

Council Assessment Panel Minutes

20 December 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

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Facsimile 8332 6338
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au



City of
Norwood
Payneham
& St Peters

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VENUE Council Chambers, Norwood Town Hall

HOUR 7.00pm

PRESENT

PANEL MEMBERS Mr John Minney
Mr Phil Smith
Ms Fleur Bowden
Ms Jenny Newman

STAFF Mark Thomson Manager Development Assessment
Adam Bowey Senior Urban Planner
Tala Aslat Planning Assistant

APOLOGIES Mr Terry Mosel

ABSENT

Mr Thomson advised that Mr Mosel is an apology and sought nomination for an acting Presiding Member.

MOVED

That Mr Smith be Acting Presiding Member

Seconded and Carried

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT
PANEL HELD ON 15 NOVEMBER 2021**

Seconded and Carried

2. STAFF REPORTS

2.1 DEVELOPMENT APPLICATION 21018456 - YOGO DESIGN & CONSULTING PTY LTD
- 60 HARROW ROAD COLLEGE PARK

DEVELOPMENT NO.:	21018456
APPLICANT:	YOGO DESIGN & CONSULTING PTY LTD
ADDRESS:	60 HARROW RD COLLEGE PARK SA 5069
NATURE OF DEVELOPMENT:	Demolition of a detached dwelling and the construction of a two-storey detached dwelling, swimming pool and front and side boundary fencing
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy • Airport Building Heights (Regulated) • Historic Area • Hazards (Flooding - General) <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Frontage (17 metres detached dwelling) • Minimum Site Area (300m²) • (Maximum building height is 1 level) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	15 Jul 2021
RELEVANT AUTHORITY:	Assessment panel at City of Norwood, Payneham and St. Peters
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
REFERRALS STATUTORY:	NIL
REFERRALS NON-STATUTORY:	Heritage Advisor Project Officer - Assets

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 4:	Representations
ATTACHMENT 1:	Application Documents	ATTACHMENT 5:	Response to Representations
ATTACHMENT 2:	Subject Land Map	ATTACHMENT 6:	Internal Referral Advice
ATTACHMENT 3:	Zoning Map		

DETAILED DESCRIPTION OF PROPOSAL:

The applicant seeks consent to demolish an existing dwelling and to construct a two storey detached dwelling, swimming pool and front and side boundary fencing. The ground floor level of the dwelling consists of an open-plan living/dining/kitchen area, lounge and bedroom and includes an alfresco area adjacent the living area at the side of the dwelling and a double garage fronting Magdalen Street. The upper level includes a further two bedrooms and family living area. The dwelling also includes a cellar/retreat below ground level. The total floor area of the dwelling is 325m², while the footprint of the dwelling is 212m².

A black steel front fence is proposed along the Harrow Road frontage, at a height of 1.5 metres, and a 2 metre high fence is proposed along the secondary frontage (Magdalen Street).

A swimming pool is proposed adjacent to the north western side boundary which is covered by a metal frame arbour/ pergola structure. The swimming pool equipment/store is proposed adjacent north western property boundary.

The proposed floor level of the dwelling is approximately 200mm above footpath level at the centre of the frontage and 480mm above the foot path level at the centre of the secondary frontage.

A landscaping plan has been submitted with the Application. The proposed landscaping includes a range of ornamental trees, shrubs and ground covers.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 60 HARROW ROAD COLLEGE PARK

Title ref.: CT 5202/214

Plan Parcel: F112012 AL9

Council: THE CITY OF
NORWOOD PAYNEHAM
AND ST PETERS

Shape:	rectangular
Frontage width:	12.80 metres
Depth:	30.48 metres
Area:	390.14 m ²

Topography:	incline of up to 440mm towards northern corner of allotment
Existing Structures:	single storey dwelling
Existing Vegetation:	low plants and shrubs

The subject land is located on the south-western side of Harrow Road, College Park. The subject land contains a modified double-fronted cottage. Vehicular access is via a driveway at the rear of the secondary street frontage (Magdalen Street). A low, open style metal fence is located on the front boundary, with taller fencing along the secondary frontage.

Locality:

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

The locality is considered to be confined to the dwellings fronting both sides of Harrow Road, between Fourth Avenue and Sixth Avenue and half way along Magdalen Street (ie. up to 3 and 6 Magdalen Street), and is characterised by single-storey detached dwellings.

Most of the dwellings within the locality are Representative Buildings, with single fronted cottages, double fronted cottages and villas being the most common architectural styles. The only notable exception to this is a single-storey residential flat building located directly to the south (54 Harrow Road) and two two-storey semi-detached dwellings at 45A & 45B Harrow Road.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Demolition – Performance Assessed
Fences and walls – Performance Assessed
Swimming pool, spa pool or associated safety features: Accepted
Demolition: Code Assessed - Performance Assessed
Fence: Code Assessed - Performance Assessed
New housing
Detached dwelling: Code Assessed - Performance Assessed

- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed

- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASONS**

The Application involves the demolition of a building (other than an ancillary building) in a Historic Area Overlay.

The proposed dwelling exceeds the maximum building height of one level, specified in Established Neighbourhood Zone DTS/DPF 4.1.

- **LIST OF REPRESENTATIONS**

Four (4) representations were received during the public notification period.

Given Name	Family Name	Address	Position	Wishes To Be Heard
John	Edwards	9 Magdalen St, Adelaide SA 5069	Opposed	Yes
Robert	Miotto	2/58 Harrow Road, College park SA 5069	Opposed	Yes
Joseph	Tonin	4 AZALEA STREET, PROSPECT SA 5082	Opposed	No
Bruce	Wood	GPO Box 2355, Adelaide SA 5001	Opposed	Yes

- **SUMMARY**

The key issues raised by representors are, in summary:

- The historic character of the area will be further devalued by the demolition of the dwelling
- The proposed dwelling is too modern
- Depth of construction will have a negative effect on surrounding houses
- Removal of the garage (and associated impacts from heat/shade)
- Impacts associated with demolition process
- Safety concerns related to demolition process
- Impact to existing street tree

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

Heritage
Storm water – Flooding

PLANNING ASSESSMENT

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

Demolition

Performance Outcome 7.1 of the Historic Area Overlay states:

“Buildings and structures, or features thereof, that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:

- (a) The front elevation of the building has been substantially altered and cannot be reasonably restored in a manner consistent with the building's original style
or
- (b) The structural integrity or safe condition of the original building is beyond reasonable repair.”

The Historic Area Statement lists “single storey double fronted villas and detached dwellings of modest proportions with some single fronted dwellings”, constructed from “1870 to the 1930's” as being important to the character of the locality.

The application was referred to the Council's heritage advisor, David Brown for comment on the proposed demolition of the existing dwelling. Mr Brown has advised that the dwelling was originally a double-fronted cottage when constructed in 1911, and that the dwelling was converted to a bungalow styled house at some point in its history. This conversion involved building a new front façade in front of the old façade, and then demolishing the old façade behind. In combination with other works, this modification has resulted in the destruction of its original front and side façades, with the roof form and chimney being the only unmodified elements of the dwelling.

David summarises within his report by stating:

The house was economical at its time of being constructed, set low on the site, and being built much later than the Villa's and cottages around it. To some degree, while it is old, it would never have fitted the late Victorian streetscape context in this area even when new. The mere fact that within 10-14 years of being built it was significantly modified also suggests it was not as well presented or significant as the surviving neighbouring houses.

With regard to the works required to restore the dwelling in a manner consistent with the building's original style, Mr Brown suggest the following works would be required:

- Remove existing verandah, front door and front windows.
- Remove side lean-to addition
- Prop roof, remove front wall and part rebuilt side wall.
- Lay new strip footings for front and side walls
- Construct new face red brick side wall out of either recycled bricks, or Elephant Brick Co bricks to match existing original bricks.
- Construct new front wall with stepped brick quoins, and sandstone or bluestone façade
- New front door and timber double hung sash windows
- Construct new verandah slab with slate edging and either tessellated tiles, or coloured concrete.
- Construct new bullnose hipped verandah with turned posts and cast iron lacework.

These works are based on a hypothetical design based on an educated guesses, as there is no evidence as to what sort of stone or detailing the house had, or what sort of verandah.

Mr Brown has advised that such reconstruction of an entire facade would result in the dwelling having compromised heritage value, compared to a dwelling which only required the replacement of a verandah and roofing to return it to an original presentation for example. In any event, Mr Brown considers that the original dwelling would have made limited contribution to the historic character of the area.

When considering the proposed demolition against Performance Outcome 7.1 (a), it is relevant that the dwelling when originally constructed was not a high quality example of a double fronted cottage compared with surrounding dwellings and that the dwelling has been extensively modified, requiring wholesale replacement of the front of the building. It is therefore considered that the Performance Outcome 7.1 is satisfied and that the demolition is consistent with the Planning & Design Code.

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, being (a)

“Maximum building height is 1 level”

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 Historic Area Overlay states:

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

Performance Outcome 1.1 of the Historic Area Overlay states:

“All development is undertaken having consideration to the historic streetscapes and built form as expressed in the Historic Area Statement.”

Historic 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 Historic Statement applicable to this development application states the following in relation to building height:

“Single storey.”

The dwelling has been designed with similar proportions to the dwelling located at 64 Harrow Road, which is listed as Representative Building. The proposed dwelling references the overall roof form, roof pitch and height and front proportions, consistent with PO 4.1 and 10.2. The second storey is contained entirely within the roof space, and has flush mounted high level skylights providing natural light to upper level windows which are located on the south eastern façade, so as to not be visible from the primary or secondary street frontages.

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 and built form within the Established Neighbourhood Zone, , despite exceeding Designated Performance Feature 4.1 of the Established Neighbourhood Zone of one building level, and Performance Outcome 1.1 of the Historic Area Overlay.

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 54% 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 adjacent properties at 8 Magdalen Street (60%) and 9 Magdalen Street (58%).

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:

- 58 Harrow Road 7.6m
- 62 Harrow Road 5.5m (representative building)

The average setback of the two adjoining dwellings is 6.55 metres. The proposed dwelling has a setback of 5.5 metres to the main façade which is inconsistent with the Designated Performance Feature. Properties to the north on the south western side of Harrow Road have a consistent 5.5 metre front setback, and on this basis the proposed dwelling is considered consistent with the Performance Outcome of 5.1.

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 south western rear boundary which achieve the length (6 metres) and height (2.9 metres) requirements of DPF 7.1.

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.”

And PO 2.4 of the Historic Area Overlay states:

“Development is consistent with the prevailing front and side boundary setback pattern in the historic area.”

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

The proposed dwelling is set back 1m from the south eastern side boundary and 1.5m from the western side boundary, with wall heights of 3.6 metres proposed. This is less than the 1.2 metre required by DPF 8.1, however given the siting characteristics of other historic dwellings in the locality (56 & 64 Harrow Road and 5, 7 & 9 Magdalen Street), the side setback is considered to satisfy both PO 8.1 of the Established Neighbourhood Zone and PO 2.4 of the Historic Area Overlay and are acceptable.

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 83m² of private open space behind the building line, exceeding this requirement.

Design & Appearance

Desired Outcome 1 of the Historic Area Overlay states:

“Historic themes and characteristics are reinforced through conservation and contextually responsive development, design and adaptive reuse that responds to existing coherent patterns of land division, site configuration, streetscapes, building siting and built scale, form and features as exhibited in the Historic Area and expressed in the Historic Area Statement.”

and;

Established Neighbourhood Zone 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.”

The roof pitch of the proposed dwelling is 35 degrees, which is consistent with historic villas fronting Harrow Road, specifically dwellings located at 56, 62 – 72 Harrow Road.

The wall height of the proposed dwelling is 3.6 metres which is typical of wall heights of historic homes in the street.

Performance Outcome 2.3 of the Historic Area Overlay states:

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

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

With regard to the new dwelling design, Mr Brown’s report states:

“The design of the proposed house has been revised to remove the dormer windows, rework the verandah to a more sympathetic form, remove the applied period decoration, and modify some of the materials.

These changes are positive and result in a house that is to some degree a contemporary version of the house at No 60 Harrow Road. The common house typology in the area is that of a simple Victorian Villa. Less ornate than the Italianate Villas built slightly later in St Peters in the Avenues, as this part of St Peters was closer to the tram line and bridge to Walkerville, so was developed earlier. Hence the simple unadorned form of the proposed dwelling is contextually appropriate.”

The proposed replacement dwelling is considered to satisfy Desired Outcome 1 of the Historic Area Overlay from a heritage perspective.

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 accessed via an existing crossover from Magdalen Street.

Overlooking

The proposed dwelling does not have any windows to upper floor areas, instead using skylights to provide natural light to upper floor areas. These skylights are located 2.3 metres above the upper floor finished floor level.

For guidance, Design in Urban Areas Designated Performance Feature 10.1 envisages sill heights greater or equal to 1.5 metres above upper floor FFL to mitigate direct overlooking, with the proposal exceeding this requirement.

Finished floor levels/flooding/retaining/fencing

The subject land is relatively flat with a slight slope up towards the norther corner of the allotment of up to ~440mm. The proposed floor level of the dwelling has been raised to resolve flooding concerns and is approximately 200mm above footpath level at the centre of the frontage and 480mm above the foot path level at the centre of the secondary frontage, which is commensurate with other historic dwellings and will allow a gravity stormwater disposal system to the street watertable, while basement areas will require a sump and pump to dispose of stormwater to the street water table.

Performance Outcome 2.1 of the Hazards (Flooding – General) Overlay states:

“Development is sited, designed and constructed to prevent the entry of floodwaters where the entry of flood waters is likely to result in undue damage to or compromise ongoing activities within buildings.”

And

Designated Performance Feature 2.1 of the Hazards (Flooding – General) Overlay states:

“Habitable buildings, commercial and industrial buildings, and buildings used for animal keeping incorporate a finished ground and floor level not less than:

In instances where no finished floor level value is specified, a building incorporates a finished floor level at least 300mm above the height of a 1% AEP flood event.”

The subject land is located within a Hazards (Flooding – General) Overlay, and was referred to Ken Schalk at Tonkin’s for flood advice. Mr Schalk has advised that the proposed floor levels for the dwelling provide 150mm freeboard above the 1 in 100 year flood level, which he considers to provide adequate protection from flooding. While this is less than that specified within DPF 2.1, based on Mr Schalk’s advice it is considered sufficient to satisfy Performance Outcome 2.1.

No detail has been provided as to how existing ground levels on site will be managed, however given the proposed floor levels, some under fence plinths up to 300mm are likely to be required to facilitate the development.

The proposal includes new open styled black steel fencing along the front boundary and secondary frontage up until the main face of the dwelling, and 2 metre high corrugated good neighbour fencing in colorbond cream is proposed along the remaining portion of the secondary frontage up until the garage. On balance, the proposed levels and fencing is considered acceptable.

Trees (Regulated, mature & street) and landscaping

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 between 200-450m² area is that development incorporates soft landscaping with a minimum dimension of 700mm, at a rate of 20% 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 21% of the site area dedicated to soft landscaping, and 82% of the land between the building line and Harrow Road dedicated to soft landscaping, therefore satisfying PO 22.1.

The applicant has provided a landscaping plan, detailing range of plantings within the front yard of the dwelling, which includes a tree (Crepe Myrtle) consistent with DPF 1.1 of the Urban Tree Canopy Overlay.

CONCLUSION

The demolition of the existing dwelling is acceptable when considering the substantial extent of modification to the façade and return walls of the dwelling, and the extent of works required to restore it in a manner consistent with its original style, given that in its original as constructed 1911 condition, it was not considered to be consistent with surrounding dwellings and that any restoration to its original appearance is an educated guess.

The proposed replacement dwelling is inconsistent with aspects of the Planning and Design Code relating to number of levels and site coverage, however presents to Harrow Road with proportions, form and materials which are consistent and compatible with historic homes in the locality, and will contribute to the streetscape.

The upper level is concealed within the roof with the overall height and roof form consistent with dwellings within its immediate locality.

On balance, 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 21018456, by YOGO DESIGN & CONSULTING PTY LTD 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. Either:
 1. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.
 2. Where provided for by any relevant off-set scheme established under section 197 of the Planning, Development and Infrastructure Act 2016 (as at the date of lodgement of the application), payment of an amount calculated in accordance with the off-set scheme may be made in lieu of planting/retaining 1 or more trees as set out in the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). Payment must be made prior to the issue of development approval.
3. The approved development must include rainwater tank storage which is:
 1. connected to at least 60% of the roof area;
 2. connected to one toilet and either the laundry cold water outlets or hot water service;
 3. with a minimum retention capacity of 2000 litres;
 4. if the site perviousness is less than 30%, with a minimum detention capacity of 1000 litres; and
 5. where detention is required, includes a 20-25 mm diameter slow release orifice at the bottom of the detention component of the tankwithin 12 months of occupation of the dwelling(s).
4. Side fencing along the secondary frontage marked as 'new 2000H Good Neighbour Fence' shall be of a corrugated profile.

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.
-

Mr Edwards addressed the Council Assessment Panel from 7:03pm until 7:07pm

Mr Miotto addressed the Council Assessment Panel from 7:08pm until 7:10pm

Mr Webber addressed the Council Assessment Panel from 7:11pm until 7:12pm

MOVED

That the Council Assessment Panel resolves 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 21018456, by YOGO DESIGN & CONSULTING PTY LTD is granted Planning Consent subject to the following conditions*

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Planning Consent

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 2. *Where provided for by any relevant off-set scheme established under section 197 of the Planning, Development and Infrastructure Act 2016 (as at the date of lodgement of the application), payment of an amount calculated in accordance with the off-set scheme may be made in lieu of planting/retaining 1 or more trees as set out in the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). Payment must be made prior to the issue of development approval.*
3. *The approved development must include rainwater tank storage which is:*
 1. *connected to at least 60% of the roof area;*
 2. *connected to one toilet and either the laundry cold water outlets or hot water service;*
 3. *with a minimum retention capacity of 2000 litres;*
 4. *if the site perviousness is less than 30%, with a minimum detention capacity of 1000 litres; and*
 5. *where detention is required, includes a 20-25 mm diameter slow release orifice at the bottom of the detention component of the tank within 12 months of occupation of the dwelling(s).*
4. *Side fencing along the secondary frontage marked as 'new 2000H Good Neighbour Fence' shall be of a corrugated profile.*

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.*
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Seconded and Carried

2. STAFF REPORTS

2.2 DEVELOPMENT APPLICATION 155/201/2021 – DRUSIAN PROPERTIES PTY LTD - 35 NORTH TERRACE HACKNEY

DEVELOPMENT APPLICATION:	155/201/21
APPLICANT:	Drusian Properties Pty Ltd
SUBJECT SITE:	35 North Terrace, Hackney (Certificate of Title Volume: 5278 Folio: 407)
DESCRIPTION OF DEVELOPMENT:	Demolition of existing building and the construction of a three-storey building comprising office accommodation, a shop (cafe) and car parking
ZONE:	Local Commercial Zone 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 details to the Panel on amended (compromise) plans submitted in relation to an Application which was refused by the Panel and that is the subject of an Appeal to the Environment Resources and Development (ERD) Court. The Panel is required to consider the amended plans and advise the ERD Court as to whether or not they satisfactorily address the concerns identified with the Application, such that consent would now be warranted.

Background

Development Application 155/201/21 was lodged in March 2021 for the demolition of an existing building and the construction of a three-storey building comprising office accommodation, a shop (cafe) and car parking.

The Panel considered the Development Application at its meeting held on Monday 16 August 2021 and determined to refuse the Application for the following reasons:

1. The proposed building is inconsistent with City Wide Principles of Development Control 359 and 361, insofar as it does not show design consideration of the relationships with adjacent Local Heritage Places and their setting, and is likely to dominate and detract from the heritage value and integrity of the adjacent Local Heritage Places by way of its design and appearance.
2. The proposal is inconsistent with City Wide Principle of Development Control 120, as it does not provide off-street vehicle parking in accordance with rates contained in Table NPSP/9.

A copy of the relevant section of the Minutes of the Panel meeting held on 16 August 2021, including the refused plans, is contained in **Attachment A**.

Following the refusal of the Application by the Panel, the Applicant lodged an Appeal with the ERD Court. A preliminary conference was held at the ERD Court on 21 October 2021, at which the Court directed the matter into the pending track at the request of the appellant, to provide an opportunity to seek to resolve the issues of contention and to gain the Panel's support of the proposal.

Further information, amended plans and details have been provided by the Appellant, which are the subject of this report and are contained in **Attachment B**.

The proposed amendments to the proposal include:

- increased rear boundary setback of 1st Floor from 2.0m to 6.0m (with balcony to 1.5m of rear boundary);
- increased front boundary setback of 1st Floor from 8.0m to 10.3m (with balcony to 8.0m of front boundary);
- reduction in floor area of 60m²; and
- gable roof form in lieu of flat roof form.

Discussion

The following discussion is based on the reasons for refusal that were given by the Panel at its meeting held on 16 August 2021.

Heritage Context

The proposed increase in setback of the first floor level from North Terrace, as well as the introduction of a gabled roof form, are designed to provide greater compatibility with adjoining and nearby Local Heritage Places.

Single storey Local Heritage Places are located at 23, 31, 33, 37, 39 and 41 North Terrace. The subject land is therefore amongst a 'run' of consistent scale heritage listed buildings. In this context, the changes to the proposal are not considered to make any meaningful difference to the compatibility of the building with its surrounds.

The 2.3 metre increase in setback of the first floor level from North Terrace does assist in creating a podium effect, however the overall scale of the building at first and second floor (ie. second and third levels) remains prominent and in stark contrast with surrounding Local Heritage Places.

The change from a flat roof to a gabled roof is considered to be detrimental to the compatibility of the building with its surrounds, because it adds height and appears contrived to have a pitched roof on a three storey office building.

The amended (compromise) application was referred to the Council's Heritage Advisor, David Brown. In summary, key aspects of Mr Brown's advice are summarised below:

- while the material and form attempt to pay homage to the two Local Heritage places to the west, the bulk and scale are jarringly out of proportion, so only enhance the visual dominance of the proposed structure;
- In simple terms the proposed development shows no scale, bulk or form relationship to the adjacent buildings, setback patterns are ignored, proportions and design elements do not relate to the Local Heritage Places;
- The front setback forward of No 33 is still a concern with the blade wall forward of the façade that will obstruct the view of the Local Heritage Place listed building from the east;
- The open nature of the ground floor is incongruent with the surroundings, and does not relate at all well to the mostly solid facades of the adjacent buildings. There is no obvious front door to the building, with all access via the driveway;
- The height of the proposed building is completely out of scale with the Local Heritage Places;
- The revised proposed new three level building will still have a serious negative impact on the setting and visual catchment of the adjacent five Local Heritage Places.

A copy of Mr Brown's report is contained in **Attachment C**.

The proposed building is therefore considered to be inconsistent with City Wide Principles of Development Control 359 and 361 to an extent which is fatal to the application. Some degree of inconsistency with Principles 359 and 361 is expected as the subject land is not in a historic (conservation) zone. However, as the land is in the middle of a run of Local Heritage Places, the scale of the building is considered fundamentally problematic. A two storey building with greater boundary setbacks would be a more appropriate solution.

Car Parking

The proposed reduction in floor area of 60m² results in a total demand for 26 spaces, as outlined in the table below, compared with 28 spaces in the original application.

Element	Table NPSP/9	Required
Office	4 spaces per 100m ²	22.0 spaces
Cafe	1 per 3 seats (no additional requirement for outdoor dining up to 25% of indoor seating)	3.3 spaces
Total Demand		26 spaces (rounded up)
Proposed		20 spaces

The proposed supply of 20 on-site spaces therefore results in a shortfall of 6 spaces, compared with 8 previously.

As was the case previously, the Applicant has suggested that the rates applicable to development in the Urban Corridor Zone should be applied, due to the close proximity of the subject land to that zone (opposite side of North Terrace).

However, as was previously reported by Council staff, limited opportunity exists on North Terrace for on-street parking, due to an adjacent bus zone and the areas available for parking being subject to a clearway in the afternoons (after 3:00pm) and outside of those times not being conducive to convenient use due to traffic speed and volumes.

As a result, any over-spill parking would likely occur in the local residential streets of Osborne Street and Westbury Street, where further on-street parking would likely be detrimental to residential amenity.

Accordingly, the 6 car parking space shortfall remains a concern, despite having been reduced from 8.

Summary

The proposed changes go some way towards addressing the reasons for refusal given by the Panel. In particular, the reduction in floor area, increased street setback of the first floor level and improved car parking ratio are all improvements.

However, it is considered that the scale of the building remains too large, such that it does not show design consideration of the relationships with adjacent Local Heritage Places and will detract from their heritage value. In addition, insufficient on-site car parking is provided.

RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, the Environment Resources & Development Court be advised that the amended (compromise) proposal in respect to Development Application No 155/201/21 by Drusian Properties Pty Ltd to Demolition of existing building and construct a three-storey building comprising office accommodation, a shop (cafe) and car parking, is not accepted, for the reasons previously given by the Panel.

Mr Brunning addressed the Council Assessment Panel from 7:22pm until 7:28pm

MOVED

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, the Environment Resources & Development Court be advised that the amended (compromise) proposal in respect to Development Application No 155/201/21 by Drusian Properties Pty Ltd to Demolition of existing building and construct a three-storey building comprising office accommodation, a shop (cafe) and car parking, is not accepted, for the reasons previously given by the Panel.

Seconded and Carried

2. STAFF REPORTS

2.3 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 details to the Panel on amended (compromise) plans submitted in relation to an Application which was refused by the Panel and that is the subject of an Appeal to the Environment Resources and Development (ERD) Court. The Panel is required to consider the amended plans and advise the ERD Court as to whether or not they satisfactorily address the concerns identified with the Application, such that consent would now be warranted.

Background

Development Application 155/D017/21 was lodged in March 2021 for Torrens Title land division (1 into 2), the demolition of an existing dwelling and the construction of two detached dwellings.

The Panel considered the Development Application at its meeting held on Monday 18 October 2021 and determined to refuse the Application for the following reasons:

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.

A copy of the relevant section of the Minutes of the Panel meeting held on 18 October 2021, including the refused plans, is contained in **Attachment 1**.

Following the refusal of the Application by the Panel, the Applicant lodged an Appeal with the ERD Court. A preliminary conference was held at the ERD Court on Thursday 2 December 2021, at which the Court directed the matter into the pending track at the request of the appellant, to provide an opportunity to seek to resolve the issues of contention and to gain the Panel's support of the proposal.

Further information, amended plans and details have been provided by the Appellant, which are the subject of this report and are contained in **Attachment 2**.

In summary, the further information includes:

- an opinion on the Planning merits of the proposal by the Appellant's Planning Consultant, Mr Vounasis from Future Urban;
- an Appraisal of Building Damage by Wallbridge Gilbert Aztec; and
- an Order of Probable Cost estimate (QS Report) by WT

The proposed amendments to the proposal include:

- Introduction of a secondary gable roof form to the facade of each dwelling
- Separation of the garages associated with each dwelling
- Inclusion of a setback between the proposed dwellings and northern boundary.
- A reduction in crossover flaring to provide a 2 metre clearance between the driveway associated with Lot 102 and the street tree

Discussion

The following discussion is based on the reasons for refusal that were given by the Panel at its meeting held on 18 October 2021.

Demolition of existing dwelling

The Appellant has sought to address the concerns raised by the Panel over the demolition of the existing dwelling by attaining additional advice from Wallbridge Gilbert Aztec. The single page summary by Wallbridge Gilbert Aztec states:

"We have also undertaken a brief inspection of the premises with a view to specifically assess whether reconstructing large portions of the existing masonry walls on the existing footings would be a viable option for the structural remediation of the building"

It is understood that the basis of this investigation is related to advice provided by Imparta, whereby 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 report by Wallbridge Gilbert Aztec focuses on the potential for reuse of the footings, and does not provide any information as to the option of replacement of damaged footings.

The report identifies that most of the walls of the building have sustained some movement related damage, with more significant damage contained to the north eastern corner of the dwelling. It also raises movement of the front verandah and cornice separation inside the dwelling, all of which have been identified by both Imparta and Innovis previously.

The report does provide advice as to the existing surface environment around the dwelling, which has areas of hard surfaced concrete, and forms the view that 'any further attempts to stabilise the soil moisture content in the underlying soils are likely to yield marginal improvement'. However, the report does not discuss the condition of the existing stormwater system, which is identified as discharging to the adjacent ground within the Imparta Structural report. Whilst some perimeter paving exists, it is understood to be in poor condition and/or ineffective and is in need of replacement as has been identified in each of the quantity surveying reports received. The WGA report concludes that the dwelling is nearing its useful life expectancy, whereby ongoing costs to maintain the serviceability of the dwelling are unreasonably high.

A second Quantity Surveying report has been undertaken by WT on behalf of the Appellant, who have provided an Order of Probable Cost Estimate detailing a Total Expected Construction Cost of \$637,000. Like the original QS report by Ryder Levitt Buckwell provided with the application, this estimate includes works which are not identified in the Imparta structural report. The more substantial items include:

- Underpinning of external and internal walls (including associated works)
- Replacement of 40% of all external walls
- Replacement of 30% of internal walls – including hard plastering

- Replacement of 40% of ceiling and cornice
- New Joinery throughout
- Complete bathroom replacement
- Complete kitchen replacement including new appliances
- Landscaping
- Timber roof framing
- Replacement of front fence
- Clearance of complete site
- Electrical upgrade

This cost estimate is vastly different from that obtained by the Council from Chris Sale Consulting as part of its assessment, which concluded a repair estimate of \$284,764 (excluding the replacement of the rear-lean to). While the scope of works have been reduced from that estimated by Rider Levett Bucknall in their QS report, the inclusions/scope of work remains significantly larger than that anticipated by the Imparta report, which accounts for the significant difference in estimated costs.

The extent of work included in the Chris Sale report is considered to be of greatest relevance to the assessment of the Application. Conversely as was the case with the QS report submitted with the original application, the WT costings are considered to include items which are outside of the scope of relevance to the assessment.

The WT report provides a 'comparable costs' analysis. Utilising its estimate of probable costs (\$637,000), it calculates the cost per square metre of works and compares this against the cost of other 'high end' residential construction projects. Specifically, WT have calculated that the restoration works to 5 Foster Street would equate to approximately \$4000 per square metre, whereas three examples of 'high end' residential construction projects cost between approximately \$2500 and \$4000 per square metre.

By comparison, the QS estimate by Chris Sale Consulting (\$284,764), equates to \$1,802 per square metre, significantly less than either a new dwelling construction or high end renovation as detailed within the WT report. As a comparison, a new dwelling of an equal size (158m²) would cost between \$444,770 and \$637,056 using costings from the three examples within the WT report, a difference of between \$160,006 and \$352,292.

The width of land division

The Appellant's Planning Consultant Mr Vounasis has provided an opinion on the suitability of the proposed allotment widths resulting from the proposed land division. In particular, Mr Vounasis has noted that smaller and similar sized allotment frontages exist at 1/2/3 - 7 Foster Street (two 6 metre frontages and one 4 metre frontage) and 13 and 15 Foster Street (8.8 metre frontages) being of a lesser and/or similar width frontage to that proposed. Mr Vounasis has opined that "the proposed land division is of a sufficient width to allow for the construction of two dwellings". This is a direct response to comments by Councils Heritage Advisor Mr David Brown who stated within his report on the original application:

"The proposed subdivision, while within the quantitative recommendations in the Development Plan will produce the two narrowest sites on the street."

Mr Brown has provided further advice within his report on the compromise proposal and states:

"The applicant quite rightly points out that the property to the south is comprised of 3 narrower dwellings, however, these are not an outcome that would satisfy the Development Plan provisions, and present as a single dwelling with a single driveway access."

There is no doubt that the allotments are of a sufficient size and frontage width to accommodate two dwellings as outlined by Mr Vounasis. However, the second reason for refusal provided by the Panel states that 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.

As discussed within the original staff report to the Panel, 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.

The Proposed Dwellings

The design of the dwellings has been amended to separate the driveways, introduce a second gable element to each dwelling which encompasses the entire façade, and provide a greater degree of separation in order to address the panels concerns over the replacement dwellings.

The revised dwelling design retains the two storey streetscape appearance to Foster Street, with the setbacks both at ground level and upper level remaining unchanged, resulting in the proposed dwellings height, scale, form and setback being incompatible with the existing single-storey development in the Zone, contrary to Zone Wide Principle 17 and continuing to fall short of City Wide Principle 205 (c) by 1.7 metres. Both policies are contained below:

“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.”

And:

“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 extent of glazing remains mostly unchanged to the front façade, with the additional blade wall only marginally improving the solid to void ratio. The design also fails to include a meaningful front verandah element, with the gable overhang of an insufficient width to form a verandah, and as such remains inconsistent with surrounding established dwellings.

The dwellings have been redesigned to provide a 900mm separation from the northern boundary, and the proposed internal boundary for the front portion of the dwelling on Lot 101, in an attempt to provide a sense of space between the dwellings. This has resulted in an increase in the length of boundary development along the southern side of the southern dwelling for the garage, from 9.2 metres to 11.9 metres. This is now visible to the Foster Street streetscape, and remains contrary to Residential Historic (Conservation) Zone Principle of Development Control 20, and City Wide Principle of Development Control 194 as 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 marked below.

“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.”

and

“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).

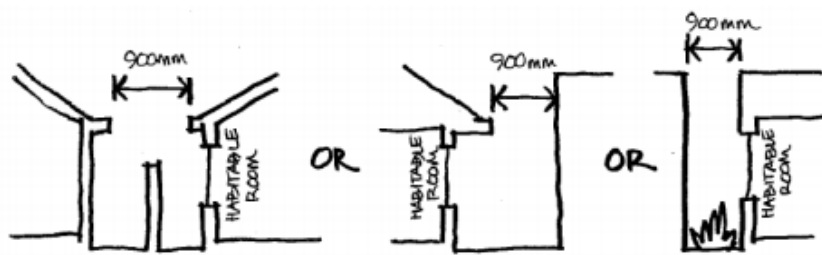
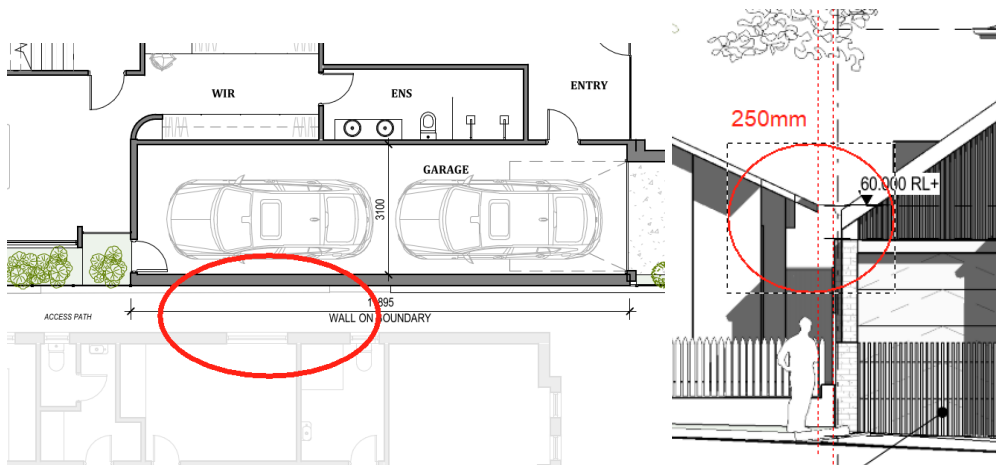


Figure 7



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. The dwelling at 8 Foster Street has one of the narrowest allotments containing a character dwelling (8.85 metre frontage), and provides a side setback of approximately 3 metres. While the proposal provides 900mm from the northern boundary, the remaining portions of each dwelling are located on the boundary which remains inconsistent with the siting characteristics of dwellings found within the locality and detracts from the spacious siting characteristics of the locality.

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 trees structural root zone. The proposed crossover flaring has been reduced to allow 2.1 metres from the centre of the street tree as part of the compromise and while this satisfies Principle 118, it remains 480mm inside the Structural Root Zone and does not comply with the Councils crossover policy.

Heritage Advice

The compromise proposal was referred to Council's Heritage Advisor, Mr David Brown for comment. Mr Brown has updated his Heritage Report, within which he continues to raise concerns with the replacement dwellings contribution to the historic character of Foster Street. Mr Brown's report summarises that:

"The proposed replacement dwellings appear to not consider many of the provisions in the Development Plan, and while some of these are able to be resolved with some modification to the design, there are too many in the current proposal to overlook. 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. 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."

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.

Therefore in this context, the compromise proposal's dwelling design continue to fail to satisfy Residential Historic (Conservation) Zone Principle of Development Control 8(a), and are not considered a suitable replacement.

A copy of Mr Browns Heritage Advice is contained in **Attachment 3**

Summary

The amended proposal seeks to addresses the reasons for refusal that were given at the Panel meeting held on 18 October 2021.

Additional advice has been sought by the appellant as to the structural condition and works required to restore the dwelling, which includes a second QS report in the form of an Order of Probable Cost Estimate by WT.

The advice forms the view that the reuse of the failed footing is not a viable option, and that further measures to stabilise the moisture content would yield marginal improvement on reactive soils. The report does not consider the option of footing replacement, as highlighted in Council's Impata report and as such does not present much in the way of additional information.

The QS report by WT appears to consider a lesser scope of works than that provided as part of the original application, however still contains costings which are irrelevant to the assessment of the current application. It does provide costings for high end residential dwellings and additions, which does provide some comparison as to the cost of structural works vs dwelling replacement, which is considerably higher.

The design of the dwellings has been amended to separate the driveways, to introduce a second gable element which encompasses the entire façades, and provide a greater degree of separation in an effort to address the panels concerns, however still results in a two storey streetscape presentation, height, scale, proportions and setbacks which are inconsistent with established character dwellings within Foster Street, which alludes to Council staff that the allotments are of an insufficient width to accommodate dwellings which contribute sufficiently to the Foster Street streetscape to offset the loss of an existing original character dwelling which needs structural and cosmetic repair.

It therefore remains the view of staff that the proposal is not considered to sufficiently accord with the Development Plan to warrant consent, for the reasons set out in the previous report and the further analysis provided in this report.

RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, the Environment Resources & Development Court be advised that 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, is not accepted.

Mr Vounasis addressed the Council Assessment Panel from 7:36pm until 7:41pm

Mr Peacock addressed the Council Assessment Panel from 7:42pm until 7:45pm

MOVED

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, the Environment Resources & Development Court be advised that 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, is not accepted.

Seconded and Carried

2. STAFF REPORTS

2.4 DEVELOPMENT APPLICATION – MS LINH VO – 30 BEULAH ROAD NORWOOD

DEVELOPMENT NO.:	21009123
APPLICANT:	Linh Vo Abel Prasad
ADDRESS:	30 BEULAH RD NORWOOD SA 5067
NATURE OF DEVELOPMENT:	Partial change of use to a coffee shop and internal alterations within an existing showroom/warehouse
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Suburban Business <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Prescribed Wells Area • Regulated and Significant Tree • Traffic Generating Development <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (2 Levels)
LODGEMENT DATE:	1 June 2021
RELEVANT AUTHORITY:	Assessment Manager at City of Norwood, Payneham and St. Peters
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	No
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 6:	Applicant's Submission in Support of Review
ATTACHMENT 1:	Application Documents	ATTACHMENT 7:	Assessment Report DA ID 21039378
ATTACHMENT 2:	Subject Land Map		
ATTACHMENT 3:	Zoning Map		
ATTACHMENT 4:	Assessment Report DA ID 21009123		
ATTACHMENT 5:	Decision Notification Form DA ID 21009123		

BACKGROUND:

Development Application ID 21009123

Development Application 21009123 was lodged on 1 June 2021 and was assigned by the Assessment Manager to one of the Council's Senior Urban Planners for be assessed as a delegate of the Assessment Manager. The Senior Urban Planner described the nature of the application as:

“Partial change of use to a coffee shop and internal alterations within an existing showroom/warehouse.”

At the time when the Senior Urban Planner described the nature of the application, he had assumed that the existing use rights of the property were as a retail showroom.

The Senior Urban Planner determined that the application did not sufficiently accord with the Planning & Design code and accordingly issued a refusal on 24 September 2021. The reason for refusal was:

“The proposed development is contrary to Transport, Access and Parking DTS/DPF 5.1(a):

Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant:

(a) Transport, Access and Parking Table 1 - General Off- Street Car Parking Requirements

Specifically, the proposed development will further exacerbate the existing car parking shortfall associated with the existing land use on the property.”

A copy of the Assessment Report by the Senior Urban Planner is contained in **Attachment 4**.

On 12 October 2021, Linh Vo and Abel Prasad applied for a review of the decision by the Council Assessment Panel (CAP).

Enforcement

In the course of assessing Development Application ID 21009123 it was identified through an inspection of the property, that Foliage Coffee was operating without Development Approval. In particular, it was observed that there were 34 café seats (21 at the front of the building and 13 at the rear), occupying approximately 80m² of floor space, with the balance of the floor area being showroom space for the sale and display of homewares and plants. An extensive food menu was advertised for pick-up and dine in options.

On 30 September 2021, an enforcement notice pursuant to Section 213 of the Planning, Development and Infrastructure Act 2016 was issued to the owners of the business, requiring the unauthorised use to cease by 15 October 2021.

The enforcement notice was appealed to the Environment Resources and Development Court (ERD Court) and the appeal is currently pending the outcome of this Review by the CAP. It was agreed between the parties that Foliage Café could continue to operate with restricted operating conditions, until the Review by the CAP has concluded. In particular, it has been agreed that Foliage Café can operate with up to 20 seats during the interim period.

Unauthorised Retail Showroom Use

The Council engaged Norman Waterhouse Lawyers to assist with the appeal of the enforcement notice. In the course of providing advice to the Council, Norman Waterhouse recommended that Council staff undertake investigations to determine whether or not the existing use rights of the building are in fact as a retail showroom. Investigations were undertaken accordingly and as a result of information obtained from Council records and a discussion with the owner of Maxbilt (the previous tenant), it has been determined on reasonable grounds that:

- prior to Maxbilt occupying the building in 1987, it was occupied by Companion as a warehouse, selling camp stoves, gas cylinders, tents and other camping equipment;
- Companion used the building as a warehouse for the storage of goods and the carrying out of commercial transactions involving the sale of such goods by way of wholesale only. No retail trade

was undertaken from the premises. The front of the building contained partitions and was used for administration, while the rear was used for storage and distribution;

- When Maxbilt occupied the premises in 1987, they advised the Council that their retail store was in the Adelaide CBD and that they intended to use the building at 30 Beulah Road for storage and wholesale trade, with only minor retail trade.
- The Council Planner in 1987 advised Maxbilt that “provided the showroom/sales area remains a relatively minor component of the business use you describe (ie. primarily concerned with the wholesale and service of kerosene and gas appliances)” and “Ideally the retail component should not exceed 10% of the total floor area”.

In summary, it was determined that there were no lawful use rights of the property as a retail showroom/bulky goods outlet. Consequently, before the CAP was able to consider a review of Development Application ID 21009123, it was necessary for the appellants to obtain consent for the retail showroom/bulky goods aspect of the current use of the land.

Development Application ID 21039378

On 3 December 2021, the appellants lodged Development Application 21039378, seeking retrospective planning consent for a change of use from a distribution centre/warehouse to a bulky goods outlet. Development Application ID 21039378 was assessed by the Assessment Manager. A copy of the Assessment Report is contained in Attachment 6. The assessment as it relates to car parking is summarised as follows:

- Until modified by Hobby Home and Garden, the building had a GLFA and TFA of 645m². Applying the rate of 0.5 spaces per 100m², the warehouse use generated a parking demand of 3 spaces. Up to 3 parking spaces were available at the rear of the building. Therefore, there was no shortfall in car parking with the use of the property as a warehouse.
- The new GLFA/TFA of the building is 620m². Applying the rate of 2.5 spaces per 100m², the proposed bulky goods retail use generates a parking demand of 16 spaces. Taking into account the 3 rear on-site parking spaces, the proposal results in a shortfall of 13 car parking spaces.

After taking into account the availability of on-street parking in the area, as is required by the Planning & Design Code, Development Application ID 21039378 was considered to merit consent; albeit marginally. As such, a Planning Consent has been issued for the use of the property as a bulky goods outlet, enabling the CAP to consider the review of decision on Development Application ID 21009123 for a partial change of use to a coffee shop and internal alterations within an existing showroom/warehouse.

DISCUSSION:

The property was originally a warehouse, which is a land use with a very low car parking demand of 0.5 spaces per 100m². The three car parking spaces at the rear of the site were sufficient to cater for the demands of the use of the site as a warehouse. MFY on behalf of the applicants suggest that these spaces did not previously exist, however just because they may not have been line marked does not mean that they did not exist. Historic aerial photography shows them having been used.

Despite being unauthorised, it is clear that the land was used as a form of bulky goods retail outlet for many years. In particular, appears that following occupation of the building by Maxbilt in 1987, retail trade occurred from the site at a scale/extent which was likely more than an ancillary use, together with wholesale trade. This unauthorised retail use likely resulted in some on-street parking reliance in the area.

More recently, Hobby Home and Garden have occupied the site exclusively as a retail showroom, resulting in a theoretical reliance on up to 13 on-street car parking spaces. This use has been granted Planning Consent.

Development Application ID 21009123 seeks to further intensify the use of the land, by introducing a café. A café has a theoretical car parking demand of 0.4 spaces per seat. With the 34 seats observed during operation (ie. prior to enforcement), that equates to a demand for 14 car parking spaces. As the café occupies an area of approximately 80m², the car parking demand for that floor area would be 2 spaces as

approved as bulky goods outlet. Therefore, the proposed café use places a further demand on on-street parking in the order of 12 spaces – taking the total on-street parking reliance to approximately 25 spaces.

General Development Policies, Traffic and Parking Performance Outcome 5.1 states:

“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
- c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared
- d) the adaptive reuse of a State or Local Heritage Place.”

Therefore, the availability of on-street car parking to be taken into consideration when assessing the suitability of the amount of on-site parking. A survey undertaken by MFY identified 36 on-street vacant parking spaces within 300 metres of the site during weekday business hours.

There are 718 properties within 300 metres of the subject land. It is considered that Performance Outcome 5.1 should be applied in a practical way. Although Performance Outcome 5.1 (a) is unquantified, a sensible application would be to allow a small shortfall in car parking to be justified having regard to availability of on-street parking. If that approach was applied, on-street parking would be able to be used to augment the parking demands of many properties, not just a few.

The existing approved use of the subject land already has a relatively heavy reliance on on-street parking. The proposal exacerbates that reliance to a significant degree.

Council staff have had extensive experience over the years with attempts to constrain the intensity of café's and restaurants through conditions, such as those restricting the number of seats. In almost all cases those attempts have been unsuccessful, with the temptation by business owners to breach the conditions seemingly too great. Regardless, in this particular case, any increase in intensity beyond that associated with the approved bulky goods use is considered problematic, so any form of café use (regardless of restrictions on intensity) is considered problematic.

RESOLUTION OPTIONS

Resolution to affirm a decision of the Assessment Manager

The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application ID 21009123 is not seriously at variance with the Planning and Design Code, but that it does not warrant planning consent for the following reason:

The proposed development is contrary to Transport, Access and Parking DTS/DPF 5.1(a):

Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant:

- (a) Transport, Access and Parking Table 1 - General Off- Street Car Parking Requirements

Specifically, the proposed development will further exacerbate the existing car parking shortfall associated with the existing land use on the property.

Resolution to set aside a decision of the Assessment Manager

The Council Assessment Panel resolves to set aside the decision of the Assessment Manager to refuse planning consent to Development Application ID 21009123 and substitute the following decision:

- That Development Application ID 21009123 is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent is granted to the application subject to the following conditions:
 1.
 2.

Resolution to defer review hearing

The Council Assessment Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to refuse planning consent in relation to Development Application ID 21009123 until:

- the next ordinary meeting of the Panel;
- the next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided
- until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)].

Mr Game and Mr Prasad addressed the Council Assessment Panel from 8:02pm until 8:04pm

MOVED

That pursuant to Clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy, the Council Assessment Panel orders that the public, with the exception of the Council's Planning Assistant, be excluded from the meeting.

Seconded and Carried

The Public Gallery, Mr Thomson and Mr Bowey left the meeting at 8:05pm

MOVED

Resolution to affirm a decision of the Assessment Manager

The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application ID 21009123 is not seriously at variance with the Planning and Design Code, but that it does not warrant planning consent for the following reason:

The proposed development is contrary to Transport, Access and Parking DTS/DPF 5.1(a):

Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant:

- (a) Transport, Access and Parking Table 1 - General Off- Street Car Parking Requirements*

Specifically, the proposed development will further exacerbate the existing car parking shortfall associated with the existing land use on the property.

Seconded and Carried

The Public Gallery, Mr Thomson and Mr Bowey returned to the meeting at 8:20pm

3. OTHER BUSINESS

Nil

4. CONFIDENTIAL REPORTS

Nil

5. CLOSURE

The Acting Presiding Member declared the meeting closed at 8:26pm

Phil Smith
ACTING PRESIDING MEMBER

Mark Thomson
MANAGER DEVELOPMENT ASSESSMENT