south.

To the west along Penola Road is land located within the Employment Zone and land to the south along Alexander Street located within an Urban Activity Zone with both areas containing commercial business activities.

The use of the dwelling for short term accommodation is within an area that already contains short term tourist accommodation (6/6 Jardine and 10/6 Jardine Street). The subject site is an individual dwelling within a cluster of other dwellings.

This application was placed on public notice and two (2) representations were received with regards to the change of use who raise concerns with regards to the number of guests allowed, maintenance of the subject land, nuisance and disturbance associated with the operation as a short term tourist accommodation.

Council have provided conditions to be included if planning consent is to be granted.

The Applicant has responded to these concerns as detailed in the Attachment.

The Code requires that 1 car parking space be provided per accommodation unit/guest room. The existing dwelling contains three (3) bedrooms that could be used by guests with four (4) car spaces provided on site for guests which meets the Code requirements for car parking on site.

No buildings and works are proposed.

Having regard to the context and nature of the subject site and locality, and the relevant provisions of the Planning and Design Code, the retrospective change of use is an appropriate form of development within the subject locality.

## **CONCLUSION**

For the reasons provided above in this Report and having consideration to the Planning and Design Code, this development is not at variance to the provisions of the Planning and Design Code and is recommended that Planning Consent be granted subject to the recommended conditions.

## **INVITES**

The Applicant - Carol Smith

## **ATTACHMENTS**

1. DAP snapshot
2. Application documents
3. Aerial map
4. Zoning map
5. Code rules at start of assessment
6. Location of Representations
7. Representations
8. Applicant response to Representations



**6.2 APPLICATION FOR REVIEW - 4 FITZGIBBON COURT, SUTTONTOWN – REPORT NO. AR24/15373**

<b>Development No:</b>	<b>DA: 23038023</b>
<b>Applicant:</b>	<b>Hotondo Homes – Natalie Banning</b>
<b>Property Address:</b>	<b>4 Fitzgibbon Court, Suttontown</b>
<b>Property Owner:</b>	<b>Mrs Kristine Lavia</b>
<b>Report No:</b>	<b>AR24/15373</b>
<b>CM9 Reference:</b>	<b>AF22/276</b>
<b>Author:</b>	<b>Roslyn Snaauw, Senior Planner</b>
<b>Authoriser:</b>	<b>Tracy Tzioutziouklaris, Assessment Manager</b>
<b>Nature of Development:</b>	<b>To construct a detached dwelling and outbuilding</b>
<b>Description:</b>	<b>To construct a detached dwelling and outbuilding</b>
<b>Zoning:</b>	<b>Suburban Neighbourhood</b>
<b>Policy Area:</b>	<b>City of Mount Gambier</b>
<b>Heritage:</b>	<b>None</b>

**REPORT RECOMMENDATION**

1. That Limestone Coast Southern Regional Assessment Panel Report No. AR24/15373 titled 'Application for Review - 4 Fitzgibbon Court, Suttontown' as presented on 21 March 2024 be noted.
2. 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 relevant legislation, the application is at variance with the provisions of the Planning and Design Code and the decision of the Assessment Manager be upheld and Planning consent be refused for the following reasons:
  - (a) The proposed development is at variance to the provisions of the Planning and Design Code with regards to front primary street boundary setback, floor area and wall height from natural ground level of the outbuilding.
  - (b) The proposed development does not ensure orderly and proper development.
  - (c) The outbuilding will not be subordinate to the residential land use of the land.
  - (d) The outbuilding appearance from the primary street Fitzgibbon Avenue and O'Leary Road to the rear, will dominate and detract from the streetscape and appearance of the dwelling to which it is associated with and will dominate the character and amenity of the subject locality.
  - (e) The proposed development does not improve or enhance the amenity and character of the area.



## BACKGROUND

Pursuant to delegated authority, Planning Consent was refused by Notice dated 20 February 2024 for this development application which is seeking to *construct a detached dwelling and outbuilding* at 4 Fitzgibbon Court in Suttontown.

The *Planning, Development and Infrastructure Act, 2016* introduces new appeal options for Applicants. As this Development Application was determined using delegated authority, the Applicant is provided the opportunity to apply for a review of the decision to the Regional Assessment Panel or the Environment, Resources and Development Court. Should the Applicant be aggrieved by the decision of the Regional Assessment Panel, the Applicant remains able to lodge a further appeal to the Environment, Resources and Development Court against the decision of the Regional Assessment Panel.

## PROPOSED DEVELOPMENT

A copy of the Assessment Report for this development application is attached to this report for Members information and perusal.

This application is for the construction of a detached dwelling and outbuilding on the subject vacant land.

Access to the proposed land will be to the west from Fitzgibbon Court in the southwestern corner. This access will provide a driveway to the proposed dwelling and outbuilding to the rear of the subject land.

### Dwelling

The proposed dwelling will have a front/western boundary setback from Fitzgibbon Court a minimum 6.5 metres, southern boundary setback of 7.0 metres, rear boundary setback of the dwelling 23.2 metres and 1.89 metres from the northern boundary.

The proposed dwelling will be constructed of brickwork and cladding with the roof being constructed of roof sheeting in the colour of Monument. The dwelling will have a wall height of 2.44 metres and overall height of approximately 4.69 metres.

The dwelling will be comprised of an entrance portico that leads into an entry, laundry, bathroom, separate toilet, open plan family/dining/kitchen (kitchen will have a walk in pantry) and will contain two (2) bedrooms with bedroom 1 containing a walk in robe and ensuite.

An alfresco area will be located to the north east, under the same roof line as the dwelling and will have access from the family room.

A double car garage will provide undercover car parking, also under the same roof line as the proposed dwelling.

### Outbuilding

This application is also for the construction of an outbuilding. The proposed outbuilding will be located to the rear of the subject land and will have the dimensions of 9.0 metre in depth and 15.0 metres in length (total floor area of 135 square metres) with an eastern boundary (O'Leary Road) setback of 1.0 metre (boundary length 20.0 metres) with a northern boundary setback of 4.0 metres and setback from the proposed dwelling 13.26 metres.

The outbuilding will have a wall height of 3.6 metres and an overall height to the ridge of 4.409 metres. The outbuilding will have a roof with a 10 degree pitch.

The western elevation will contain four (4) roller doors and a pedestrian door with the outbuilding constructed in colorbond cladding in the color of Monument.



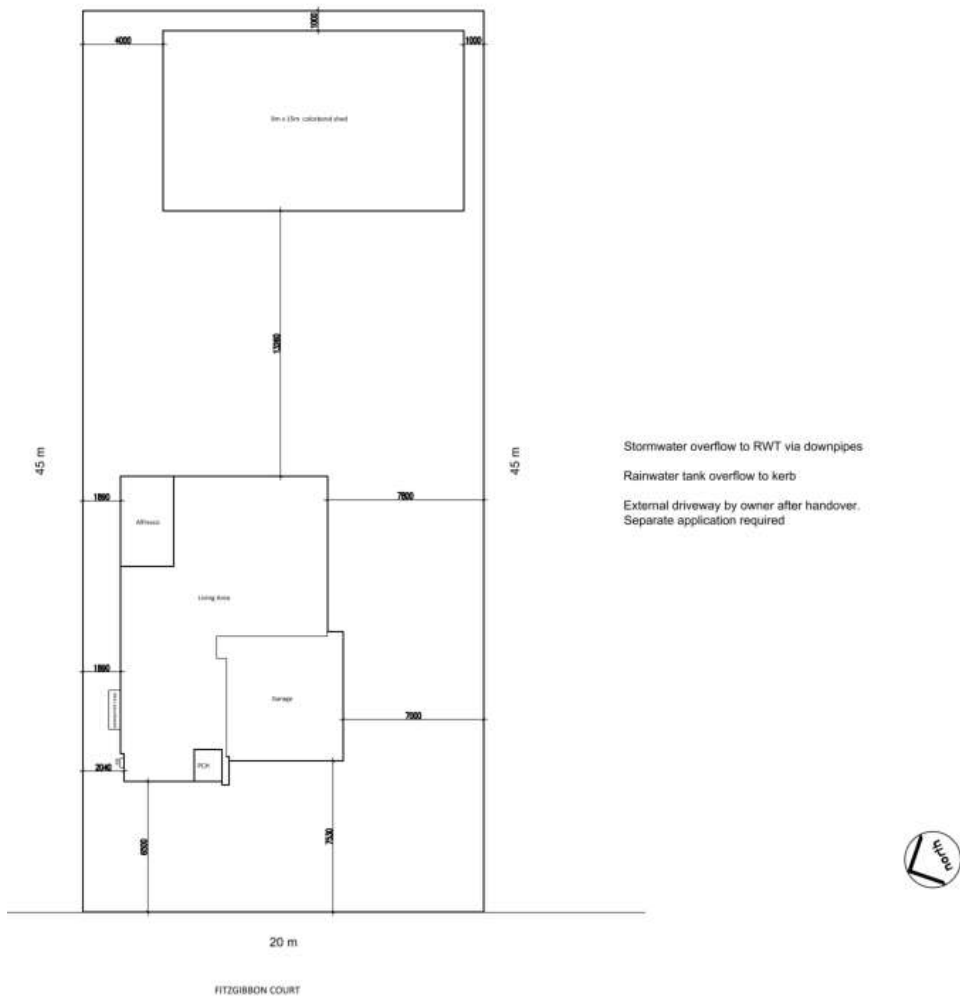


Figure 1: Proposed site plan of development

**LOCATION OF DEVELOPMENT:**

The subject land is located in an area of newly created residential allotments, within the Suburban Neighbourhood Zone as identified by the Planning and Design Code (Code) (in effect) Version 2024.1 - 18/01/2024.

The site has a rectangular configuration with an allotment size of 900m<sup>2</sup> with a primary road frontage to the west Fitzgibbon Court and a rear boundary to O’Leary Road. No access is provided from O’Leary Road.

The front and rear boundary have a length of 20.0 metres with the north and southern boundary length being 45.0 metres.

The subject land is void of any characteristics as it is cleared vacant land located within an area being developed with residential dwellings with front boundary setbacks of, and greater than 8.0 metres with outbuilding footprints, having an average floor area in Fitzgibbon Court being 78 square metres.





Figure 2: Subject site highlighted

**Location reference:** 4 FITZGIBBON CT SUTTONTOWN SA 5291

**Title ref.:** CT 6282/126 **Plan Parcel:** D131535 AL30 **Council:** CITY OF MOUNT GAMBIER

### CONSENT TYPE REQUIRED:

Planning Consent

### CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**

New housing

Shed

Detached dwelling: Code Assessed - Performance Assessed

Outbuilding (Shed): Code Assessed - Performance Assessed

- **OVERALL APPLICATION CATEGORY:**

Code Assessed - Performance Assessed

- **REASON**

P&D Code; reduced primary street setback dwelling, outbuilding floor area greater than 60sqm and wall height is greater than 3.0m

### PUBLIC NOTIFICATION

Pursuant to Table 5 of the Planning and Design Code, a detached dwelling and outbuilding is exempt from public notification.

### AGENCY REFERRALS

N/A

### INTERNAL REFERRALS

N/A

### PLANNING & DESIGN CODE POLICIES

As per the attached extract from the Planning and Design Code.

In assessing the merits of the proposal, Council have reviewed the Zone, Overlays, and General Development Policies as contained within the Code (in effect) Version 2024.1 - 18/01/2024.



The following provisions of the Suburban Neighbourhood Zone most relevant to the proposed assessment are as follows:

Dwelling

Part 2 – Zones and Sub Zones

**Suburban Neighbourhood Zone**

**Assessment Provisions (AP)**

Desired Outcome (DO)

Desired Outcome	
DO 1	Low density housing is consistent with the existing local context and development pattern. Services and community facilities contribute to making the neighbourhood a convenient place to live without compromising residential amenity and character.

Performance Outcomes (PO) and Deemed to Satisfy (DTS) / Designated Performance Feature (DPF) Criteria

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<b>Land Use and Intensity</b>	
<p>PO 1.1</p> <p>Predominantly low density residential development with complementary non-residential uses compatible with a low density residential character.</p>	<p>DTS/DPF 1.1</p> <p>Development comprises one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) Ancillary accommodation</li> <li>(b) Child care facility</li> <li>(c) Community facility</li> <li>(d) Consulting room</li> <li>(e) Dwelling</li> <li>(f) Educational facility</li> <li>(g) Office</li> <li>(h) Place of Worship</li> <li>(i) Recreation area</li> <li>(j) Shop</li> <li>(k) Supported accommodation.</li> </ul>
<b>Site coverage</b>	
<p>PO 3.1</p> <p>Building footprints consistent with the character and pattern of a low-density suburban neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.</p>	<p>DTS/DPF 3.1</p> <p>The development does not result in <u>site coverage</u> exceeding 50%.</p>
<b>Primary Street Setback</b>	
<p>PO 5.1</p> <p>Buildings are setback from <u>primary street</u> boundaries consistent with the existing streetscape.</p>	<p>DTS/DPF 5.1</p> <p>Buildings setback from the <u>primary street</u> boundary in accordance with the following table:</p>





There is no existing building on either of the abutting sites sharing the same street frontage as the site of the proposed building.	8m
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### Part 3 – Overlays

None relevant

The following provisions of Part 4 – General Development Policies most relevant to the proposed assessment are as follows:

### Part 4 – General Development Policies

#### Design in Urban Areas

##### Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Development is: <ul style="list-style-type: none"> <li>(a) contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality</li> <li>(b) durable – fit for purpose, adaptable and long lasting</li> <li>(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</li> <li>(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.</li> </ul>

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

#### Outbuilding

### Part 2 – Zones and Sub Zones

#### Suburban Neighbourhood Zone

##### Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Low density housing is consistent with the existing local context and development pattern. Services and community facilities contribute to making the neighbourhood a convenient place to live without compromising residential amenity and character.

Performance Outcomes (PO) and Deemed to Satisfy (DTS) / Designated Performance Feature (DPF) Criteria





Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<b>Site coverage</b>	
<p>PO 3.1</p> <p>Building footprints consistent with the character and pattern of a low-density suburban neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.</p>	<p>DTS/DPF 3.1</p> <p>The development does not result in <u>site coverage</u> exceeding 50%.</p>
<b>Ancillary Buildings and Structures</b>	
<p>PO 11.1</p> <p>Residential ancillary buildings are sited and designed to not detract from the streetscape or appearance of primary residential buildings on the <u>site</u> or neighbouring properties.</p>	<p>DTS/DPF 11.1</p> <p>Ancillary buildings:</p> <ul style="list-style-type: none"> <li>(a) are ancillary to a <u>dwelling</u> erected on the same <u>site</u></li> <li>(b) have a floor area not exceeding 60m<sup>2</sup></li> <li>(c) are not constructed, added to or altered so that any part is situated:                             <ul style="list-style-type: none"> <li>(i) in front of any part of the <u>building line</u> of the <u>dwelling</u> to which it is ancillary or</li> <li>(ii) within 900mm of a boundary of the allotment with a <u>secondary street</u> (if the land has boundaries on two or more roads</li> </ul> </li> <li>(h) have a <u>wall height</u> or <u>post height</u> not exceeding 3m above natural ground level (and not including a gable end)</li> <li>(i) have a roof height where no part of the roof is more than 5m above the natural ground level</li> <li>(j) if clad in sheet metal, is pre-colour treated or painted in a non-reflective colour</li> </ul>

### Part 3 – Overlays

None relevant

The following provisions of Part 4 – General Development Policies most relevant to the proposed assessment are as follows:

### Part 4 – General Development Policies



**Design in Urban Areas**

**Assessment Provisions (AP)**

Desired Outcome (DO)

Desired Outcome	
DO 1:	<p>Development is:</p> <ul style="list-style-type: none"> <li>(a) contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality</li> <li>(b) durable – fit for purpose, adaptable and long lasting</li> <li>(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</li> <li>(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.</li> </ul>

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

**PLANNING ASSESSMENT**

The proposed detached dwelling and ancillary outbuilding are located on the subject site which is located in the Suburban Neighbourhood Zone pursuant to the Code (in effect) Version 2024.1 - 18/01/2024.

Dwelling

The proposal is a single storey two (2) bedroom dwelling will not result in a building footprint/site coverage exceeding 50% which will provide sufficient space around the dwelling to limit any visual impacts and provide an opportunity for soft landscaping to be undertaken.

The front boundary setback is proposed to be 6.0 metres however development within this area are providing a front primary street boundary setback of 8.0 metres.

Council consider that a front boundary setback of 8.0 can be achieved with the size and allotment configuration able to provide this requirement.

Outbuilding

The desired outcome for the Zone is for low density housing that is consistent with the existing local context and development pattern.

- Performance Outcome – Ancillary Buildings and Structures – PO11.1 of the Code states that residential ancillary buildings are sited and design to not detract from the streetscape or appearance of primary residential buildings on the site or neighbourhood properties.

The proposed outbuilding does not meet the required floor area and wall height requirements. The proposed outbuilding will have a floor area of 135 square metres instead of the Code requirement of 60 square metres. The proposed wall height is 3.6 metres and the Code recommends 3.0 metres above ground level.

Council note that the average floor area of outbuildings within Fitzgibbon Court are approximately 78 square metres and within Springview Estate approximately 100 square metres with wall heights being generally 3.6 metres or less above natural ground level.

The Planning and Design Code identifies ancillary buildings are to be sited and designed to not detract from the streetscape appearance of primary residential buildings on the site or neighbouring properties.



The primary land use of the allotment is for the detached dwelling being constructed with the outbuilding being an ancillary building that is used in association with the dwelling. The size and scale of the outbuilding is questionable as to whether it is of an appropriate size, bulk and scale within this immediate area with added consideration required as the rear/eastern boundary adjoins O'Leary Road and development is visually dominant along this Road.

The wall height and footprint of the outbuilding will be a significant visual feature from both Fitzgibbon Court and O'Leary Road and the subject land is on allotment that is on higher ground to surrounding land to the south and east and will be visually dominant to the dwelling which is of a similar floor area and overall height.

When considering the location, floor area, wall height and length of wall to be constructed with a 1.0 metre setback from the eastern and southern boundary, the outbuilding as proposed, is not considered appropriate to be constructed within a residential area and is not supported. The bulk and scale of the building is not contextual to the developing surrounding land and will not positively contribute to the character of the locality being significantly greater than what is anticipated for outbuildings pursuant to the Planning and Design Code.

The Code, in most instances, no longer requires applications for an outbuilding to be placed on public notification and it is the responsibility of the Responsible Authority, in this instance Council, to ensure that this type of development is not supported to ensure the amenity of surrounding land and the neighbourhood is not impacted by this type of development.

Part 4 – General Development Policies – Design in Urban Areas, details that a desired outcome for development to be contextual by considering, recognising and carefully responding to its natural surroundings or building environment and positively contribute to the character of the locality.

Council advised the Applicant that this proposed development would be out of character with the neighbourhood character and requested amending plans to show the floor area of the proposed outbuilding to be reduced. No modifications/amendment to the plans were received addressing Council's concerns and it was requested that the application progressed as is.

Council have determined that the proposed garage will not be in the context with the desired outcome nor performance criteria as it will not be consistent with the character and pattern of construction within this area and will not be subordinate to the dwelling being of a similar footprint with the proposed development of the outbuilding being a visually dominant feature of the subject allotment.

The development as proposed is at variance with the character and visual appearance of properties within the subject locality and does not warrant support or the granting of Planning Consent.

It is highlighted the applicant was advised prior to verification of the application the outbuilding design was considered at odds with the policies of the Planning and Design Code and that design changes should be considered prior to the determination of the application.

The Applicant has provided examples of outbuildings within this area and Council can provide the following response:

- 17 Collins Drive, Suttontown (1,244 sqm allotment)
  - The outbuilding received Development Approval on the 24 August 2020 was approved pursuant to the *Development Act 1993*.
  - The Outbuilding dimensions are 10.8 metres by 7.5 metres (81sqm floor area) with a wall height of 3.6 metres and overall height of 4.48 metres.
- 24-26 Collins Drive, Suttontown (1,649 sqm allotment)
  - The outbuilding received Planning Consent on the 5 November 2019 under the *Development Act 1993*.
  - The Outbuilding dimensions are 16.0 metres by 8.0 metres (128sqm floor area) with a wall height of 3.0 metres and overall height of 3.70 metres.
- 37 Collins Drive, Suttontown (1,237 sqm allotment)



- The outbuilding received Planning Consent on the 21 March 2022 under the *Planning, Development and Infrastructure Act 2016*.
- The Outbuilding dimensions are 16.0 metres by 8.0 metres (128sqm floor area) with a wall height of 3.6 metres and overall height of 4.5 metres.
- 45-47 Collins Drive, Suttontown (2,500sqm allotment)
  - The outbuilding received Planning Consent on the 5 November 2020 under the *Development Act 1993*.
  - The Outbuilding dimensions are 11.0 metres by 12.0 metres (132sqm floor area) with a wall height of 4.0 metres and overall height of 4.9 metres.
- 39 Springview Drive, Suttontown (1,865sqm allotment)
  - The application was part of the transitional application and was automatically granted in PlanSA.
  - The outbuilding received Development Approval on 5 July 2021 under the *Planning, Development and Infrastructure Act 2016*.
  - The Outbuilding dimensions are 18.0 metres by 9.0 metres (162sqm floor area) with a wall height of 3.6 metres and overall height of 4.4 metres.
- 47 Springview Drive, Suttontown (1,650sqm allotment)
  - The outbuilding received Development Approval on 2 March 2022 under the *Planning, Development and Infrastructure Act 2016*.
  - The outbuilding dimensions are 18.0 metres by 9.0 metres (162sqm floor area) with a wall height of 3.8 metre and an overall height 4.6 metres.
- 48 Springview Drive, Suttontown (1,489sqm allotment)
  - The outbuilding received Development Approval on the 2 November 2018 under the *Development Act 1993*.
  - The outbuilding dimensions are 15.0 metres by 8.0 metres (120sqm floor area) with a wall height of 3.6 metres with an overall height of 4.37 metres.
- 50 Springview Drive, Suttontown (1,563sqm allotment)
  - The outbuilding received Development Approval on 30 August 2019 under the *Development Act 1993*.
  - The outbuilding dimensions are 12.6 metres by 8.0 metres (100.8sqm floor area) with a wall height of 3.6 and overall height of 4.3 metres.
- 22 Greenwood Close, Suttontown (1,546sqm allotment)
  - The outbuilding received Development Approval on 3 May 2022 under the *Planning, Development and Infrastructure Act 2016*.
  - The outbuilding dimensions are 15.0 metres by 10.0 metres (150sqm in floor area) with a wall height of 3.9 metres and an overall height of 4.95 metres.
- 1 Fitzgibbon Court, Suttontown (1,089sqm allotment)
  - The outbuilding received Development Approval on 22 November 2022 under the *Planning, Development and Infrastructure Act 2016*.
  - The outbuilding dimensions are 11.0 metres by 7.0 metres (77sqm in floor area) with a wall height of 3.6 metres and an overall height of 4.3 metres.
- 5 Fitzgibbon Court, Suttontown (902.97sqm allotment)



- The outbuilding received Development Approval on 3 November 2023 under the *Planning, Development and Infrastructure Act 2016*.
- The outbuilding dimensions are 9.0 metres by 5.0 metres (45sqm in floor area) with a wall height of 3.0 metres and an overall height of 3.44 metres.
- 11 Fitzgibbon Court, Suttontown (925sqm allotment)
  - The outbuilding received Development Approval on 19 December 2023 under the *Planning, Development and Infrastructure Act 2016*.
  - The outbuilding dimensions are 10.0 metres by 7.5 metres (75sqm in floor area) with a wall height of 3.6 metres and an overall height of 4.3 metres.
- 16 Fitzgibbon Court, Suttontown (926sqm allotment)
  - The outbuilding received Development Approval on 5 September 2023 under the *Planning, Development and Infrastructure Act 2016*.
  - The outbuilding has an 'L' shaped design and will have a total floor area of 116.19 sqm with a wall height of 2.51 metres and an overall height of 3.03 metres.
- 18 Fitzgibbon Court, Suttontown (1,256sqm allotment)
  - The outbuilding received Development Approval on 11 July 2023 under the *Planning, Development and Infrastructure Act 2016*.
  - The outbuilding dimensions are 9.12 metres by 9.12 metres (83.17sqm in floor area) with a wall height of 3.5 metres and an overall height of 4.7 metres.
- This application subject land at 4 Fitzgibbon Court, Suttontown (900sqm allotment)
  - The outbuilding dimensions are 15.0 metres by 9.0 metres (135sqm in floor area) with a wall height of 3.6 metres and an overall height of 4.4 metres.

As can be seen by the examples of approvals provided above (which there are many more outbuildings approved within this area) the average outbuilding floor area within Fitzgibbon Court (5) is 79.27sqm, noting that Fitzgibbon Court contains smaller allotments (other than numbers 18 and 15 Fitzgibbon Court) than the examples provided above the eastern properties of Fitzgibbon Court sharing a boundary with O'Leary Road.

## CONCLUSION

The proposed development is not in keeping with the context to the character of the neighbourhood with performance outcomes as detailed in the Zone and Policies of the Planning and Design Code not being achieved in respect to the setback of the proposed dwelling and the size and scale of the proposed garage and the Refusal as issued be upheld by the Limestone Coast Southern Regional Assessment Panel.

## INVITES

The Applicant - Hotondo Homes

## ATTACHMENTS

1. Application for Review
2. DecisionNotificationForm- Refusal
3. DAP Submission Snapshot Appl 23038023
4. Application documents
5. Applicant request to progress application
6. Fitzgibbon plans
7. Planning and Design Code policies



8. Refusal Planning Assessment Report - Application 23038023
9. Request for Documentation
10. Aerial map
11. Zoning map





<b>6.3</b>	<b>CHANGE OF USE TO INDOOR RECREATION FACILITY (GYM) AND ADVERTISEMENT INCLUDING ILLUMINATION OF ADVERTISEMENT – REPORT NO. AR24/16746</b>
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<b>Development No:</b>	<b>DA: 24001575</b>
<b>Applicant:</b>	<b>Dean Linder-Leighton</b>
<b>Property Address:</b>	<b>4 Scott Court, Mount Gambier</b>
<b>Property Owner:</b>	<b>Challons Investments Pty Ltd</b>
<b>Report No:</b>	<b>AR24/16746</b>
<b>CM9 Reference:</b>	<b>AF22/276</b>
<b>Author:</b>	<b>Roslyn Snaauw, Senior Planner</b>
<b>Authoriser:</b>	<b>Tracy Tzioutziouklaris, Assessment Manager</b>
<b>Nature of Development:</b>	<b>Change of use to indoor recreation facility (gym) and advertisement including illumination of advertisement</b>
<b>Description:</b>	<b>Change of use to indoor recreation facility (gym) and advertisement including illumination of advertisement</b>
<b>Zoning:</b>	<b>Employment</b>
<b>Policy Area:</b>	<b>City of Mount Gambier</b>
<b>Heritage:</b>	<b>N/A</b>

### REPORT RECOMMENDATION

1. That Limestone Coast Southern Regional Assessment Panel Report No. AR24/16746 titled 'Change of use to indoor recreation facility (gym) and advertisement including illumination of advertisement' as presented on 21 March 2024 be noted.
2. That the Limestone Coast Southern Regional Assessment Panel, 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, resolve that the development application is NOT seriously at variance with the Planning and Design Code, for the following reasons:
  - (a) The proposed land use is not prejudicial to the Desired Outcome of the Employment Zone.
  - (b) The identified departures from the Planning and Design Code are not considered to be "important or grave".
  - (c) The proposed development is for a commercial type purpose and is the reuse of an existing building.
3. That the Limestone Coast Southern Regional Assessment Panel resolve that pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* having undertaken an assessment of the application against the Planning and Design Code and relevant legislation, the application is at variance with the provisions of the Planning and Design Code and the application be refused subject to the following reason:
  - (a) The proposed development is at variance to Part 4 – General Development Policies – Transport, Access and Parking - Desired Outcome DO 1 and Performance Outcomes PO 1.1 and PO 5.1 of the Planning and Design Code with regards to safety, the inability to provide sufficient car parking on site and the functional performance of Scott



Court to accommodate the volume of traffic likely to be generated by the change of use.





**BACKGROUND**

The subject land is located within the Employment Zone and is developed with a warehouse that contains an office area downstairs (119sqm) and upstairs (110sqm). The total building area is 1,272 square metres.

It is noted the warehouse and upstairs office were previously leased separately from each other.

At the time of writing this report, 13 March, 2024 there were 36 days left on the clock for the Planning Assessment.

**PROPOSED DEVELOPMENT**

This application is for change of use from a warehouse and office (Studform) to an indoor recreation facility (gym) with advertisement including illumination of advertisement.

An additional internal mezzanine is proposed to the rear of the existing warehouse (100sqm).

Indoor recreation facility

- It is proposed that there will be two (2) staff with additional staff required for classes as necessary
- Average of fifteen (15) to twenty-five (25) clients (this has been amended to 16 per session).
- Proposed to primarily operate between the hours of 6.00am to 11.00am and 3.00pm to 6.30pm (this has been amended to 5.00am to 8.00am and 5.00pm to 7.00pm).
- Nine (9) car spaces are being provided on-site.

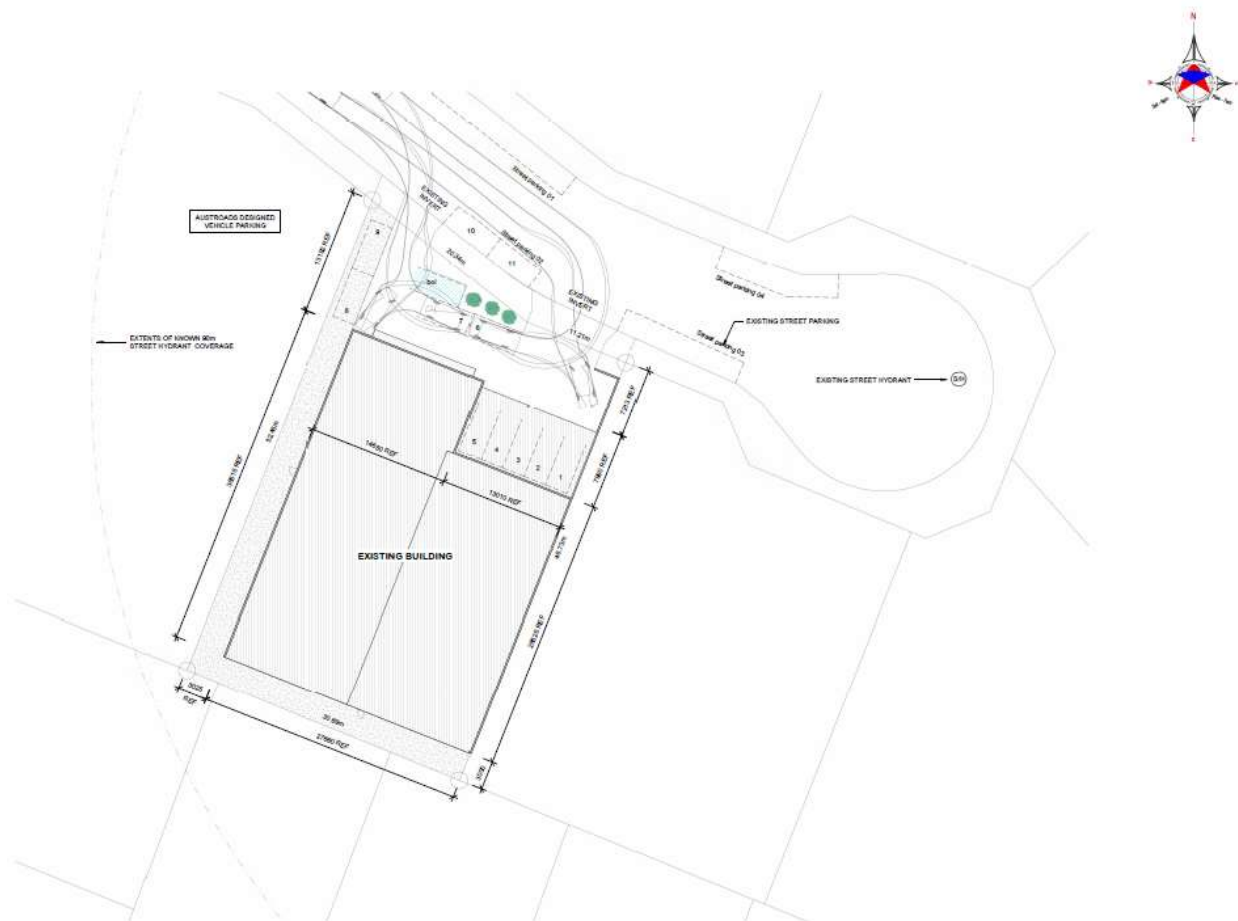


Figure 1: Site plan



### Advertisement

The north/front elevation facing Scott Court (Figure 2 below) contains a circular sign is proposed to be illuminated and is flush with the wall with a height above ground level being 4.4 metres and having a diameter of 2.4 metres.

A sign is located on the entrance canopy in the form of a fascia sign that will have the dimensions of 0.300 metres in height and 8.0 metres in length. This sign is not illuminated.



Figure 2: Northern/front elevation signage

The southern/rear elevation contains a high wall sign that is flush with the wall and has the dimensions of 1.5 metres in height and 8.9 metres in width and is 4.5 metres above the ground level. This sign is not illuminated.





Figure 3: Southern/rear elevation

The western elevation contains a high wall sign that is flush with the wall and has the dimensions of 1.8 metres in height and 10.7 metres in length and is 4.5 metres above the ground level. This sign is not illuminated.



Figure 4: Western elevation

Council note that the advertisement aspect of the application have already been installed prior to any development consent (as noted in photographs provided above)

#### Internal works



The internal works will provide for three (3) gymnasium areas, locker room, customer service area, office/reception area, café area, storeroom and toilet areas. The existing upper mezzanine area to the north/front of the structure will include a member's lounge, kitchen, recreation room, toilets and two (2) further rooms not labelled for purpose.

Council note that an additional internal mezzanine floor of 100sqm is to be constructed to the rear/south of the structure.

### **LOCATION OF DEVELOPMENT:**

The subject land has a rectangular configuration and is located within the Employment Zone as identified by the Planning and Design Code (Code) P&D Code (in effect) Version 2024.1 - 18/01/2024.

The subject land has an allotment/site area of approximately 1,500sqm and contains an existing concrete, two (2) level warehouse and office with vehicle access to the north from Scott Court.

The surrounding area is located within the Employment Zone that contains low impact light industrial, commercial and business activities.

Minimal carparking is provided in the neck of Scott Court and none in the Court bowl.



Figure 5: Location of off-site carparking in the Court

**Location reference:** 4 SCOTT CT MOUNT GAMBIER SA 5290

**Title ref.:** CT 5457/590 **Plan Parcel:** D48283 AL12 **Council:** CITY OF MOUNT GAMBIER

### **CONSENT TYPE REQUIRED:**

Planning Consent

### **CATEGORY OF DEVELOPMENT:**

- **PER ELEMENT:**



Change of use: Code Assessed - Performance Assessed

Advertisement: Code Assessed - Performance Assessed

- **OVERALL APPLICATION CATEGORY:**

Code Assessed - Performance Assessed

- **REASON**

P&D Code; indoor recreation facility and advertisement

## **PUBLIC NOTIFICATION**

Public notification was required to be undertaken pursuant to Table 5 – Procedural Matter – Notification as the proposed change of use to an Indoor Recreation Facility is not a class of development that is exempt or excluded from notification.

The application was placed on public notification with 23 contacts notified of the change of use.

One (1) Representation was received opposing the change of use which is summarised as follows:

### **Representation**

The full detailed copy of the Representation is provided in the Attachments of this report.

<b>NAME</b>	<b>ADDRESS</b>	<b>STAKEHOLDER POSITION</b>	<b>ISSUES</b>	<b>REQUEST TO BE HEARD</b>
Michael Parker	8 Scott Court, Mount Gambier SA 5290	Opposes the development	• Lack of car parking	Yes

### **Applicant Response to Representation**

The Applicant has responded to these concerns stating:

- Revised on-site car parking capacity (no plans have been received for this)
- Busiest hours will be adjusted to 5.00 am to 8.00am and 5.00pm to 7.00pm
- Limiting number of persons to 16 per session.

### **AGENCY REFERRALS**

N/A

### **INTERNAL REFERRALS**

N/A

### **PLANNING & DESIGN CODE POLICIES**

In assessing the merits of the proposal, Council has reviewed the Zone, Overlays, and General Development policies as contained within the P&D Code (in effect) Version 2024.1 - 18/01/2024.

#### **Approach to Planning Assessment**

Part 1 of the Code is titled 'Rules of Interpretation' which sets out how the Code implements the requirements of section 66 of the *Planning, Development and Infrastructure Act 2016* (the Act). It includes the following information:

#### ***Policies – Desired Outcomes and Performance Outcomes***

*Zone, subzone, overlay and general development policies are comprised of Desired Outcomes (DO) and Performance Outcomes (PO). These are applicable to performance assessed development and to restricted development.*

#### ***Desired Outcome (DO)***





*Desired outcomes are policies designed to aid the interpretation of performance outcomes by setting a general policy agenda for zone, subzone, overlay or general development policies. 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 Outcome (PO)**

*Performance outcomes are policies designated 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 (DPF)**

*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 another way, or from the need to assess development on its merits against all relevant policies.*

**Land Use**

The following provisions of the Employment Zone most relevant to the proposed assessment are as follows:

Part 2 – Zones and Sub Zones

**Employment Zone**

**Assessment Provisions (AP)**

Desired Outcome (DO)

Desired Outcome	
DO 1	A diverse range of low-impact light industrial, commercial and business activities that complement the role of other zones accommodating significant industrial, shopping and business activities.
DO 2	Distinctive building, landscape and streetscape design to achieve high visual and environmental amenity particularly along arterial roads, zone boundaries and public open spaces.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
PO 1.1	
A range of employment-generating light industrial, service trade, motor repair and other compatible businesses servicing the local community that do not produce emissions that would detrimentally affect local amenity.	



### Part 3 – Overlays

#### Advertising Near Signalised Intersections Overlay

##### Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Provision of a safe road environment by reducing driver distraction at key points of conflict on the road.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<b>Advertisements Near Signalised Intersections</b>	
PO 1.1  Advertising near signalised intersections does not cause unreasonable distraction to road users through illumination, flashing lights, or moving or changing displays or messages.	DTS/DPF 1.1  Advertising: <ul style="list-style-type: none"> <li>(a) is not illuminated</li> <li>(b) does not incorporate a moving or changing display or message</li> <li>(c) does not incorporate a flashing light(s).</li> </ul>

### Part 4 – General Development Policies

#### Advertisements

##### Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Advertisements and advertising hoardings are appropriate to context, efficient and effective in communicating with the public, limited in number to avoid clutter, and do not create hazard.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<b>Appearance</b>	
PO 1.1  Advertisements are compatible and integrated with the design of the building and/or land they are located on.	DTS/DPF 1.1  Advertisements attached to a building satisfy all of the following: <ul style="list-style-type: none"> <li>(a) are not located in a <u>Neighbourhood-type zone</u></li> </ul>



	<ul style="list-style-type: none"> <li>(b) where they are flush with a wall:             <ul style="list-style-type: none"> <li>(i) if located at canopy level, are in the form of a fascia sign</li> <li>(ii) if located above canopy level:                 <ul style="list-style-type: none"> <li>A. do not have any part rising above parapet height</li> <li>B. are not attached to the roof of the building</li> </ul> </li> </ul> </li> <li>(c) where they are not flush with a wall:             <ul style="list-style-type: none"> <li>(i) if attached to a verandah, no part of the advertisement protrudes beyond the outer limits of the verandah structure</li> <li>(ii) if attached to a two-storey building:                 <ul style="list-style-type: none"> <li>A. has no part located above the finished floor level of the second storey of the building</li> <li>B. does not protrude beyond the outer limits of any verandah structure below</li> <li>C. does not have a sign face that exceeds 1m<sup>2</sup> per side.</li> </ul> </li> </ul> </li> <li>(d) if located below canopy level, are flush with a wall</li> <li>(e) if located at canopy level, are in the form of a fascia sign</li> <li>(f) if located above a canopy:             <ul style="list-style-type: none"> <li>(i) are flush with a wall</li> <li>(ii) do not have any part rising above parapet height</li> <li>(iii) are not attached to the roof of the building.</li> </ul> </li> <li>(g) if attached to a verandah, no part of the advertisement protrudes beyond the outer limits of the verandah structure</li> </ul>
	<ul style="list-style-type: none"> <li>(h) if attached to a two-storey building, have no part located above the finished floor level of the second storey of the building</li> <li>(i) where they are flush with a wall, do not, in combination with any other existing sign, cover more than 15% of the building facade to which they are attached.</li> </ul>
<p>PO 1.2</p> <p>Advertising hoardings do not disfigure the appearance of the land upon which they are situated or the character of the locality.</p>	<p>DTS/DPF 1.2</p> <p>Where development comprises an advertising hoarding, the supporting structure is:</p> <ul style="list-style-type: none"> <li>(a) concealed by the associated advertisement and decorative detailing or</li> <li>(b) not visible from an adjacent public street or thoroughfare, other than a support structure in the form of a single or dual post design.</li> </ul>
<p>PO 1.5</p> <p>Advertisements and/or advertising hoardings are of a scale and size appropriate to the character of the locality.</p>	<p>DTS/DPF 1.5</p> <p>None are applicable.</p>
<p>Proliferation of Advertisements</p>	
<p>PO 2.1</p> <p>Proliferation of advertisements is minimised to avoid visual clutter and untidiness.</p>	<p>DTS/DPF 2.1</p> <p>No more than one freestanding advertisement is displayed per occupancy.</p>





<p>PO 2.3</p> <p>Proliferation of advertisements attached to buildings is minimised to avoid visual clutter and untidiness.</p>	<p>DTS/DPF 2.3</p> <p>Advertisements satisfy all of the following:</p> <ul style="list-style-type: none"> <li>(a) are attached to a building</li> <li>(b) other than in a <u>Neighbourhood-type zone</u>, where they are flush with a wall, cover no more than 15% of the building facade to which they are attached</li> <li>(c) do not result in more than one sign per occupancy that is not flush with a wall.</li> </ul>
<b>Advertising Content</b>	
<p>PO 3.1</p> <p>Advertisements are limited to information relating to the lawful use of land they are located on to assist in the ready identification of the activity or activities on the land and avoid unrelated content that contributes to visual clutter and untidiness.</p>	<p>DTS/DPF 3.1</p> <p>Advertisements contain information limited to a lawful existing or proposed activity or activities on the same site as the advertisement.</p>
<b>Amenity Impacts</b>	
<p>PO 4.1</p> <p>Light spill from advertisement illumination does not unreasonably compromise the amenity of sensitive receivers.</p>	<p>DTS/DPF 4.1</p> <p>Advertisements do not incorporate any illumination.</p>
<b>Safety</b>	
<p>PO 5.1</p> <p>Advertisements and/or advertising hoardings erected on a verandah or projecting from a building wall are designed and located to allow for safe and convenient pedestrian access.</p>	<p>DTS/DPF 5.1</p> <p>Advertisements have a minimum clearance of 2.5m between the top of the footpath and base of the underside of the sign.</p>
<p>PO 5.2</p> <p>Advertisements and/or advertising hoardings do not distract or create a hazard to drivers through excessive illumination.</p>	<p>DTS/DPF 5.2</p> <p>No advertisement illumination is proposed.</p>



## Part 4 – General Development Policies

### Design

#### Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	<p>Development is:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) durable – fit for purpose, adaptable and long lasting</li> <li>(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</li> <li>(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.</li> </ul>

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

### Transport, Access and Parking

#### Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<b>Movement Systems</b>	
<p>PO 1.1</p> <p>Development is integrated with the existing transport system and designed to minimise its potential impact on the functional performance of the transport system.</p>	<p>DTS/DPF 1.1</p> <p>None are applicable.</p>
<p>PO 1.4</p> <p>Development is sited and designed so that loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.</p>	<p>DTS/DPF 1.4</p> <p>All vehicle manoeuvring occurs onsite.</p>



Vehicle Access	
<p>PO 3.1</p> <p>Safe and convenient access minimises impact or interruption on the operation of public roads.</p>	<p>DTS/DPF 3.1</p> <p>The access is:</p> <ul style="list-style-type: none"> <li>(a) provided via a lawfully existing or authorised driveway or access point or an access point for which consent has been granted as part of an application for the division of land</li> <li>or</li> <li>(b) not located within 6m of an intersection of 2 or more roads or a pedestrian activated crossing.</li> </ul>
<p>PO 3.3</p> <p>Access points are sited and designed to accommodate the type and volume of traffic likely to be generated by the development or land use.</p>	<p>DTS/DPF 3.3</p> <p>None are applicable.</p>
<p>PO 3.5</p> <p>Access points are located so as not to interfere with street trees, existing street furniture (including directional signs, lighting, seating and weather shelters) or infrastructure services to maintain the appearance of the streetscape, preserve local amenity and minimise disruption to utility infrastructure assets.</p>	<p>DTS/DPF 3.5</p> <p>Vehicle access to designated car parking spaces satisfy (a) or (b):</p> <ul style="list-style-type: none"> <li>(a) is provided via a lawfully existing or authorised access point or an access point for which consent has been granted as part of an application for the division of land</li> </ul>
<p>PO 3.8</p> <p>Driveways, access points, access tracks and parking areas are designed and constructed to allow adequate movement and manoeuvrability having regard to the types of vehicles that are reasonably anticipated.</p>	<p>DTS/DPF 3.8</p> <p>None are applicable.</p>
Vehicle Parking Rates	
<p>PO 5.1</p> <p>Sufficient on-<u>site</u> vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-<u>site</u> rate such as:</p> <ul style="list-style-type: none"> <li>(a) availability of on-street car parking</li> <li>(b) shared use of other parking areas</li> <li>(c) in relation to a mixed-use development, where the <u>hours of operation</u> of commercial activities complement the residential use of the <u>site</u>, the provision of vehicle parking may be shared</li> <li>(d) the adaptive reuse of a State or Local Heritage Place.</li> </ul>	<p>DTS/DPF 5.1</p> <p>Development provides a number of car parking spaces on-<u>site</u> at a rate no less than the amount calculated using one of the following, whichever is relevant:</p> <ul style="list-style-type: none"> <li>(a) Transport, Access and Parking Table 2 – Off-Street Vehicle Parking Requirements in Designated Areas if the development is a class of development listed in Table 2 and the <u>site</u> is in a Designated Area</li> <li>(b) Transport, Access and Parking Table 1 – General Off-Street Car Parking Requirements where (a) does not apply</li> <li>(c) if located in an area where a lawfully established carparking fund operates, the number of spaces calculated under (a) or (b) less the number of spaces offset by contribution to the fund.</li> </ul>



Vehicle Parking Areas	
<p>PO 6.1</p> <p>Vehicle parking areas are sited and designed to minimise impact on the operation of public roads by avoiding the use of public roads when moving from one part of a parking area to another.</p>	<p>DTS/DPF 6.1</p> <p>Movement between vehicle parking areas within the <u>site</u> can occur without the need to use a public road.</p>
<p>PO 6.2</p> <p>Vehicle parking areas are appropriately located, designed and constructed to minimise impacts on adjacent sensitive receivers through measures such as ensuring they are attractively developed and landscaped, screen fenced, and the like.</p>	<p>DTS/DPF 6.2</p> <p>None are applicable.</p>
<p>PO 6.5</p> <p>Vehicle parking areas that are likely to be used during non-daylight hours are provided with sufficient lighting to entry and exit points to ensure clear visibility to users.</p>	<p>DTS/DPF 6.5</p> <p>None are applicable.</p>

**Table 1 – General Off-Street Car Parking Requirements**

The following parking rates apply and if located in an area where a lawfully established carparking fund operates, the number of spaces is reduced by an amount equal to the number of spaces offset by contribution to the fund.

Car Parking Rate (unless varied by Table 2 onwards)	
Class of Development	Where a development comprises more than one development type, then the overall car parking rate will be taken to be the sum of the car parking rates for each development type.
Recreational and Entertainment Uses	
Indoor recreation facility	<p>6.5 spaces per 100m2 of <u>total floor area</u> for a Fitness Centre</p> <p>4.5 spaces per 100m2 of <u>total floor area</u> for all other Indoor recreation facilities.</p>

**PLANNING ASSESSMENT  
SERIOUSLY AT VARIANCE**

Section 107(2)(c) of the Act requires the Relevant Authority to determine whether the development is seriously at variance with the Planning and Design Code (The Code), Disregarding minor variations. A development that is seriously at variance with the Code must not be granted consent.

The Supreme Court previously explained:

*“The expression “seriously at variance with the Development Plan” refers to that which is an important or grave departure in either quantity or degree from the Development Plan) It denotes something which is plainly not light or trifling. It is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it (Mar Mina SA Pty Ltd v City of Marion [008] SASC 120).”*

A more recent judgment of the Supreme Court has confirmed that planning authorities are to approach the ‘seriously at variance question’ in the same way it was approached under the predecessor act (para 74 of Geber Super Pty Ltd c the Barossa Assessment Panel [2023] SASC 154).

It is recommended that the Panel determines the proposed development is not seriously at variance with the Planning and Design Code.





The proposed change of use from a warehouse to an indoor recreation facility (Gym) is a business activity that is able to be accommodated within the Employment Zone.

## PLANNING ASSESSMENT

The subject land is located within the Employment Zone which has a Desired Outcome DO 1 for *A diverse range of low-impact light industrial, commercial and business activities that complement the role of other zones accommodating significant industrial, shopping and business activities* with DO 2 having a Desired Outcome DO 2 for a *distinctive building, landscape and streetscape design to achieve high visual and environmental amenity particularly along arterial roads, zone boundaries and public open spaces.*

Performance Outcome PO 1.1 of this Zone is for *a range of employment-generating light industrial, service trade, motor repairs and other compatible business servicing the local community that do not produce emissions that would detrimentally affect local amenity.*

This application is for change of use to an indoor recreation facility (gym) with advertisement including illumination of advertisement.

An additional internal mezzanine is proposed to the rear of the existing warehouse (100sqm).

### Indoor recreation facility

- It is proposed that there will be two (2) staff with additional staff required for classes as necessary
- Average of fifteen (15) to twenty-five (25) clients (this has been amended to 16 per session).
- Proposed to primarily operate between the hours of 6.00am to 11.00am and 3.00pm to 6.30pm (this has been amended to 5.00am to 8.00am and 5.00pm to 7.00pm).
- Nine (9) car spaces are being provided on-site.

It is considered that the use of a site for an Indoor Recreational Facility is a suitable use within this Zone subject to achieving specified factors within policies contained within the Planning and Design Code as detailed below.

The Applicant, in response to concerns raised from the Representation received, has limited the number of persons in a session to sixteen (16). It is identified within this Application that there will be two (2) staff and class instructors over three (3) gymnasium areas which could equate to fifty-three (53) persons on site at any one time.

The Planning and Design Code, Part 4 – General Development Policies – Transport, Access and Parking has a Desired Outcome DO 1 of *A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.*

This application is proposing to provide a total of nine (9) car spaces on site. Movement Systems PO 1.1 has a Performance Outcome that *Development is integrated with the existing transport system and designed to minimise its potential impact on the functional performance of the transport system.* Whilst it is shown that some vehicle manoeuvring can occur onsite, Council raise concerns with regards to interruption to the operation of and queuing within Scott Court with limited on street car parking available to accommodate the volume of traffic likely to be generated by the change of use to a gym with up to fifty-three (53) persons on site at any one time.

Vehicle Parking Rates – PO 5.1 has a Performance Outcome that *Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:*

- a) Availability of on-street car parking
- b) Shared use of other parking areas

Performance Outcome 5.1 has a corresponding Designated Performance Feature that this Development provide a number of car parking spaces on-site at a rate no less than the amount calculated in Transport, Access and Parking Table 1 – General Off-Street Car Parking Requirements



which states that for the proposed use of the site for an Indoor Recreational Facility, 4.5 car spaces are to be provided per 100sqm of total floor area. The proposed floor area is approximately 1,300sqm which requires 58 car spaces be provided on site. Council consider that the provision of nine (9) car spaces on site for up to fifty-three (53) persons is not sufficient nor practical for the number of persons that could attend classes.

The availability of on-street car parking within Scott Court has been taken into consideration and concerns remain the use of the site will detrimentally affect the local amenity with insufficient car parking able to be provided on site, even with amended operational hours for the 'busiest times' being adjusted to 5.00 am to 8.00am and 5.00pm to 7.00pm which are hours outside of normal 9.00am to 5.00pm business hours.

This Application is also for retrospective Advertisements. Part 4 – General Development Policies – Advertisements, has a Desired Outcome DO 1 that *Advertisements and advertising hoardings are appropriate to context, efficient and effective in communicating with the public, limited in number to avoid clutter, and do not create hazard.*

Performance Outcome PO 1.1 – Appearance of the Planning and Design Code states that *Advertisements are compatible and integrated with the design of the building and/or land they are located on.* Council consider that the advertisement provided is compatible to this area. The subject land is not located in a Neighbourhood-type zone and is not located within close proximity to a signalised intersection with regards to the northern elevation. Council note that all signs are flush with a wall with no part protruding beyond the outer limits of the existing building.

The signage does not disfigure the appearance of the subject land with the size appropriate to the character of the locality and other signage within this area.

It is noted the advertisement aspect of the application has already been installed prior to planning consent being determined.

## **CONCLUSION**

Council, having regard to the context and nature of the subject site and locality, the relevant provisions of the Planning and Design Code, in particular car parking requirements have determined that the change of use to an Indoor Recreational Facility (gym) is not an appropriate form of development within the subject locality and does not warrant support or the granting of Planning Consent and the development application be Refused.

## **INVITES**

The Representor - Michael Parker

The Applicant – Mr Dean Linder-Leighton

## **ATTACHMENTS**

1. Application snapshot
2. Application documents
3. Representation
4. Applicant response to Representation
5. Location of Representor highlighted in blue
6. Code Assessment - Policies at start of Assessment
7. Subject land aerial map
8. Zoning map





**7 URGENT MOTIONS WITHOUT NOTICE**

**8 MEETING CLOSE**