

Council Assessment Panel Minutes

18 October 2021

Our Vision

*A City which values its heritage, cultural diversity,
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable
and socially cohesive, with a strong community spirit.*

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City of
Norwood
Payneham
& St Peters

1.	CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL HELD ON 20 SEPTEMBER 2021	1
2.	STAFF REPORTS	2
2.1	DEVELOPMENT APPLICATION 155/D017/2021 – NICHOLAS JAKE PEACOCK – 5 FOSTER STREET, NORWOOD	2
2.2	DEVELOPMENT APPLICATION 21009962 – MR PAOLO PITEO – 75 WILLIAM STREET, NORWOOD	18
3.	OTHER BUSINESS	30
4.	CONFIDENTIAL REPORTS	30
5.	CLOSURE	30

VENUE Council Chambers, Norwood Town Hall

HOUR 7.00PM

PRESENT

Panel Members Mr Terry Mosel
Mr John Minney
Mr Phil Smith
Ms Fleur Bowden
Ms Jenny Newman

Staff Mark Thomson Manager Development Assessment
Nenad Milasinovic Senior Urban Planner
Tala Aslat Planning Assistant

APOLOGIES

ABSENT

- 1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL HELD ON 20 SEPTEMBER 2021**

Seconded and Carried

2. STAFF REPORTS

2.1 DEVELOPMENT APPLICATION 155/D017/2021 – NICHOLAS JAKE PEACOCK – 5 FOSTER STREET, NORWOOD

DEVELOPMENT APPLICATION:	155/D017/21
APPLICANT:	Nicholas Jake Peacock
SUBJECT SITE:	5 Foster Street, Norwood (Certificate of Title Volume: 5826 Folio: 105)
DESCRIPTION OF DEVELOPMENT:	Torrens Title land division (1 into 2), the demolition of an existing dwelling and the construction of two detached dwellings
ZONE:	Residential Historic (Conservation) Zone (Norwood 4 Policy Area) - Norwood, Payneham and St Peters (City) Development Plan (dated 11 February 2021)
PUBLIC NOTIFICATION CATEGORY:	Category 2

Purpose of Report

The purpose of this report is to provide information to the Panel in order for a determination to be made on a combined development application involving a Torrens Title land division (1 into 2), the demolition of an existing dwelling and the construction of two detached dwellings.

Staff do not have delegated authority to determine the Application, it involves the construction of new dwellings in a Historic (Conservation) Zone and is a Category 2 Application in which representations were received from persons who are opposed to the Application.

As such, the Application is referred to the Panel for determination.

In making its determination, the Panel is required to consider whether, on balance, the proposal is firstly seriously at variance with the Development Plan as a whole. If so, the Application must be refused consent pursuant to Section 35(2) of the *Development Act 1993*. If not, the Panel must go on to consider whether the proposal sufficiently accords with the Development Plan to merit consent.

Subject Land Attributes

Shape:	regular
Frontage width:	15.24 metres
Depth:	45.72 metres
Area:	696.77m ²
Topography:	the site slopes towards the north eastern corner of allotment by approximately 300mm
Existing Structures:	single-storey bungalow and masonry front fence
Existing Vegetation:	mix of trees, shrubs and lawned areas

The subject land is located on the western side of Foster Street, Norwood. It contains a single-storey inter-war (1920's) bungalow set back from the street and a low masonry front fence. A small rear (western) lean-to addition is attached to the rear of the dwelling, which contains basic laundry facilities. There is an existing 850mm high better block retaining wall which runs along the southern side boundary of the allotment.

Vehicular access is provided via a crossover on Foster Street at the southern end of the frontage. Both the front and rear yards are predominantly lawned areas, with the rear yard area also containing a mix of plants and shrubs along the rear fence line. None of the vegetation on the land is regulated. A single well-established street tree is located on the verge in front of the property, at the northern end of the frontage.

Locality Attributes

Land uses: Predominantly residential
Building heights (storeys): Predominantly single-storey

The subject land is located within the Norwood 4 Policy Area of the Historic (Conservation) Zone, approximately half way along the main north-south section of Foster Street, between Magill Road to the north and 15 Foster Street to the south. Foster Street is characterised by historic dwelling stock, comprising a mix of inter-war Bungalows, and Victorian era villa and cottages. Some examples of replacement dwellings also exist in Foster Street – eg.2 Foster Street (a mid-twentieth century conventional hipped tiled roof dwelling), adjacent at 6 Foster Street (a contemporary part-two storey detached dwelling) and adjoining the subject land to the south at 7 Foster Street (three mid-twentieth century single storey row dwellings).

A map of the subject land and its surrounds is contained in **Attachment 1**.

Proposal in Detail

The Applicant seeks consent to demolish the existing dwelling and front fence, divide the allotment into two allotments and to construct two two-storey detached replacement dwellings and new front fencing.

The proposed dwellings appear as a pair of semi-detached dwellings. However, no party wall rights are proposed in the plan of division and the applicant intends for the dwellings to be constructed as separate abutting buildings and are therefore defined as detached dwellings. In this respect, it should be noted that the continuous roof over the two dwellings as shown in the 3 dimension render drawings is inaccurate, as without party wall rights, there would need to be separate but abutting roof structures.

The proposed dwellings have gabled roof forms above the ground and first floor levels, with the first floor recessed back from the front façade. Each dwelling has single-width garaging abutting the shared boundary, and large expanses of glazing around the entrance door and gable infill. The gabled elements are to be constructed of brick (in a bagged finish, painted white) with feature wall accents clad in sandstone (laid in Ashlar pattern). The roof is to be clad in a ribbed flat pan interlocking sheet in colorbond Shale Grey to the front façade, while roofing along the side elevations is to be a corrugated profile. Upper level walling is to be clad in fibre cement 'Wide Groove' or 'Wide Vertical Groove' in either a 'Shale Grey' or 'Mid Grey', while all windows have black powder coated frames.

A 1.5 metre high pillared masonry and widely spaced batten fence is proposed along the Foster Street boundary (including a pedestrian gate and recessed driveway gates) which also screens the bin store/enclosure. Indicative landscaping has been provided to perimeter areas and within the front yards of each dwelling.

The rear (western) and side yard areas are to be used as combination of private open space and service yard areas, which include covered terraced areas.

The relevant details of the proposal in terms of areas, setbacks and the like are set out in Table 1 below.

TABLE 1: DEVELOPMENT DATA:

Consideration	Dwelling 1 & 2	Development Plan Merit Assessment Quantitative Guideline
Site Area	348m ²	300m ²
Allotment Width	7.62m	N/A
Allotment Depth	45.72m	N/A
External Wall Height*	6.3m	N/A
Maximum Overall Height (to roof apex)*	7.8m	N/A
Floor Area (total including verandahs)	335m ²	N/A

TABLE 1: DEVELOPMENT DATA *continued...*

Consideration	Dwelling 1 & 2	Development Plan Merit Assessment Quantitative Guideline
Floor Area (footprint)	232m ²	N/A
Site Coverage	66%	N/A
Private Open Space	67m ² (approximately) 19.3% of site area	20% of site area
Street Set-back	7.2m	N/A
Side Set-back Ground Level	2.8m northern side and 2.1m southern side	N/A
Side Set-back Upper Level	2.6-2.9m	N/A
Rear Set-back Ground	8.9m	N/A
Rear Set-back Upper	11.6m	
Car Parking Provision	2 undercover and one visitor space within the driveway area	2 (1 covered) spaces per dwelling; whereby the covered space is set back no less than 5.5 metres from the primary street frontage

** Heights are taken from the finished ground floor level and in the case of external wall heights, are measured to the under-side of the gutter or where there is no external gutter, to the top of the parapet wall. Where wall heights vary at different points of the dwelling, a range is given.*

Plans and details of the proposed development are contained in **Attachment 2**.

Notification

Pursuant to Residential Historic (Conservation) Zone Principle of Development Control 41, the Development Application has been identified and processed as a Category 2 form of development for public notification purposes.

Five representations (all in opposition) were received in response to this notification, copies of which are contained in **Attachment 3**. The key issues raised by the representors are as follows:

- The demolition/loss of a heritage house
- The increase in density from the proposed division of land
- Increased Traffic and parking issues
- the proposed new dwellings are not in keeping with older homes within the context of the existing streetscape and will look out of place
- Cracking issues are the same as all homes within the street and 'just part of the soil composition for this location'
- The existing building should be retained.

The following representor desires to be heard personally by the Panel, in support of their representation:

- *Ms Diane Joy Skene and Mr Graham William Pate*

The Applicant has not provided a written response to the representations, however amended plans were submitted following the conclusion of the public notification period.

State Agency Consultation

The *Development Regulations 2008* do not require consultation with State Government Agencies.

Discussion

The subject land is located within the Norwood 4 Policy Area of the Residential Historic (Conservation) Zone of the Norwood, Payneham and St Peters (City) Development Plan. The proposed development is neither a complying nor a non-complying form of development and accordingly is required to be assessed on its merits having regard to all of the relevant provisions of the Development Plan.

The key issues, specific to this Development Application, are discussed in detail below.

Land Use and Density

The following Development Plan provisions provide guidance on the type and density of residential development that is envisaged within the Development Plan:

Norwood 4 Policy Area Desired Character Statement

Norwood 4 Policy Area Objectives: 1.
Norwood 4 Policy Area PDC's: 1, 2, 3 & 5.

RH(C)Z Desired Character Statement

RH(C)Z Objectives: 1.
RH(C)Z PDC's: 1, 2, 3, 7, 8, 27 & 30.

City Wide Objectives: 1, 2, 7, 8 & 10.
City Wide PDC's: 1, 2, 3, 4, 16, 18, 19 & 185.

Principle of Development Control 3 of the Norwood 4 Policy Area and Principles of Development Control 3 and 8 of the Residential Historic (Conservation) Zone, state respectively:

“Existing buildings originally constructed prior to 1940 which contribute to the desired character of the Zone and the Policy Area should not be demolished.”

and

“Buildings that contribute to the historic character and desired character of the zone should be retained and conserved.”

and

“The introduction of new dwellings in the zone should only occur where:

- (a) land is vacant or under-utilised and the development can be achieved without adverse impact on the established residential amenity and the historic character of the relevant policy area;*
- (b) it replaces a building or use of land which does not contribute significantly to the heritage value, historic character and the desired character of the zone; or*
- (c) it involves the conversion of an existing building to row dwellings, or semi-detached dwellings, where such conversion will enhance the historic character of the zone.”*

Norwood 4 Policy Area is the only policy area of the four (4) Norwood policy areas within the Residential Historic (Conservation) Zone, which specifically lists bungalows as being an important dwelling type. Having regard to the advice provided by the Council's Heritage Advisor, Mr David Brown, the existing dwelling on the subject land is considered to contribute to the desired character of the Norwood 4 Policy Area within the Residential Historic (Conservation) Zone.

Principle 3 of the Norwood 4 Policy Area seeks to prevent dwellings constructed prior to 1940 which contribute to the desired character of the zone and policy area, from being demolished.

There are no Contributory Items in the suburb of Norwood. When the Council introduced Historic (Conservation) Zones in Norwood, it chose to include policy which recognises the importance of buildings which contribute to historic character by way of referencing construction periods, rather than listing individual properties.

Unlike policy which applies to Contributory Items in other suburbs, there are no policies in the Development Plan which specifically state that the structural condition or extent of remedial work required to a pre-1940's dwelling are relevant considerations when assessing an Application for their demolition. Despite that, it is considered appropriate to have regard to the structural condition of the dwelling in the assessment of the subject Application, as the Development Plan should be applied pragmatically.

For example, in a Supreme Court judgement which addressed the issue of relevance of flooding when assessing a proposal to demolish a Local Heritage Place (also not a specific Development Plan consideration) concluded that it was improper of the Environment, Resources and Development Court to have disregarded flooding as a relevant consideration (LAKSHMANAN v CITY OF NORWOOD, PAYNEHAM & ST PETERS & ANOR [2009] SAERDC 22 (30 April 2009)). Rather, the Court concluded that it is necessary to read the Development Plan as a whole and glean the intent when undertaking an assessment.

Applying that approach and in light of the fact that structural condition is a relevant consideration for the demolition of Contributory Items, it is considered appropriate to also give consideration to the condition of a pre-1940's dwelling, when reviewing the proposal against Principle 3 of the Norwood 4 Policy Area. In particular, when assessing an application to demolish a Contributory Item, the relevant policy requires that regard be had to whether the item is structurally unsound and substantial rehabilitation work is required to an extent that is unreasonable.

The Applicant has submitted an engineering report by Ms Kristine Gatbonton of Innovis, dated 12 February 2021, detailing the condition of the dwelling.

Ms Gatbonton's report highlights that the foundations of the dwelling have failed, particularly in the north-eastern corner. In addition, Ms Gatbonton states that the existing dwelling would require underpinning to all structural walls to restore the capacity and performance of the footings and to re-level the structure. A copy Ms Gatbonton's report is contained in **Attachment 2** (Page 11-22).

The Council engaged Mr James Cibich of Imparta Engineers, to provide an assessment of the structural condition of the existing dwelling. Mr Cibich's report describes similar issues with the dwelling as those discussed by Ms Gatbonton's, including noting the failed footing in the north-eastern corner. Mr Cibich identified that the principle source of damage to the dwelling is footing movements caused by seasonal movements of the reactive clay soil foundation. Whilst Mr Cibich has noted that the building has sustained cracking damage, he has not concluded that the structural condition of the building is structurally unsound, as Ms Gatbonton did.

Having regard to the extent and size of cracking which has occurred, Mr Cibich has advised:

"Most cracking was measured to be within Damage Category 1 (Very Slight, > 1mm wide) or 2 (Slight, < 5mm wide) of Table C1 of AS 2870 Residential Slabs & Footings. Two cracks were determined to be in the more severe categories: one crack was determined (through extrapolation of a mid-height measurement) to be in Damage Category 3 (Moderate, 5 – 15mm wide), the other was determined (also through extrapolation of a mid-height measurement) to be within Damage Category 4 (Severe, 15 – 25mm wide).

and that:

Although the damage to this building is considerable, most is cosmetic in nature and does not represent a concern to the safety or wellbeing of occupants. This cracking can be cosmetically repaired from time to time, if and when it occurs.

Mr Cibich has advised that the moderate and severe cracking (damage Categories 3 & 4) is confined to the north-eastern corner of the dwelling (Bedroom 1), which would require the reconstruction of those affected walls to rectify, while the remainder of the dwelling has sustained either slight or very slight cracking.

A copy of Mr Cibich's report is marked as **Attachment 4** (Pages 54-69)

For the most part both engineers agree on the extent of damage to the existing dwelling, albeit Ms Gatbonton's report reaches the conclusion that the dwelling is unsound and at a risk to occupation, while Mr Cibich's report suggest that the dwelling is "*mostly cosmetic in nature and does not represent a concern to the safety or wellbeing of occupants*". Both engineers also disagree on the appropriate approach to rectification works.

As previously mentioned, Ms Gatbonton has advised that complete underpinning of all structural walls is required, while Mr Cibich has advised that stabilisation of soil moisture levels and repair of the dwelling without underpinning is a reasonable approach.

In his report, Mr Cibich discussed the pros and cons of underpinning the building and was not entirely clear on his recommendation in this respect. As a result, clarification was sought by Council staff from Mr Cibich, as to what works he would recommend to an owner who intended to retain and repair the dwelling. In response, Mr Cibich advised that he would recommend reconstruction of the north-eastern corner walls of Bedroom 1, with the existing footing beneath those walls either being reused (and any out of levelness corrected) or replaced. The dwelling could then be stabilised through moisture control measures, such as the installation of downpipes to take stormwater to the street and watering of gardens in summer.

Mr Cibich's additional comments are contained in **Attachment 4** (Pages 70-73).

The applicant engaged Rider Levett Bucknall to provide a Quantity Surveyors Report on the extent of works, detailing the associated costs with repairing the dwelling in line with the Innovis engineering report. This report details an estimated total cost of \$708,000 to repair the dwelling which includes structural works to upgrade the dwelling to that of a building which achieves modern construction standards, including but not limited to:

- complete underpinning of all external and internal walls;
- replacement of all roof framing, sheeting and guttering;
- replacement of all timber floors;
- replacement of all ceilings;
- replacement of all kitchen and bathroom joinery; and
- replacement of front fence.

A copy of the Rider Levett Bucknall report is contained in **Attachment 2** (Pages 23-30)

Upon receipt of the Quantity Surveyors Report, Council staff sought to obtain an independent Quantity Surveyors report, based on the extent of works recommended by Mr Cibich of Imparta.

As Quantity Surveyors are rarely used for expert advice on planning matters, Council sought a recommendation from its Lawyers on which Quantity Surveyors to engage. In response, Mr Giulio Altamura of Rider Levett Bucknall was recommended. Unfortunately Council staff did not recognise at the time, that Rider Levett Bucknall had been engaged by the Applicant and would therefore not be independent.

Mr Altamura was engaged to:

"prepare a QS report outlining the anticipated costs with stabilisation, structural repairs and cosmetic repairs, based on the suggested approach in the structural report, and on the expectation of the work required to repair the building to standards accepted for older buildings, acknowledging that they will be subject to periodic patching and repair."

More Specifically, Mr Altamura was asked to prepare a QS report on the costs associated with the following items, representing Council staff's understanding of the works recommended by Mr Cibich of Imparta:

- *reconstruct the north-eastern corner of Bed 1. This would involve demolishing the cavity masonry walls down to the footing and reconstructing them, keying new masonry into the existing. It may be possible to retain the existing footing even though it is likely rotated as part of previous movements (any out-of-levelness could be built out in the lower courses of the new wall).*
- *Replace/reconstruct the front verandah slab and piers are beyond viable repair due to soil movement and would require reconstruction*
- *Raise underfloor venting adjacent driveway – or lower driveway paving – whichever is more cost effective*

- *Reconstruction/repair of the rear lean-to including the bathroom contained within*
- *Other repairs include some gutter and fascia replacement*
- *Cosmetic repairs to the building (cornice/ceilings/facia/crack repair and rotted gutter).*

On 16 August 2021, Council staff received a report from Mr Altamura, which specified a cost estimate of \$358,000 for the extent of works outlined in the dot-points above. For an unknown reason, the report also provided costings for various other items of works which Council staff had not asked Mr Altamura to provide costings on. Following receipt of the report, it occurred to Council staff that Rider Lovett Bucknall were the Quantity Surveyors who had been engaged by the Applicant and would therefore not be in a position to provide independent advice.

Consequently, Council staff engaged Mr Cameron Flentje of Chris Sale Consulting to provide a QS report on the costs associated with the following items, representing a slightly more detailed account of Council staff's understanding of the works recommended by Mr Cibich of Imparta:

- *reconstruct the north-eastern corner of Bed 1. This would involve demolishing the cavity masonry walls down to the footing and reconstructing them, keying new masonry into the existing. It may be possible to retain the existing footing even though it is likely rotated as part of previous movements (any out-of-levelness could be built out in the lower courses of the new wall).*
- *Replace/reconstruct the front verandah slab and piers are beyond viable repair due to soil movement and would require reconstruction*
- *Raise underfloor venting adjacent driveway – or lower driveway paving – whichever is more cost effective*
- *Reconstruction/repair of the rear lean-to including the bathroom contained within*
- *Other repairs include some gutter and fascia replacement*
- *Internal painting of the building and replacement of damaged facia*
- *Stormwater connection to street water table.*

The report by Chris Sale estimates a total cost of \$355,461, or \$284,764 if the replacement of the lean to is excluded. In this respect, Chris Sale included the cost of the lean-to replacement at the request of Council staff (see dot-point above), based on an incorrect understanding that Imparta had recommended its replacement. Upon review of the Imparta report, Mr Cibich has stated that the lean-to is in average condition and has not recommended its replacement. Therefore, the relevant cost estimate from Chris Sale is \$284,764.

A copy of the Quantity Surveyors Report by Chris Sale is contained in **Attachment 4** (Pages 74-100)

Clearly, the QS report prepared by Rider Levett Bucknall for the Applicant and that prepared by Chris Sale for the Council are vastly different. The former contains costings for works which would result in a building with new footings, new roof, new floor, new ceilings, new kitchen and bathroom cabinets and fittings etc. The result of those works would be a building which was largely reconstructed to modern construction standards. By contrast, the extent of works quoted by Chris Sale represents the extent of works required to stabilise and repair the building to the state of a typical 1920's bungalow which is appropriately maintained and managed. Council staff have been advised by its Lawyers that the extent of work included in the Chris Sale report is of greatest relevance to the assessment of the Application.

As an application involving replacement dwellings (and land division), the extent to which the proposed new dwellings will be compatible with the historic character of the zone and the policy area should be considered. Therefore, it is premature at this point in the report, without having first considered the merits of the replacement dwellings, to be making a recommendation on the demolition of the existing dwelling.

The application seeks to subdivide the allotment into two new allotments, in order to accommodate two new dwellings. Principle of Development Control 5 of the Norwood 4 Policy Area seeks a minimum allotment size of 300m² per allotment, with the application proposing site areas of 348m², satisfying this Principle. No further quantitative requirements are provided with relation to site frontage, instead relying on qualitative requirements to provide guidance.

Residential Historic (Conservation) Zone Principle of Development Control 30 states:

“The division of land should only occur where it will:

- (a) result in an allotment pattern that maintains or reinforces the historic character of the policy area;*
- (b) create allotments of a size and dimension that will provide for the siting and setback of subsequent new development from property boundaries so that new development does not overshadow, dominate, encroach on or otherwise detrimentally affect the setting of the surrounding buildings; and*
- (c) provide an area for landscaping of a size and dimension that complements the landscape character of the policy area.”*

Commentary on the proposed division has been provided by David Brown, the Councils Heritage advisor, who states:

“The proposed subdivision, while within the quantitative recommendations in the Development Plan will produce the two narrowest sites on the street. This western side of Foster Street, as described above, was all developed from land sales post WW1 subdivided off the original house in the street. The eastern side of the street was subdivided much earlier creating the varied property sizes, and less consistent development.”

Despite the inconsistencies with Principle 30, the land division is one portion of a combined application and it is therefore important to consider whether the proposed dwellings are able to achieve the range of other quantitative and qualitative provisions of the Development Plan, relating to matters such as streetscape, scale, height, private open space, setbacks, car parking etc. This will assist in concluding whether, on balance, the land division is able to be supported and is discussed under the relevant headings of this report.

streetscape/bulk/scale/height/character/heritage

The following Development Plan provisions provide guidance with respect to considerations relating to appearance, streetscape, bulk, scale and character:

Norwood 4 Policy Area Desired Character Statement

Norwood 4 Policy Area PDC's: 1 & 4.

Residential H(C)Z Desired Character Statement

Residential H(C)Z Objectives: 1, 5 & 6.

Residential H(C)Z PDC's: 1, 2, 13-19, 22, 23, 25 & 26.

City Wide Objectives: 18, 19 & 20.

City Wide PDC's: 29-35, 39, 41, 43, 48 & 196.

Principle of Development Control 4 of the Norwood 4 Policy Area states:

“Development in the Norwood 4 Policy Area should not exceed two storeys in height above natural ground level”.

There are two examples of two storey development within the immediate locality of the subject land, which includes an addition to the adjacent dwelling to the north at 3 Foster Street contained within a modified roof space, and on the eastern side of Foster Street adjacent the subject land, in the form of a small upper portion of the dwelling at 6 Foster Street, set back from the dwelling's frontage. As the addition at 3 Foster Street is contained within a modified roof space, it maintains a single-storey streetscape presence, while the upper level of 6 Foster Street is relatively small and has limited visibility within the streetscape given the adjacent built form. This creates a predominantly single storey streetscape character on both sides of Foster Street.

Residential Historic (Conservation) Zone Principle of Development Control 17 provides guidance on how two storey development should be undertaken in instances where it is allowed (such as the Norwood 4 Policy Area), stating:

“Development of a new building or building addition should result in dwellings that have a single-storey appearance along the primary street frontage, where these are predominant in the locality, but may include:

- (a) sympathetically designed two-storey additions that utilise or extend roof space to the rear of the dwelling, such as the use of attics with dormer windows; or*
- (b) second storey components located to the rear of a building; and*
- (c) in either of these instances:*
 - (i) should be of a building height, scale and form that is compatible with the existing single-storey development in the zone;*
 - (ii) should not result in an excessive mass or scale that would adversely affect the visual outlook from adjoining residential properties;*
 - (iii) should not overshadow or impact on the privacy of neighbouring properties;*
 - (iv) should not compromise the heritage value of the building or the view of the building from the street; and*
 - (v) the total width of second storey windows should not exceed 30 percent of the total roof width along each elevation and be designed so as to not overlook the private open space of adjoining dwellings.”*

Despite the upper level of the proposed dwellings being set back from single storey facades, it is considered that the proposed dwellings do not have a single storey appearance along the primary street frontage, contrary to Principle 17. The upper level is not sufficiently located to the rear of the building to achieve this. As a result, the proposed building height scale and form is not compatible with the existing single-storey development in the zone.

City Wide Principle of Development Control 216 states:

“Garaging in association with semi-detached dwellings should generally not be placed side by side. In instances, where it may be considered appropriate, the garages should be set back from the main face of the dwellings and designed to provide visual separation between each garage”

and

Residential Historic (Conservation) Zone Principle of Development Control 31 states:

“Development of carports and garages or other outbuildings should, without necessarily replicating the historic detailing of the surrounding Heritage Places or Contributory Items:

- (a) be set behind the main face of the dwelling and may be freestanding;*
- (b) be designed and sited to ensure garage doors do not visually dominate the primary or secondary street frontage of the dwelling;*
- (c) not extend design elements such as verandahs, roof forms or historic detailing at the same alignment as the main face of the principal building;*
- (d) exhibit architectural and roof form designs, and exterior finishes to enhance and not diminish the historic character of the locality; and*
- (e) not incorporate undercroft parking or other parking or access arrangements that are not in keeping with the historic character of the area.”*

The garaging is a prominent element of the dwelling design. With the upper level being set back, the ground level has the most streetscape presence. In this respect, the ground level comprises only garaging and entries. The centrally located garaging makes them even more of a focal point of the façade. The garages are not set behind the main face of the dwelling and they are under the main roof (as opposed to being separate, discreet and subordinate elements). The garaging is therefore inconsistent with City Wide Principle 216 and parts (a), (b) and (c) of Residential Historic (Conservation) Zone Principle 31.

The dwellings features expansive areas of glazing to the front façade, resulting in a solid to void ratio which is inconsistent with established dwellings. While the dwellings incorporate front shade elements above the garages and entries, they are not reflective of traditional verandah elements in the street found on cottages and bungalows. As a result the dwellings lack regard to the context of the surrounding original character dwellings within the street, and are considered to be incompatible in scale and appearance.

Given that the subject land is located within a Historic (Conservation) Zone, advice was sought from the Council's Heritage Advisor, Mr David Brown regarding the heritage aspects of the proposal. Mr Brown has raised concerns with the replacement dwellings contribution to the historic character of Foster Street.

Residential Historic (Conservation) Zone Principle 8(a) states that the introduction of new dwellings in the zone should only occur where (amongst other considerations) the development can be achieved without adverse impact on the established residential amenity and the historic character of the relevant policy area.

In terms of whether the proposed dwellings adversely impact on the historic character of the policy area, Mr Brown has advised that *"In heritage terms the proposed new two-level dwellings would not be a successful replacement for the existing bungalow on the site if demolition was approved. They would also not take into account the general streetscape context of Foster Street, meaning they would visually dominate the more traditional character buildings in the street."*

Therefore in this context, the new dwellings fail to satisfy Residential Historic (Conservation) Zone Principle of Development Control 8(a), and are not considered a suitable replacement.

A copy of David Browns report is contained in **Attachment 4** (Pages 101 – 105).

The application includes an open style masonry pillar and batten front fence, with an overall height of 1.5 metres which allows views into the front landscaped yards of the dwellings. Accordingly, the design of the proposed front fence is considered to be consistent with the design criteria detailed in Table 4 - Design Guidelines for Heritage Places and Development in Historic (Conservation) Zones, which states in part:

"Relatively low and open fencing is appropriate to enable visually attractive detailing of the design of a dwelling to remain visible from a road."

Setbacks and Site Coverage

The following Development Plan provisions provide guidance with respect to set-backs and site coverage considerations:

Norwood 4 Policy Area PDC's:	6 & 8.
RH(C)Z PDC's:	10, 11 & 12.
City Wide PDC's:	205, 212, 216 & 221.

City Wide Principle of Development Control 205 states:

"Where the Zone and/or Policy Area does not specify a minimum distance and where there is a consistent front set-back pattern evident within a locality, dwellings should be set back from the allotment boundary on the primary street frontage:

- (a) the same distance as one or the other of the adjoining dwellings (or any distance in between), provided the difference between the setbacks of the two adjoining dwellings is not greater than 2 metres;*
- (b) not less than the average of the setbacks of the adjoining dwellings, if the difference between the setbacks of the adjoining dwellings is greater than 2 metres; or*
- (c) the same distance as the greater of the two adjoining dwelling setbacks, in all circumstances where a new dwelling comprising of 2 or more storeys is being introduced, and one or both of the adjoining properties are single storey."*

The dwellings are proposed to be set back 7.2 metres from the street to the facade, with the projecting verandah's/canopies coming to within 6.2 metres of the street. The dwelling directly to the north at 3 Foster Street is setback 6.5 metres, and the dwelling to the south at 7 Foster Street is set back 8.9 metres. As the proposed dwelling is two storey, part (c) of Principle 205 is applicable, with the dwellings falling short of this requirement by 1.7 metres. If the proposed dwellings were single storey, the front setback would be appropriate, however this is not the case.

Residential Historic (Conservation) Zone Principle of Development Control 20 states:

Building to side boundaries (other than for party walls in semi-detached or row dwellings) or to the rear boundary is generally inappropriate, but may be considered where it is demonstrated that it assists in the retention of a heritage place and where there will be no detrimental effect on the residential amenity of adjoining properties.

In terms of side setbacks, the proposed dwellings extend to both side boundaries at ground level and are set back between 2.6 and 2.9 metres at upper level. . The side boundary walls are 9.3 metres long and 3.2 metres high. As the boundary walls do not assist in the retention of a heritage place (unlike an ensuite addition to a historic villa for example), the proposed boundary development is inconsistent with Principle 20.

Reviewing the built form within the locality, the majority of dwellings have a generous side setback on at least one side, which assists to provide a sense of space between dwellings. As discussed by David Brown within his report, the smallest allotment in the street at 8 Foster Street (8.85 metre frontage) provides a side setback of approximately 3 metres. As a result the proposed side setbacks fail to maintain the siting characteristics of dwellings found within the locality. Although the proposed boundary development is set back behind a section of façade which has 900mm side setbacks, it would still be visible from certain vantage points of the street and detract from the spacious siting characteristics of the locality.

The proposed dwellings are set back 8.9 metres at ground level, and 11.6 metres for the upper level from the rear boundary. The proposed rear setback is considered to result in an adequate degree of visual separation for the directly adjacent property at 4 George Street. It is considered that the outlook for the existing occupiers from the private open space area of this neighbouring property, would not be unreasonably compromised by the proposal given the extent of visual separation from the proposed rear elevation of the new dwellings, and that two storey development is envisaged within the Policy Area.

The resulting site coverage of the proposed development is in the order of 66% for each dwelling. There is no minimum site coverage requirement within the Norwood 4 Policy Area, rather guidance is found within the Residential Historic (Conservation) Zone Principle of Development Control 12 which states:

The site coverage of buildings resulting from the erection or alteration of, or addition to, a building, should be compatible with the site coverage of those buildings in the locality which contribute significantly to the historic character.

The built form within the locality contains a range of allotments with several examples having site coverages similar to that proposed, such that the site coverage of the proposal is considered to be compatible with Principle of Development Control 12.

Overshadowing/overlooking

The following Development Plan provisions provide guidance with respect to overshadowing and overlooking considerations:

City Wide PDC's:	11, 32, 37, 200 & 201.
------------------	------------------------

City Wide Principle of Development Control 194 states:

"All habitable rooms should have at least one window with a minimum horizontal distance, between any facing building and the face of the wall containing the window (ie the distance between the eaves, fascias or gutters), of no less than 900 millimetres which is clear to the sky (Refer to Figure 7).

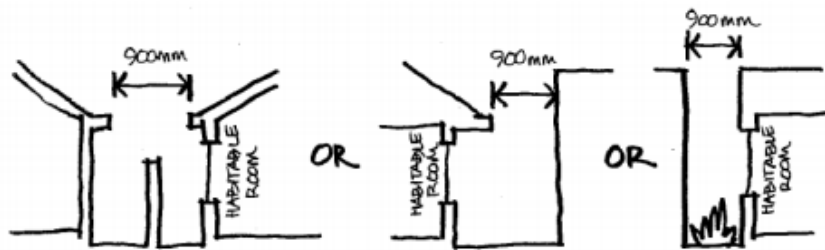
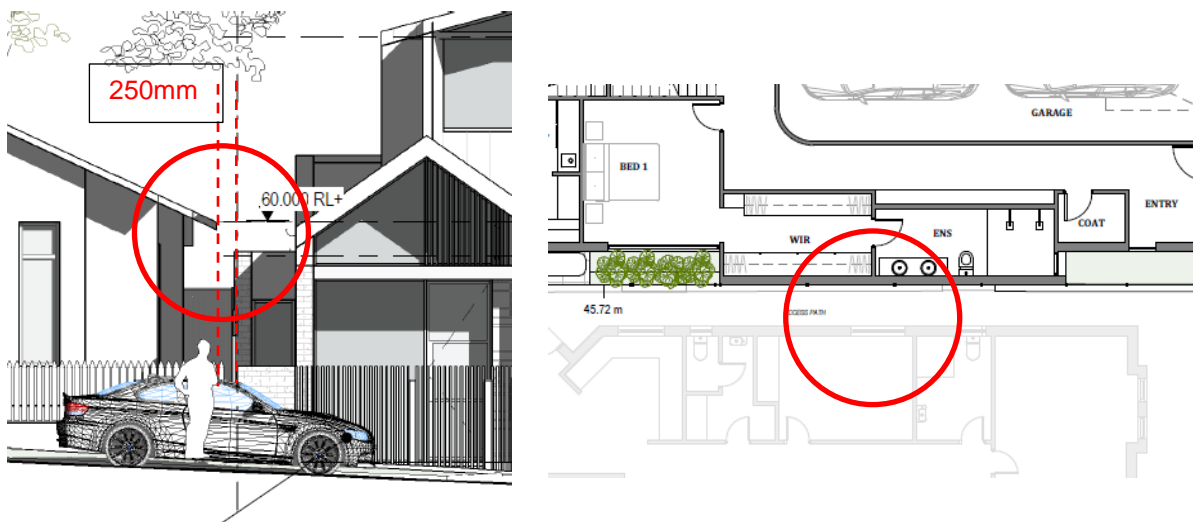


Figure 7

The proposed boundary wall of the southern dwelling does not allow for a 900mm horizontal distance which is clear to the sky, adjacent to an adjacent bedroom of the dwelling at 3/7 Foster Street, as shown in the images below.



Aside for the lack of light to the bedroom window of the dwelling to the south, the proposed development is likely to achieve the relevant overshadowing policy contained in Principles of Development Control 195 and 196. Overshadowing drawings have not been submitted with the Application, however the rear of the proposed dwellings extends only slightly beyond the rear of the dwelling to the south, so the private open space of that dwelling is not likely to be excessively overshadowed.

The elevations depict a floor level approximately 400mm above natural ground, which is similar to the existing bungalow. Although no fencing details have been proposed for side boundaries, no unreasonable overlooking is anticipated from within ground floor areas of the new dwellings. The application includes a combination of minimum 1700 high windows and obscure screening to upper floor windows to mitigate the potential for overlooking into adjacent properties, consistent with City Wide Principle 235.

As such, the proposal is considered to be consistent with City Wide Principles of Development Control 11 which states:

“Buildings should be designed so as not to unreasonably overlook or overshadow indoor or outdoor living areas of adjacent dwellings.”

Private open space

The following Development Plan provisions provide guidance with respect to private open space considerations:

City Wide PDC’s: 225, 241, 243, & 248.

City Wide Principle of Development Control 225 states the following (in part):

Dwellings (other than residential development in the form of apartments within a multi storey building) should have associated private open space of sufficient area, shape and gradient to be functional and capable of meeting the likely needs of the occupant(s) (taking into consideration the location of the dwelling and the dimensions and gradient of the site) and should be in accordance with the following:

- (a) *a dwelling with a site area of 250 square metres or greater, 20 per cent of the site area should be private open space, of which one portion should be equal to or greater than 10 per cent of the site area and have a minimum dimension of 4 metres.*

The overall private open space provision associated with each of the proposed dwellings equates to approximately 67m², a minor departure from the 70M² required by Principle 225. The proposed private open space areas are accessible through the internal living areas of the dwellings. Due to an adjacent outbuilding on adjoining allotments, the private open space areas of the dwelling on Lot 102 has compromised access to northern sunlight. The private open space of the dwelling on Lot 101 remains largely unaffected by this structure. Overall the proposed dwellings are considered to have a reasonable level of private open space, given the design of the dwellings and the orientation of the subject land.

Car parking/access/manoeuvring

The following Development Plan provisions provide guidance with respect to car parking access and manoeuvring considerations:

City Wide Objectives: 34.
City Wide PDC's: 101, 116, 123, 237, 238 & 265.

Table NPSP/8.

The proposed dwellings require new crossover access to Foster Street, due to the existing crossover access being adjacent the southern boundary, and the new designs utilising a central crossover. There is a street tree located in front of Lot 102, which has a calculated structural root zone of 2.58 metres. City Wide Principle of Development Control 118 requires a minimum 1.5 metre clearance from a street tree, while the Councils crossover policy requires a minimum distance of the street trees structural root zone. The proposed crossover is 1.1 metres from the centre of the street tree, at odds with both Principle 118 and the Councils crossover policy.

Table 8 prescribes that a detached dwelling be provided with two spaces of which one space is covered and is set back at least 5.5 metres from the primary street frontage in order to enable a visitor car park within the driveway area. Each of the proposed garages can accommodate two cars in a stacked arrangement and a visitor car within the driveway area. In terms of the visitor parking spaces, they are likely to be made available to visitors by way of the automated driveway gate being opened by the occupiers at such a time when they are expecting visitors to arrive. It is also noted that no detail has been provided as to how the level change across the front of the site will be managed, in order to enable the successful operation of the driveway gates on a level surface, while maintaining the existing footpath grade.

Accordingly, the proposed onsite car parking provision satisfies the quantitative requirements prescribed in Table NPSP/8.

Finished floor levels/flooding/retaining/fencing

The following Development Plan provisions provide guidance with respect to considerations relating to floor levels, flooding and retaining:

City Wide PDC's: 58, 140, 151, 165, 166 & 171.

The subject land is not located within a recognised flood plain.

The Applicant has nominated a finished floor level of 56.47 (AHD) which is 360mm above the midpoint top of kerb level in Foster Street. In this regard, it is considered that the resulting finished floor level will not result in the proposed dwellings being unreasonably built up in comparison to other dwellings fronting Foster Street.

As discussed, the land slopes towards the north eastern corner of Foster Street in the order of 300mm. As such, it is likely that roof and ground surface stormwater will be drained by gravity to both the Foster Street water table.

The Applicant has not proposed any side fencing details along the side boundaries as part of the development proposal. Due to changes introduced as a result of the Planning and Design Code, a separate application would be required for any boundary fencing forward of the building line of each proposed dwelling.

Given the FFL levels proposed, assuming the Applicant elects to propose typical 1.8 metre high fencing at a later stage, the combined height of retaining wall and new fencing would be unlikely to be beyond that envisaged by City Wide Principle of Development Control 58, which states:

“The combined height of a fence and a retaining wall should not exceed 2.4 metres (measured from the lower of the two adjoining natural ground levels).”

The proposed floor levels are considered to compliment the streetscape and would not result in unreasonable retaining/fencing heights and are considered to satisfy Development Plan requirements.

Trees (significant, mature & street) and landscaping

The following Development Plan provisions provide guidance with respect to considerations relating to significant trees, mature trees, street trees and landscaping:

Residential H(C)Z PDC's:	36 & 37.
City Wide Objectives:	24, 117 & 119.
City Wide PDC's:	76, 220, 221, 422 & 426.

There are several small to medium sized tree on the subject land, none of which are identified as Regulated trees.

The Applicant has provided indicative landscaping areas on the site plan, which details the planting of shrubs and trees scheme that seeks to introduce plantings adjacent the external perimeter boundaries of the land as well as the front yard area.

The overall landscaping scheme is considered to accord with City Wide Principles of Development Control 220 and 221 state the following respectively:

Residential development should incorporate soft landscaping of a scale and intensity to offset built form and to reinforce the established garden and mature tree lined character of the City.

And

The landscaping of development in residential zones should:

- (a) enhance residential amenity;*
- (b) screen storage, service and parking areas;*
- (c) provide protection from sun and wind;*
- (d) not unreasonably affect adjacent land by shadow; and*
- (e) preferably incorporate the use of local indigenous plant species.*

Environmental Sustainability

The following Development Plan provisions provide guidance with respect to environmental sustainability considerations:

City Wide Objectives: 23 & 42.
City Wide PDC's: 67, 68, 69, 149, 153 & 161.

The orientation of the allotment and location of adjacent development presents difficulty in achieving good solar access to dwellings, particularly to the dwelling on Lot 101. The dwelling on Lot 102 has been designed to enable access to northern light to the combined kitchen/meals/living area, while some afternoon sun may enter via the large rear windows to living areas. As a result, the development proposal is considered to generally accord sufficiently with City Wide Principles of Development Control 68.

The application includes indicative rainwater tanks on the site plan, however no detail has been provided as to the size of these tanks or of the method of disposal to the street water table, given the dwellings are to be constructed boundary to boundary. This is considered to be negative aspect of the proposal given that this Application seeks to introduce a pair of replacement dwellings that is substantially larger than the existing dwelling and therefore would result in substantial increase in stormwater collection on the proposed roofed areas. That said, if the Panel was of a collective view to approve the proposed development, this matter could be easily resolved via the imposition of a condition regarding the provision of rainwater tanks and method of disposal.

Summary

The existing dwelling sustained cracking damage to its external and internal walls as a result of footing movement, including the failure of a footing in the north eastern corner, largely due to the reactive clay soil foundation on which it has been constructed. The Engineer engaged by the Council has advised that the building is not structurally unsound, however has recommended various repair and management works. Based on advice from a Quantity Surveyor, the cost of those works is likely to be in the order of \$285,000, which is clearly not an insignificant amount.

The existing dwelling is considered to make an important contribution to the historic character of the locality, being a dwelling type which is recognised as being characteristic of this particular policy area and in original unmodified condition.

The proposed land division would result in two allotments which are the narrowest in Foster Street. The proposed dwellings are considered to be an inappropriate infill development within the Foster Street streetscape, as they are not compatible with the Historic Character. This is partially due to the design of the dwellings, and partially due to the narrowness of the proposed allotments, as summarised by the Councils Heritage Architect, David Brown; *“Essentially the blocks of land do not appear to be wide enough to allow for a suitable house design that will adequately satisfy the provisions of the Development Plan.”*

There is also a high probability that the indicated crossover location would also require the removal of the existing Street Tree in front of the allotment.

On balance, it is considered reasonable that the existing dwelling be required to be retained and rehabilitated in this instance given the heritage value of the building and its contribution to the heritage character of both Foster Street and the Residential Historic (Conservation) Zone.

Accordingly, it is considered that the proposal is not seriously at variance with the Development Plan, however does not sufficiently accord with the relevant provisions of the Development Plan to warrant consent.

RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **refused** to Development Application No 155/D017/21 by Nicholas Jake Peacock to undertake a Torrens Title land division (1 into 2), the demolition of an existing dwelling and the construction of two detached dwellings, on the land located at 5 Foster Street, Norwood, for the following reasons:

Reasons for Refusal

1. The existing dwelling proposed for demolition makes a positive contribution to the Foster Street streetscape and whilst it has some structural deficiencies, the extent of rehabilitation work required to address the damage is reasonable, such that demolition is not justified.
2. The proposed land division is of an insufficient width to allow for the construction of dwellings which adequately satisfy the provisions of the Development Plan.
3. The proposed dwellings are not acceptable infill dwellings within a Residential Historic (Conservation) Zone.

Mr Vounasis addressed the Council Assessment Panel Members from 7:06pm until 7:10pm
Mr Anderson addressed the Council Assessment Panel Members from 7:11pm until 7:14pm
Mr Peacock addressed the Council Assessment Panel Members from 7:18pm until 7:19pm

MOVED

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **refused** to Development Application No 155/D017/21 by Nicholas Jake Peacock to undertake a Torrens Title land division (1 into 2), the demolition of an existing dwelling and the construction of two detached dwellings, on the land located at 5 Foster Street, Norwood, for the following reasons:*

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2. *The proposed land division is of an insufficient width to allow for the construction of dwellings which adequately satisfy the provisions of the Development Plan.*
3. *The proposed dwellings are not acceptable infill dwellings within a Residential Historic (Conservation) Zone.*

Seconded and Carried

2. STAFF REPORTS

2.2 DEVELOPMENT APPLICATION 21009962 – MR PAOLO PITEO – 75 WILLIAM STREET, NORWOOD

DEVELOPMENT NO.:	21009962
APPLICANT:	Mr Paolo Piteo
ADDRESS:	75 WILLIAM ST NORWOOD SA 5067
NATURE OF DEVELOPMENT:	Construction of a two storey detached dwelling, a front fence and a swimming pool
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Character Area • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Frontage (8m) • Minimum Site Area (500 sqm) • Maximum Building Height (1 level)
LODGEMENT DATE:	8 June 2021
RELEVANT AUTHORITY:	Assessment Panel at City of Norwood, Payneham & St. Peters
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 5:	Response to Representations
ATTACHMENT 1:	Application Documents		
ATTACHMENT 2:	Subject Land Map		
ATTACHMENT 3:	Zoning and Overlay Map		
ATTACHMENT 4:	Representations		

DETAILED DESCRIPTION OF PROPOSAL:

The applicant proposes to construct a two storey detached dwelling, a front fence and a swimming pool.

The ground floor level includes a double garage, an open-plan living/dining/kitchen area and two bedrooms. An alfresco area is proposed adjacent the living area at the rear of the dwelling. The upper level includes a further two bedrooms, a small kitchen, study nook and a home theatre. A balcony is proposed at the rear of the dwelling, to be accessed from the two upper level bedrooms. The total floor area of the dwelling is 352m². The footprint of the dwelling is 246m² in area.

A masonry front fence is proposed along approximately 1/3 of the frontage, ranging in height from 1.8 to 2.0 metres above ground level. The fence is proposed to be clad in stone and have an open section with vertical metal bar infill.

A swimming pool is proposed adjacent to the western side boundary. A vine covered metal frame arbour is proposed above the swimming pool and a pool equipment shed is proposed in the rear north-western corner of the allotment.

The proposed floor level of the dwelling is approximately 700mm above footpath level at the centre of the frontage and 350mm below the ground level at the centre of the rear boundary.

The proposed development is reliant upon the demolition of an existing villa on the site, however such demolition is excluded from the definition of development pursuant to Schedule 4 of the *Planning, Development and Infrastructure (General) Regulations 2017* and hence does not require any form of development authorisation.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 75 WILLIAM ST NORWOOD SA 5067

Title ref.: CT
5270/667

Plan Parcel: F147787
AL1

Council: THE CITY OF NORWOOD PAYNEHAM AND
ST PETERS

Shape:	rectangular
Frontage width:	15.24 metres
Depth:	30.48 metres
Area:	464.51m ²

Topography: 1 metre fall from front to rear (south to north) and 400mm cross-fall from east to west

Existing Structures: single storey villa

Existing Vegetation: lawned areas and low plants

The subject land is located on the northern side of William Street, Norwood, approximately 50 metres west of Osmond Terrace.

The subject land contains a historic villa. Vehicular access is via a driveway along the eastern side boundary. A low, open style metal fence is located on the front boundary.

Locality:

The locality is considered to extend along William Street, from Osmond Terrace to Elizabeth Street. Most of the locality is located within the Character Area Overlay, including properties on the northern side of the street from 65 to 75 William Street and those on the southern side of the street from 82 to 86 William Street. This is illustrated in Attachment 4.

The locality is characterised by predominantly character homes, comprising late 19th and early 20th century cottages and villas. There are a number of Local Heritage Places in the locality, including those at 59-63, 65, 80 and 86 William Street and 83-85 Osmond Terrace.

The eastern end of the locality, including everything east of the subject land on the northern side of William Street and everything east of Alfred Street on the southern side of William Street, has a different character to the central part of the locality, as it contains mostly two storey contemporary dwellings. This corresponds with the areas outside of the Character Area Overlay. Similarly, the western end is characterised by outwardly two storey dwellings at 59 and 76/76A William Street.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Swimming pool, spa pool or associated safety features: Accepted
New housing
Detached dwelling: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
The building height exceeds the maximum building height Technical Numeric Variation (TNV) of 1 building level.
- **LIST OF REPRESENTATIONS**

Fourteen (14) representations were received during the public notification period. Of those, only eight (8) related to the development application and were therefore valid. The remaining representations related only to the demolition of the existing villa, which does not form part of the development application.

Given Name	Family Name	Address	Wishes To Be Heard	In Support
Alex	Blood	246 Beulah Rd, Beulah Pk 5067	No	No
Charles	Gilchrist	73 Church Tce, Walkerville 5081	No	No
Robyn	Harrison	33-35 William St, Norwood 5067	Yes	No
Kate	Hobbs	33 William Street, Norwood 5067	Yes	No
Spiro	Kypreos	71 Williams Street, Norwood 5067	No	No
Chryssanthe	Paronis	75a William St, Norwood 5067	No	Yes (with concerns)
Ian	Radbone	16 Theresa Street, Norwood 5067	No	No
Steven	Reichelt	12 Gloucester Terrace, Norwood 5067	No	Yes (with concerns)

- **SUMMARY**

The key issues raised by representors are, in summary:

- The proposed dwelling does not fit with the character of the area;
- Overlooking of 12 Gloucester Street;
- The proposed house is 200mm closer to the street than the existing house;
- The proposed rear setback is 3.7m whereas it should be 4.0m;
- The proposed house is too tall, impacting on the streetscape;
- The proposed house is unrelieved and modern and has an enormous garage;

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

Nil

PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

Land Use

Desired Outcome 1 for the Established Neighbourhood Zone is:

“A neighbourhood that includes a range of housing types, with new buildings sympathetic to the predominant built form character and development patterns.”

Performance Outcome 1.1 for the Established Neighbourhood Zone seeks:

“Predominantly residential development with complementary non-residential activities compatible with the established development pattern of the neighbourhood.”

The Designated Performance Feature associated with PO 1.1, is for development to comprise one or more of the following:

- a) Ancillary accommodation
- b) Community facility
- c) Consulting room
- d) Dwelling
- e) Office
- f) Recreation area
- g) Shop.

The proposal is for a dwelling and is therefore consistent with the Planning and Design Code from the perspective of land use.

Building Height

Performance Outcome 4.1 of the Established Neighbourhood Zone states:

“Buildings contribute to the prevailing character of the neighbourhood and complements the height of nearby buildings.”

The Designated Performance Feature associated with PO 4.1, is for building height to be no greater than a specified height, according to the relevant Technical Numeric Variation (TNV). In the case of the subject land, the relevant TNV is:

“Maximum building height is 1 level”

This 1 level TNV is applied to all properties located within the Character Area Overlay and the suburb of Norwood.

Performance Outcome 10.2 of the Established Neighbourhood Zone states:

“The appearance of development as viewed from public roads is sympathetic to the wall height, roof forms and roof pitches of the predominant housing stock in the locality.”

Performance Outcome 2.2 of the Character Area Overlay states:

“Development is consistent with the prevailing building and wall heights in the character area.”

Performance Outcome 1.1 of the Character Area Overlay states:

“All development is undertaken having consideration to the valued attributes expressed in the Character Area Statement.”

Character Area Statements are contained within the Planning and Design Code, to describe the prevailing character of the relevant area, thereby assisting in the application of relevant policy; most notably PO 1.1. The Character Statement applicable to this development application states the following in relation to building height:

“Generally single storey streetscape appearance.”

There are two ways in which the height policies which are set out above could possibly be interpreted:

- | | |
|------------|---|
| Approach 1 | Despite the zone level TNV of 1 level building height, the more specific Character Area Overlay envisages sensitively designed two storey dwellings (ie. 2 nd level at the rear), by virtue of noting in the character area statement that single storey streetscapes are important (as opposed to single storey <u>period</u>); or |
| Approach 2 | The zone level TNV is 1 level building height and nothing in the Character Area Overlay states that a 2 level building is appropriate, so therefore the entire dwelling should be 1 level. |

Advice has been sought from Norman Waterhouse Lawyers as to which approach is most appropriate. Their response is summarised below.

“In construing the P&D Code, the Rules of Interpretation state that in the event of any inconsistency the provisions of an overlay will prevail over all other policies applying. The Character Area Overlay seek to regulate streetscape appearance and characteristics, as set out in Development Outcome 1... In relation to building height it (the Character Area Statement) states “Generally single storey streetscape appearance”. You have suggested below that this may be interpreted as envisaging sensitively designed two storey dwellings. Whilst that may be the case in certain zones, the Character Area Overlay is only concerned with what can be seen from the street, so it does not need to go any further than speaking of building height as it relates to streetscape appearance. Therefore we are of the view that it doesn’t speak for or against two-storey development that is not visible from the street.

On the other hand, the zone descends into a greater level of detail and is not just concerned with streetscape appearance, but overall building height. Designated Performance Features are just one way of satisfying a performance outcome. DPF 4.1. picks up the TNV which provides a maximum building height of 1 level. Accordingly, if the proposed dwelling is single storey, DPF 4.1 will be satisfied and PO 4.1 is therefore satisfied. However, just because a proposed dwelling exceeds 1 level and DPF 4.1 is not met, does not mean that PO 4.1 is not met.

For example, the prevailing character of the neighbourhood may include multiple examples of two storey dwellings and therefore PO 4.1 may be met notwithstanding departure from the TNV applying to DPF 4.1. Alternatively, you might form the view that with regard to DO 1 and PO 4.1 that some form of two-storey built-form is sympathetic or complementary to the prevailing character and therefore appropriate.

Unfortunately having the TNV within the DPF means it does not carry as much weight as if it was captured in a PO. The failure to meet the TNV has some relevance in assessing if PO 4.1 is satisfied, and in our view it should not be departed from lightly, but it does not mean that “all dwelling should be 1 level”.

To summarise, we are of the view there is no inconsistency between the Character Area Overlay and the Established Neighbourhood Zone in this instance. It will be DO 1 and 2 and PO 4.1 and 10.2 in particular of the Established Neighbourhood Zone that will determine whether a sensitively designed two-storey dwelling is appropriate in this location.”

Therefore, Norman Waterhouse have advised that Approach 2 is the appropriate approach. Put simply, DPF 4.1 states that dwellings in their entirety (not just what is seen from the street) should be single storey and the reference to single storey streetscape appearance in the Character Area Statement does not override that.

However, Norman Waterhouse have also advised that Performance Outcome 4.1 and other relevant policies (including PO 10.2) could be achieved in some circumstances, despite a building exceeding the TNV of 1 building level. The example given is where the prevailing character of the neighbourhood may include multiple examples of two storey dwellings.

Two storey dwellings do not feature in the prevailing character of the locality of the subject land. Despite this, it is considered that there are circumstances which result in the proposed two storey (above ground) dwelling achieving Performance Outcomes 4.1 and 10.2 of the Established Neighbourhood Zone. Specifically, the subject land is adjacent to outwardly two storey dwellings immediately east at 75a William Street and across the road to the south at 88-90 William Street. In addition, the dwelling has been designed in a manner which reduces the visual prominence of the upper level; not only from William Street but also from adjacent properties.

In particular, the upper level has been designed largely within the roof space, with the only visible upper level windows being those in the rear elevation, facing a commercial property. As a result, the dwelling is considered to appear ostensibly as a single storey dwelling, not only from the street, but also from adjoining properties.

Accordingly, the proposed dwelling is considered to achieve the relevant Performance Outcomes in relation to height, despite exceeding the TNV of one building level.

Setbacks, Site Coverage, Siting

Performance Outcome 3.1 of the Established Neighbourhood Zone states:

“Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.”

The Designated Performance Feature for PO 3.1 is that development does not result in site coverage exceeding 50%.

The proposed dwelling would result in 57% site coverage. Despite exceeding the 50% criteria in DPF 3.1, it is considered that the Performance Outcome is achieved, as the extent of site coverage is reasonably consistent with that of adjoining properties at 73 William Street (54%) and 75a William Street (60%).

Performance Outcome 5.1 of the Established Neighbourhood Zone states:

“Buildings are set back from primary street boundaries consistent with the existing streetscape.”

The Designated Performance feature for PO 5.1 is that the building line be set back from the primary street boundary at least the average setback to the building line of existing buildings on adjoining sites which face the same primary street (including those buildings that would adjoin the site if not separated by a public road or a vacant allotment).

The following measurements have been taken of the setbacks of the building lines of the dwellings on adjoining sites:

- 75a William Street 4.5m
- 73 William Street 4.5m

The average setback of the two adjoining dwellings is 4.5 metres. The proposed dwelling has a setback of 4.5 metres, consistent with the Designated Performance Feature and is therefore appropriate.

Performance Outcome 7.1 of the Established Neighbourhood Zone states:

“Dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties.”

The Designated Performance Feature for PO 7.1 is that side boundary walls occur only on one side boundary and satisfy (i) or (ii) below:

- i. side boundary walls adjoin or abut a boundary wall of a building on adjoining land for the same or lesser length and height
- ii. side boundary walls do not:
 - A. exceed 3.2m in height from the lower of the natural or finished ground level
 - B. exceed 8m in length
 - C. when combined with other walls on the boundary of the subject development site, exceed a maximum 45% of the length of the boundary
 - D. encroach within 3m of any other existing or proposed boundary walls on the subject land.

The proposed dwelling includes boundary walls of the garage on the eastern side boundary. The wall does not achieve the Designated Performance Feature, as ranges in height above natural ground level from 3.9 metres to 4.2 metres and is 9.5 metres long. The wall would be adjacent to the side of the dwelling at 75a William Street, where there are no windows at ground level and therefore no impact in relation to visual outlook or overshadowing. Accordingly, Performance Outcome 7.1 is considered to be achieved despite the extent of boundary walling proposed.

In relation to side setbacks, Performance Outcome 8.1 of the Established Neighbourhood Zone states:

“Buildings are set back from side boundaries to provide:

- a) *separation between buildings in a way that complements the established character of the locality*
- b) *access to natural light and ventilation for neighbours.”*

The Designated Performance Feature for PO 8.1 is that (other than boundary walls), building walls are set back no less than 900mm for ground level walls and in the case of upper level walls, a distance of 0.9m plus 1/3 of the wall height above 3m.

The proposed dwelling is set back 970mm from the eastern side boundary and 900mm from the western side boundary. As there is no upper level wall as such, upper level side setback criteria does not apply.

Design & Appearance

Performance Outcome 10.1 states:

“Garages and carports are designed and sited to be discrete and not dominate the appearance of the associated dwelling when viewed from the street.”

The Designated Performance Feature for this, is for garages and carports facing a street to be

- a) be set back at least 0.5m behind the building line of the associated dwelling;
- b) be set back at least 5.5m from the boundary of the primary street; and
- c) have a total garage door / opening width not exceeding 30% of the allotment or site frontage, to a maximum width of 7m.

The proposed garage is:

- a) set back 1.5m behind the building line of the associated dwelling;
- b) set back 6.0m from the boundary of the primary street; and
- c) has a total garage door / opening width of 5.4m, equating to 35% of the site frontage.

Accordingly, the proposal is inconsistent with part (c) of the Designated Performance Feature, with the garage door opening comprising 35% of the site frontage, rather than a maximum of 30%. This is a negative aspect of the proposal, however with the minimum requirements in parts (a) and (b) of the Designated Performance Feature being positively exceeded, on balance the garage door width is considered acceptable.

Despite this, the garage is considered to dominate the appearance of the dwelling from the street and as such Performance Outcome 10.1 is not considered to be satisfied. This is a result of the front fence configuration, whereby the portion of the dwelling façade other than the garage is concealed from view in the street behind the front fence. Not only does the fence extend along the front boundary in front of this section of the façade at a height ranging from 1.8 to 2.0 metres, it also returns perpendicular to the front boundary to meet the façade.

Performance Outcome 10.2 states:

“The appearance of development as viewed from public roads is sympathetic to the wall height, roof forms and roof pitches of the predominant housing stock in the locality.”

While the roof pitch of the proposed dwelling is high at 45 degrees, this section of William Street contains at least two tudor style homes with steep roof pitches and in this context, the roof pitch is considered appropriate. The wall height of the proposed dwelling is 4 metres, which is approximately 0.5 metres taller than typical wall heights of character homes in the street, however is not considered excessive in the context of the adjacent outwardly two storey dwellings at the eastern end of the street.

Performance Outcome 2.3 of the Character Area Overlay states:

“Design and architectural detailing of street-facing buildings (including but not limited to roof pitch and form, openings, chimneys and verandahs) are consistent with the prevailing characteristics in the character area.”

The proposed dwelling reflects the basic form and proportion of character homes in the locality including vertically proportioned windows, as well as reflecting traditional building materials with stone clad walls and corrugated iron roof.

Performance Outcome 6.2 states:

“development maintains the valued landscape pattern and characteristics that contribute to the character area, except where they compromise safety, create nuisance, or impact adversely on existing buildings or infrastructure.”

The Character Area Statement notes the following in relation to fencing:

“Low, open-style fencing that allows connectivity to the street. Front fencing and side fencing (between the front of a dwelling and the street) and landscaping are important components of streetscape character. Some more solid forms of fencing along arterial roads.”

The proposed front fence includes a 2.3 metre long visually permeable section but is otherwise solid, including the north-south return section. In combination with the proposed height ranging from 1.8 to 2.0 metres, it is considered to detract from the character of the streetscape and result in the garage being the dominant visual element of the dwelling when viewed from the street.

If the Panel determines to grant consent to the application, it is recommended that a condition be imposed which requires that the front fence to be redesigned to not exceed 1.8m in height above the footpath at any point and comprise a minimum of 70% visually permeable sections including along the north-south return, to the reasonable satisfaction of the Assessment Manager.

Performance Outcome 21.1 and Designated Performance Feature 21.1 of the Design in Urban Areas section of the General Development Policies (which in turn reference Table 1), require that 60m² of private open space is located behind the building line for a site exceeding 300m². The proposed development includes 118m² of private open space behind the building line.

Performance Outcome 22.1 states:

Soft landscaping is incorporated into development to:

- a) minimise heat absorption and reflection
- b) contribute shade and shelter
- c) provide for stormwater infiltration and biodiversity
- d) enhance the appearance of land and streetscapes.

The Designated Performance Feature for PO 22.1 in relation to sites greater than 450m² area is that development incorporates soft landscaping with a minimum dimension of 700mm, at a rate of 25% of the site area, with at least 30% of the land between the primary street boundary and the building line being soft landscaped.

The proposal includes 28% of the site area dedicated to soft landscaping including the vine/arbour covered swimming pool and surrounding timber deck. It is considered appropriate for these to be treated as ‘soft’ forms of landscaping, as they would assist in reducing heat absorption and reflection.

The second part of the Designated Performance Feature is also achieved, with 35% of the land between the building line and William Street being dedicated to soft landscaping.

Heritage

The subject land is located adjacent to Local Heritage Places on the opposite side of William Street. The traditional general form of the building as it presents to William Street is considered to be compatible with the adjacent Local Heritage Places.

Traffic Impact, Access and Parking

Performance Outcome 5.1 and Designated Performance Feature 5.1 of the Transport, Access and Parking section of the General Development Policies (which in turn reference Table 1 General Off-street Parking Requirements), require a detached dwelling with 2 or more bedrooms to have 2 spaces per dwelling, 1 of which is to be covered. The proposal achieves this, with 2 spaces provided within the proposed garage and an additional 2 in the driveway.

Overlooking

The owner/occupier of the dwelling at 12 Gloucester Street has expressed concern regarding overlooking from the upper level rear balcony of the proposed dwelling. In this respect, Performance Outcome 10.2 of the General Development Policies section of the P&D Code states:

“Development mitigates direct overlooking from balconies to habitable rooms and private open space of adjoining residential uses in neighbourhood type zones.”

The Designated Performance Feature for this is for balconies to be permanently obscured by screening with a maximum 25% transparency/openings fixed to a minimum height of:

- 1.5m above finished floor level where the balcony is located at least 15 metres from the nearest habitable window of a dwelling on adjacent land; or
- 1.7m above finished floor level in all other cases

The proposed balcony has a solid balustrade to a height of 1.5m above floor level and is more than 15 metres away from the property boundary at 12 Gloucester Street and approximately 35 metres away from the nearest habitable window of the dwelling at 12 Gloucester Street and therefore accords with the Designated Performance Feature.

CONCLUSION

The proposed dwelling is inconsistent with aspects of the Planning and Design Code relating to number of levels, site coverage, the extent of boundary walling and the dominance of the garage.

On the other hand, the proposal presents to William street with proportions, form and materials which are consistent and compatible with character homes in the locality. The upper level is concealed within the roof and while the resultant scale of the building is quite large, it is compatible with its immediate locality which includes a number of outwardly two storey dwellings.

On balance, subject to changes to the front fence height and configuration, the proposal is considered to be sufficiently in accordance with the Planning and Design Code to merit 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 21009962, by Mr Paolo Piteo is **granted** Planning Consent subject to the following conditions

CONDITIONS

Planning Consent

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.
2. The front fence shall be redesigned to not exceed 1.8m in height above the footpath at any point and comprise a minimum of 70% visually permeable sections including along the north-south return, with details to be provided to the reasonable satisfaction of the Assessment Manager prior to the granting of Development Approval.

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. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
 - a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
 - b. if an appeal is commenced—
 - i. until the appeal is dismissed, struck out or withdrawn; or
 - ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).

Ms Nankivell addressed the Council Assessment Panel Members from 7:42pm until 7:43pm

MOVED

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 21009962, by Mr Paolo Piteo is **granted** Planning Consent subject to the following conditions*

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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.*
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General Notes

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 - a. *until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or*
 - b. *if an appeal is commenced—*
 - i. *until the appeal is dismissed, struck out or withdrawn; or*
 - ii. *until the questions raised by the appeal have been finally determined (other than any question as to costs).*

Seconded and Carried

3. OTHER BUSINESS

Nil

4. CONFIDENTIAL REPORTS

Nil

5. CLOSURE

The Presiding Member declared the meeting closed at 7:50pm

Terry Mosel
PRESIDING MEMBER

Mark Thomson
MANAGER DEVELOPMENT ASSESSMENT