

Council Assessment Panel Minutes

20 November 2023

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

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VENUE Council Chambers, Norwood Town Hall

HOUR 7:00pm

PRESENT

Panel Members Mr Terry Mosel
Mr Mark Adcock
Mr Ross Bateup
Ms Jenny Newman
Cr Christel Mex

Staff Geoff Parsons, Manager Development Assessment
Kieran Fairbrother, Senior Urban Planner
Ned Feary, Senior Urban Planner
Tala Aslat, Planning Assistant

APOLOGIES

ABSENT

1. COMMENCEMENT AND WELCOME

2. APOLOGIES

**3. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT
PANEL HELD ON 16 OCTOBER 2023**

**Moved by Mr Bateup and Seconded by Ms Newman
CARRIED**

4. DECLARATION OF INTERESTS

**Cr Mex declared conflict of interest for item 8.1, due to her previous consideration and
publicly declared position on this matter.**

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 22010614 – 164 PROPERTY GROUP PTY LTD – 164, 166 & UNIT 1-4 168 PORTRUSH ROAD, TRINITY GARDENS

DEVELOPMENT NO.:	22010614
APPLICANT:	164 Property Group Pty Ltd
ADDRESS:	UNIT 1-4 168 PORTRUSH RD TRINITY GARDENS SA 5068 166 PORTRUSH RD TRINITY GARDENS SA 5068 164 PORTRUSH RD TRINITY GARDENS SA 5068
NATURE OF DEVELOPMENT:	Demolition of the existing residential dwelling and two storey commercial building and the construction of a pre-school (Edge Early Learning Centre) 90 place with associated signage, carparking and landscaping.
ZONING INFORMATION:	Zones: • Employment Overlays: • Airport Building Heights (Regulated) • Advertising Near Signalised Intersections • Hazards (Flooding) • Hazards (Flooding - General) • Major Urban Transport Routes • Prescribed Wells Area • Regulated and Significant Tree • Traffic Generating Development Technical Numeric Variations (TNVs): • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	23 Jun 2022
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	23 Jun 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Kieran Fairbrother Senior Urban Planner
REFERRALS STATUTORY:	Commissioner of Highways
REFERRALS NON-STATUTORY:	Gayle Buckby Josef Casilla

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ATTACHMENT 3:	Zoning & Locality Map	ATTACHMENT 8:	Flood Maps
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DETAILED DESCRIPTION OF PROPOSAL:

This proposal seeks to demolish the existing structures on the land (for which development approval is not required) and construct a two-storey, 90-place child care centre (pre-school), together with three (3) advertising signs, 22 car parking spaces and associated landscaping. The child care centre will accommodate children from 0 to 5 years old, separated into different learning areas/rooms across the ground floor. The second level is a small area comprising a staff room and ancillary staff facilities. A large outdoor play area is proposed for the rear of the site, integrated with appropriate shade sails and landscaping to provide shade, shelter and amenity for the occupants.

Between the building and Portrush Road is a proposed 22-space car park, with access obtained directly from Portrush Road via a two-way vehicle crossover. Landscaping beds are provided between the car parking area and street boundaries to help soften the appearance of the development as viewed from the public realm.

The centre is proposed to operate Monday to Friday, 6:30am to 6:30pm.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: UNIT 1-4 168 PORTRUSH RD TRINITY GARDENS SA 5068

Title ref.: CT **Plan Parcel:** D1143 **Council:** THE CITY OF NORWOOD PAYNEHAM
5811/775 AL269 AND ST PETERS

Location reference: 166 PORTRUSH RD TRINITY GARDENS SA 5068

Title ref.: CT **Plan Parcel:** F134606 **Council:** THE CITY OF NORWOOD PAYNEHAM
5776/895 AL55 AND ST PETERS

Location reference: 164 PORTRUSH RD TRINITY GARDENS SA 5068

Title ref.: CT **Plan Parcel:** F137826 **Council:** THE CITY OF NORWOOD PAYNEHAM
6038/221 AL26 AND ST PETERS

Shape:	regular
Frontage width:	approx. 37.8 metres to Portrush Road and 49.8 metres to Jones Avenue, with a 3m x 3m corner cut-off
Area:	2153m ²
Topography:	relatively flat
Existing Structures:	a pair of semi-detached dwellings, two outbuilding(s), a two-storey mixed-use building comprising shops at ground level and dwellings on the second level, and hard-stand areas for car parking associated with the mixed-use building

Locality

The locality is depicted in **Attachment 3**. It broadly encompasses the area extending 100m north and south of the subject site, and 50m east and west. Within this locality there are a mix of land uses, which reflects the various different zones caught up within this area. The western side of

Amherst Avenue is zoned within the Employment Zone and Community Facilities Zone and includes an educational establishment north of Jones Avenue, and vacant land, two dwellings, a landscaping supplies business, an office/warehouse and a motor repair station to the south. Similarly, the east side of Portrush Road contains the same mix of land uses. The west side of Portrush Road is mainly comprised of dwellings with an office and a medical centre also.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Demolition: Exempt
Pre-school: Code Assessed - Performance Assessed

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

- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
P & D Code: Child care facilities (which includes a pre-school) are not exempt from requiring public notification in Table 5 of the Employment Zone.

- **LIST OF REPRESENTATIONS**

First Name	Surname	Address	Position	Wishes to be heard?
Evonne	Moore	77 Henry Street, Maylands	Support with concerns	No
Spencer	Lowndes	432 South Road, Marleston	Opposed	Yes

- **SUMMARY**

The first representor raised concerns regarding the lack of trees provided, specifically along the Portrush Road boundary, which in their opinion would improve the streetscape and help provide shade for the site and footpath.

The second representor's concerns can be summarised as follows:

- Inappropriate land use for the Employment Zone;
- Would conflict with the types of land uses envisaged within the Employment Zone.

The applicant declined the opportunity to provide a response to representations.

AGENCY REFERRALS

- Commissioner of Highways

The Commissioner of Highways was supportive of the proposal, subject to additional flaring of the vehicle crossover at the kerb and sightlines being maintained for vehicles entering and exiting the site. Both of these requirements are reflected in the conditions imposed by the Commissioner.

INTERNAL REFERRALS

- Gayle Buckby, Manager, Traffic & Integrated Transport
 - Supportive of the proposal following amendments that now has access entirely off Portrush Road
- Ken Schalk (Tonkin), Principal Hydrological Engineer
 - Not supportive of the proposal because of the impediment of floodwaters and the evacuation risks

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 of the Employment Zone seeks:

“A diverse range of low-impact light industrial, commercial and business activities that complement the role of other zones accommodating significant industrial, shopping and business activities.”

Performance Outcome 1.1 of the Employment Zone seeks:

“A range of employment-generating light industrial, service trade, motor repair and other compatible businesses servicing the local community that do not produce emissions that would detrimentally affect local amenity.”

It is the applicant’s submission that a child care centre is a low impact, business activity which is consistent with what Desired Outcome (DO) 1 of the Zone seeks. Additionally, they suggest that a child care centre is an employment-generating service and therefore accords generally with Performance Outcome (PO) 1.1 of the Zone.

The Supreme Court recently held that a desired outcome is not a policy in its own right, but instead sets a general policy agenda for a zone. According to Justice Blue in that case, performance outcomes are the only policies in their own right, and desired outcomes should be used only to assist in the interpretation of performance outcomes (*Geber Super Pty Ltd v The Barossa Assessment Panel* [2023] SASC 154 at [87]). As such, the author does not agree with the applicant’s planning that *any* low-impact light industrial, commercial or business activities are appropriate within the Employment Zone given the wording of DO 1. Contrarily, DO 1 sets a broad agenda of land uses for

the zone and it is the performance outcomes that then set the more specific agenda and policy basis for assessment.

In this case, PO 1.1 seeks ‘a range of employment-generating light industrial, service trade, motor repair and other compatible businesses...’ among other things. Upon a proper reading of PO 1.1, ‘employment-generating’ is the operative phrase, that operates upon all of, individually, ‘light industrial’, ‘service trade’, ‘motor repair’ and ‘other compatible businesses’, and must be read in conjunction with them when assessing a proposal. In other words, it is not sufficient that a land use be employment-generating for it to satisfy PO 1.1, as has been suggested by the applicant’s planning consultant. Upon proper construction of this phrase, the land use must be employment-generating *and* a light industrial, service trade, motor repair or other compatible business (as well as servicing the local community and without detrimental emissions, but those considerations are irrelevant for the time being).

The proposed land use is for a child care centre, which is neither light industrial, a service trade premises or a motor repair station. Thus, the question for consideration is whether a child care centre is ‘a compatible business’. Compatible is defined by the Oxford dictionary as “able to exist or occur together without problems or conflict”.

A good place to commence for consideration of this question is with the land uses desired in the Zone, and DPF 1.1 provides a list of fifteen (15) uses to that end. Within this list are uses such as office, place of worship and shop, all with which a child care centre could exist without conflict. However, also in this list are light industry, service trade premises, retail fuel outlet and motor repair station. Each of these land uses may produce some kinds of emissions that would have the potential to affect the operation of a child care centre. PO 1.1 states that any such uses should not ‘produce emissions that would detrimentally affect local amenity’, but that does not preclude any emission production whatsoever. In fact, it is hard to conceive a motor repair station, for instance, that produce zero noise emissions, or a light industry that produce zero noise or odour emissions.

With this in mind, it is relevant to consider Performance Outcome 1.1 of the Interface Between Land Uses module of the General Development Policies, which states:

“Sensitive receivers are designed and sited to protect residents and occupants from adverse impacts generated by lawfully existing land uses (or lawfully approved land uses) and land uses desired in the zone.” (my emphasis)

A child care centre is a sensitive receiver as defined in the Planning & Design Code. When considering the types of land uses desired in the zone, as discussed above, it is difficult to conceive exactly how a child care centre might be ‘designed and sited’ to protect its occupants from adverse impacts generated by such uses. The above PO requires consideration of not only what land uses are currently taking place around the subject land, but also those that may take place in the future. When one considers that a light industry might operate next door to the child care centre, it becomes difficult to reconcile a child care centre as a ‘compatible business’ in the context of PO 1.1 of the Employment Zone.

For further context, Performance Outcome 1.2 of the Interface Between Land Uses module of the General Development Policies states:

“Development adjacent to a site containing a sensitive receiver (or lawfully approved

sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.”

As demonstrated in **Attachment 3**, the Employment Zone within this locality is relatively narrow, comprising only the land between Portrush Road and Amherst Avenue. On either side of this Zone are two predominantly-residential zones – the General Neighbourhood Zone on the west side of Portrush Road and the Established Neighbourhood Zone on the east side of Amherst Avenue. Accordingly, it is reasonable to expect of any future development in the Employment Zone that any emissions produced by that development are oriented towards the rear of that allotment, and directed away from the respective neighbourhood-type zones. Consequently, the development of the subject land for a child care centre has the potential to either: restrict the types of development that could otherwise occur on adjacent land within the Employment Zone; or place unnecessary restraints on future development of adjacent land within the Zone to further mitigate emissions that may be otherwise considered reasonable.

The proposed land use for a child care centre results in a fundamental conflict with the intent of the Employment Zone, and is not considered to accord with any of the abovementioned Performance Outcomes. For clarity, even if the child care centre was designed in such a way as to mitigate the potential impacts of emissions created by existing and future neighbouring land uses within the Employment Zone, the lack of amenity for the occupants that would result would likely be a cause for concern also. For these reasons, the proposed land use is considered inappropriate within the Employment Zone.

Building Height

Performance Outcome 3.5 of the Employment Zone states:

“Building height is consistent with the form expressed in any relevant Maximum Building Height (Levels) Technical and Numeric Variation [TNV] layer... or is generally low-rise to complement the established streetscape and local character.”

Hence, there are two ways that a proposal may satisfy this PO. The relevant and applicable TNV for this site sets a maximum building height of 2 levels. The proposed building is two levels and therefore satisfies this PO.

Performance Outcome 3.6 of the Employment Zone states:

“Buildings mitigate visual impacts of building massing on residential development within a neighbourhood-type zone.”

The corresponding Designated Performance Feature provides that if a building is “constructed within a building envelope provided by a 45-degree plan, measured from a height of 3m above natural ground level at the boundary of an allotment used for residential purposes in a neighbourhood-type zone” then this Performance Outcome may be satisfied. The subject land is separated by the adjacent General Neighbourhood Zone by Portrush Road, and so the proposed building easily falls within the building envelope suggested by DPF 3.6.

Setbacks, Design & Appearance

Performance Outcome 3.1 of the Employment Zone states:

“Buildings are set back from the primary street boundary to contribute to the existing/emerging pattern of street setbacks in the streetscape.”

The east side of Portrush Road has no consistent setback pattern nor any consistent streetscape character to this end. Several sites south of the subject land contain commercial uses with buildings set well back into the allotment and car parking situated between the building and the front boundary. The proposed child care centre will be set back in a similar fashion – 13.7m at its closest point and separated by the car park. This is consistent with the general setback pattern on this side of the road and therefore satisfied PO 3.1.

Performance Outcome 3.2 of the Employment Zone states:

“Buildings are set back from a secondary street boundary to accommodate the provision of landscaping between buildings and the street to enhance the appearance of land and buildings when viewed from the street.”

The building is set back 1.84m from the Jones Avenue Street boundary. Notably, the site has a boundary with Jones Avenue measuring 49.8m and the building is only 13.3m wide adjacent this boundary. The remaining area adjacent this boundary is almost entirely comprised of soft landscaping areas, as is the area between the building and this boundary, and so the proposal satisfies this PO.

Performance Outcome 2.1 of the Employment Zone states:

“Development achieves distinctive building, landscape and streetscape design to achieve high visual and environmental amenity particularly along arterial roads, zone boundaries and public open spaces.”

Performance Outcome 2.2 of the Employment Zone states:

“Building facades facing a boundary of a zone primarily intended to accommodate residential development, public roads, or public open space incorporate design elements to add visual interest by considering the following:

- (a) Using a variety of building finishes*
- (b) Avoiding elevations that consist solely of metal cladding*
- (c) Using materials with low reflectivity*
- (d) Using techniques to add visual interest and reduce large expanses of blank walls including modulation and incorporation of offices and showrooms along elevations visible to a public road.”*

The Portrush Road elevation – which faces a boundary with the General Neighbourhood Zone – is comprised of a mixture of painted and unpainted precast concrete panels and vertical metal cladding. The colour scheme chosen for this elevation is non-reflective. Distinct elements of the building are broken up through the use of different materials, which provides visual interest and gives depth to the articulated components of the façade as a result of this change. Appropriate levels of fenestration are included across the façade too, which allow for passive surveillance from the building. Overall, the Portrush Road elevation of the building adds visual interest and will enhance the Portrush Road streetscape, and importantly provides a complementary transition to the adjacent General Neighbourhood Zone.

The Jones Avenue façade is comprised solely of painted precast concrete and glazing – the projecting wall at ground floor and the second building level are unlikely to be observed from Jones Avenue. Nonetheless, there will be landscaping between the building and this boundary which will help hide the monochromatic and mono-material façade. Further, this wall is only 13.3m in length, comprising less than a third of the length of this boundary and therefore won't have a detrimental impact upon the streetscape. Adjacent the building will be landscaping on one side and 1800mm high metal pool-style fencing on the other which provides views into the children's play area and adds visual interest itself.

Overall, the building has been designed and sited in a manner that it will make a positive contribution to the Portrush Road and Jones Avenue streetscapes, consistent with the above Performance Outcomes.

Performance Outcome 5.1 of the Employment Zone states:

“Landscaping is provided to enhance the visual appearance of development when viewed from public roads and thoroughfares.”

Performance Outcome 5.2 of the Employment Zone states:

“Development incorporates areas for landscaping to enhance the overall amenity of the site and locality.”

Performance Outcome 3.1 of the Design in Urban Areas module of the General Development Policies states:

“Soft landscaping and tree planting are incorporated to:

- (a) Minimise heat absorption and reflection*
- (b) Maximise shade and shelter*
- (c) Maximise stormwater infiltration*
- (d) Enhance the appearance of land and streetscapes*

Performance Outcome 7.4 of the Design in Urban Areas module of the General Development Policies states:

“Street-level vehicle parking areas incorporate tree planting to provide shade, reduce solar heat absorption and reflection.”

Performance Outcome 7.5 of the Design in Urban Areas module of the General Development Policies states:

“Street level parking areas incorporate soft landscaping to improve visual appearance when viewed from within the site and from public places.”

Soft landscaping areas have been provided around the perimeter of the car park at the front of the site, which includes a 1662mm-wide strip across the front boundary which contains nominal tree plantings and the retention of one existing tree. It isn't clear what is being planted aside from trees in this area – i.e. groundcovers and shrubs – but should the Panel choose to grant consent to this application then this detail could be sought by way of a reserved matter. Similar landscaping has

been provided between the car park and the building along the secondary street boundary of the site, and then again between the car park and the building. These landscaping areas will have the effect of improving the amenity of the site and the appearance of the development from public streets, thus contributing to a more attractive streetscape.

In respect of the landscaping that is not visible from the street, the development provides for some tree plantings in the rear outdoor play area which will improve amenity and provide shade cover. Although not strictly soft landscaping, the shade sails will provide shade and cooling effect for the occupants of the site, which will be important for creating a high amenity environment for the young children as well as staff. As such, the proposal sufficiently accords with the above Performance Outcomes subject to a more detailed landscaping plan being provided.

Performance Outcome 1.5 of the Design in Urban Areas module of the General Development Policies states:

“The negative visual impact of outdoor storage, waste management, loading and service areas is minimised by integrating them into the building design and screening them from public view (such as fencing, landscaping and built form) taking into account the form of development contemplated in the relevant zone.”

The refuse storage area and service yard associated with this development is located between the building and the southern boundary and fenced off from public view behind the building line of the building, consistent with this PO.

Traffic Impact, Access and Parking

Performance Outcome 1.1 of the Major Urban Transport Routes Overlay states:

“Access is designed to allow safe entry and exit to and from a site to meet the needs of development and minimise traffic flow interference associated with access movements along adjacent State Maintained Roads.”

When this application was first lodged, the original proposal was for the site to have two (2) access points – entry from Jones Avenue and entry and exit from/to Portrush Road. Advice received from the Council’s Manager, Traffic & Integrated Transport (**Attachment 8**) suggested that such an arrangement would be unsuitable because the existing congestion and parking issues on Jones Avenue would only be exacerbated and further flow back into Portrush Road; contrary to the above PO. Accordingly, the proposal was amended to provide access/egress solely from Portrush Road.

Pursuant to Table 5 of the Major Transport Routes Overlay, the application was necessarily referred to the Commissioner of Highways for assessment against the policies contained within that Overlay, all of which are contained in **Appendix 1** but most relevantly PO 1.1 above and PO 5.1 below.

Performance Outcome 5.1 of the Major Transport Routes Overlay states:

“Access points are located and designed to accommodate sight lines that enable drivers and pedestrians to navigate potential conflict points with roads in a controlled and safe manner.”

In respect of sightlines, the Commissioner directed the imposition of a condition of consent - should

consent be granted – that sightlines continue to be provided in accordance with AS 2890.1:2004. Overall, the Commissioner of Highways is satisfied that the proposal sufficiently complies with the provisions of the Major Urban Transport Routes Overlay and are supportive of the proposal. Vehicles can enter and exit the site in a forward fashion, and sufficient room is provided within the car park for vehicle circulation such that the car park remains functional and safe.

Performance Outcome 1.1 of the Transport, Access and Parking module of the General Development Policies states:

“Development is integrated with the existing transport system and designed to minimise its potential impact on the functional performance of the transport system.”

Performance Outcome 3.1 of the Transport, Access and Parking module of the General Development Policies states:

“Safe and convenient access minimises impact or interruption on the operation of public roads.”

Council’s administration internally referred the application again to the Manager, Traffic & Integrated Transport following amendments to the proposed access arrangement. They are supportive of the proposal now (see **Attachment 8**) and agree with the Commissioner of Highways position that adequate sightlines must be maintained in order to achieve safe and convenient access and egress. Importantly, the development includes a ‘turn around bay’ for vehicles – at the southern end of the car park – so that vehicles can safely manoeuvre within the site without conflict. Council’s Manager, Traffic & Integrated Transport has suggested that, if planning consent is granted to this application, that a condition is imposed that this be appropriately line marked to avoid it being used as a parking space.

In respect of car parking provision, Performance Outcome 5.1 of the Transport, Access and Parking module of the General Development Policies 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 [various] factors that may support a reduced on-site rate.”

The corresponding Designated Performance Feature suggests that car parking supply consistent with Table 1 of the Transport, Access and Parking Module may be one way of satisfying this Performance Outcome.

Table 1 provides that 0.25 car parking spaces must be provided per child, for a child care centre. The proposal is for the child care centre to accommodate up to 90 children. Therefore, to meet the requirements of Table 1, 22.5 car parking spaces should be provided. The application provides for 22 car parking spaces, which includes one accessible car parking space. Although there is a theoretical shortfall of 0.5 spaces, this is satisfactory and will meet the needs of the development in accordance with PO 5.1 above.

Environmental Factors

Noise Emissions

Performance Outcome 2.1 of the Interface Between Land Uses module of the General Development Policies states:

“Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its hours of operation having regard to [various factors].”

Performance Outcome 4.1 of the Interface Between Land Uses module of the General Development Policies states:

“Development that emits noise (other than music) does not unreasonable impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).”

The subject land is located in the Employment Zone meaning noise emissions of some kind are expected from development within that Zone. However, the site is adjacent to dwellings within the General Neighbourhood Zone (west) and a school (north), and a dwelling within the Employment Zone (south east). The applicant provided an acoustic report by Echo Acoustic Consulting (see **Attachment 1**) that suggests that the noise emissions produced by the facility will achieve the relevant standards and guidelines through implementation of several measures. Of those measures that are related to physical construction, these have been reflected in the architectural drawings for the facility. Of those that are related to management practice, these could be enforced by way of a condition of consent that relates to those recommendations should the Panel choose to grant planning consent to this proposal.

The main sources of noise from this facility will be from children playing in the outdoor area, traffic noise associated with drop-offs and pick-ups, waste collection noise and the operation of service equipment such as AC units. In the context of being within the Employment Zone, where some low-impact emissions are expected, noise emissions from traffic, waste vehicles and service equipment are considered reasonable. More so when one considers that these noises will all be generated from adjacent Portrush Road. The noise from the 90 children, however, is less predictable. Nevertheless, it is anticipated that this noise will be largely indiscernible when compared with noise produced: from traffic along Portrush Road (noting it is a dedicated heavy vehicle route), from other land uses within the Zone, and from the adjacent primary school.

The modelling undertaken by Echo Acoustic Consulting on behalf of the applicant demonstrates compliance with the relevant standards and guidelines in respect of noise from all potential noise sources within the facility. As such, Performance Outcomes 2.1 and 4.1 above are considered satisfied.

Waste Management

The proposed development seeks to use Council’s standard waste collection service, which has been confirmed with relevant Council staff as being acceptable. Waste will be stored in the dedicated waste storage area on site adjacent the southern boundary, and will be presented kerbside for collection in accordance with East Waste’s collection schedule.

Site Contamination

Performance Outcome 1.1 of the Site Contamination module of the General Development Policies states:

“Ensure land is suitable for use when land use changes to a more sensitive use.”

Because of the previous commercial activity on 168 Portrush Road the proposed development involves a more sensitive use of the land. Consequently, the applicant was requested to undertake a Preliminary Site Investigation (**PSI**) and provide a site contamination declaration form, in accordance with Practice Direction 14.

The site contamination declaration form states that a class 3 activity (agricultural activities) may have taken place on the land in the past. However, this activity did not appear to involve any of the specific potentially contaminating activities identified in the *Environment Protection Regulations 2009* and so the likelihood of contamination from this activity is low; and therefore the land is suitable for the proposed use. This conclusion is consistent with the findings in the PSI.

Accordingly, the land is considered to be suitable for the proposed development in respect of any potential contamination concerns.

Flooding & Stormwater

The subject land is located within both the Hazards (Flooding) Overlay and the Hazards (Flooding – General) Overlay. The spatial application of these Overlays are contained within **Attachment 8**, as is a map showing the 1% AEP event floodplain. Accordingly, the application was referred to the Council’s external hydrological engineer (Tonkin) for advice, which is contained in **Attachment 7**.

By way of summary, Tonkin advised:

1. The finished floor level of the building needs to be 58.9mAHD to provide sufficient freeboard in a 1% AEP event; and
2. An overflow path should be provided along the southern boundary of the site to allow flood waters to flow through from Amherst Avenue to Portrush Road (the existing siting of the building has this flow path blocked); and
3. There were concerns about the evacuation of children in a 1% or larger flood event.

Each of these will be addressed in turn.

1. Finished Floor Levels

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.”

In accordance with the advice provided by Tonkin, the proposal incorporates a finished floor level of 58.9mAHD, which provides 200mm of freeboard in a 1% AEP event.

2. Overflow path

Performance Outcome 3.2 of the Hazards (Flooding) Overlay states:

“Development does not cause unacceptable impacts on any adjoining property by the

diversion of flood waters or an increase in flood velocity or flood level.”

Performance Outcome 3.3 of the Hazards (Flooding) Overlay states:

“Development does not impede the flow of floodwaters through the allotment or the surrounding land, or cause an unacceptable loss of flood storage.”

Performance Outcome 3.6 of the Hazards (Flooding) Overlay states:

“Fences do not unreasonable impede floodwaters.”

Performance Outcome 5.1 of the Hazards (Flooding) Overlay states:

“The depth and extent of filling required to raise the finished floor level of a building does not cause unacceptable impact on any adjoining property by diversion of flood waters, an increase in flood velocity or flood level, or an unacceptable loss of flood storage.”

Per the advice provided by Tonkin, the building should've been redesigned and re-sited to allow for an overflow path for floodwaters along the southern boundary of the site. This was brought to the applicant's attention, but they determined not to make any changes notwithstanding this advice. Additionally, 400mm of retaining and a 1.8m fence is to be provided in the southeast corner.

The current building design and siting, and the additional retaining and fencing in the southeast corner of the site, together result in the flow path for a 1% AEP flood event being impeded, resulting in additional flooding of 47 Amherst Avenue and the diversion of flood waters into 45 and/or 49 Amherst Avenue. This causes unacceptable impacts to adjoining properties contrary to the above Performance Outcomes.

3. Evacuation concerns

Performance Outcome 1.1 of the Hazards (Flooding – General) Overlay states:

“Buildings housing vulnerable people, community services facilities, key infrastructure and emergency services are sited away from flood areas to enable uninterrupted operation of services and reduce likelihood of entrapment.”

The corresponding Designated Performance Feature states that, among other land uses, pre-schools should be located wholly outside the 1% AEP flood event. The same policy is contained at PO 2.2 of the Hazards (Flooding) Overlay, whose corresponding DPF also states that pre-schools should not be located within the Overlay area.

Performance Outcome 6.1 of the Hazards (Flooding) Overlay states:

“Development does not occur on land:

- (a) From which evacuation to areas not vulnerable to flood risk is not possible during a 1% AEP flood event...”*

As earlier noted, Tonkin expressed concern about how children might be evacuated and protected

during a 1% AEP or greater flood event. Evidently, this advice was not passed on to the applicant until Monday 6 November (**Attachment 9**), and so they were not given the chance to address this. Nonetheless, as shown in **Attachment 8**, the 1% AEP flood plain covers the majority of the subject land and the surrounding road network. Consequently, without incorporating a flood “safehouse” of some description into the proposed development, it is difficult to meet PO 6.1 above. Even in that event, evacuation logistics could be a concern given children-to-staff ratios, which is possibly why DPF 1.1 (above) and DPF 2.2 of the Flooding (General) Overlay state that pre-schools (child care centres) should not be located within the 1% AEP flood event / Overlay area.

The flooding susceptibility of the site, the failure to provide an overflow path and the consequences thereof, and the unknowns regarding the ability to safely evacuate children in a large flood event, lead to the conclusion that this development is inappropriate on the subject land. It should be noted that in the event the Panel is inclined to support this application subject to these flooding concerns being resolved – i.e. by way of a deferral of the decision and the applicant being asked to favourably amend the application – the applicant has already advised that they do not wish to do so (see **Attachment 9**).

Signage

The proposal includes three (3) separate advertisements: a 2.1m tall freestanding pylon sign adjacent the northwest corner of the site; signage on the wall adjacent the pedestrian entry on Portrush Road; and signage affixed to the building façade.

Performance Outcome 6.1 of the Employment Zone states:

“Freestanding advertisements are not visually dominant within the locality.”

Performance Outcome 1.1 of the Advertisements module of the General Development Policies states:

“Advertisements are compatible and integrated with the design of the building and/or land they are located on.”

Performance Outcome 1.2 of the Advertisements module of the General Development Policies states:

“Advertising hoardings do not disfigure the appearance of the land upon which they are situated or the character of the locality.”

Performance Outcome 1.5 of the Advertisements module of the General Development Policies states:

“Advertisements and/or advertising hoardings are of a scale and size appropriate to the character of the locality.”

All three advertisements have been well integrated into the design of the building, are not visually dominant and do not disfigure the appearance of the land or locality. The freestanding pylon sign is an appropriate height so as to attract attention without being disproportionate to the scale of the proposed development of the subject land. Similarly, both advertisements on the entry wall and the

building have been scaled appropriately against the wall to which they are attached, provide identification for the business and are compatible within the locality and streetscape.

Performance Outcome 2.1 of the Advertisements module of the General Development Policies states:

“Proliferation of advertisements is minimised to avoid visual clutter and untidiness.”

The proposal involves three (3) advertisements, but each of a different form. The entry sign helps provides a legible point of pedestrian entry, whereas the fascia sign and the freestanding pylon sign help identify the business from road and pedestrian traffic alike. The signs are well integrated into the design and sufficiently separated to avoid visual clutter and untidiness consistent with this Performance Outcome.

Performance Outcome 1.3 of the Advertisements module of the General Development Policies states:

“Advertising does not encroach on public land or the land of an adjacent allotment.”

The plans provided do not make it clear if the signage on the wall adjacent the Portrush Road pedestrian entry is painted or otherwise three-dimensional (e.g. acrylic lettering). Accordingly, if the Panel considers granting consent to this application, then a condition of consent should be imposed that requires the wall and associated signage to be located entirely within the subject land’s boundaries so as to not encroach onto public land.

Performance Outcome 1.1 of the Advertising Near Signalised Intersections module of the General Development Policies states:

“Advertising near signalised intersections does not cause unreasonable distraction to road users through illumination, flashing lights, or moving or changing displays or messages.”

The corresponding Designated Performance Feature states that advertising that is not illuminated, does not incorporate a moving or changing display or message, and does not flash, will generally be regarded as satisfying PO 1.1. All three (3) signs associated with this development meet these criteria and are not considered to cause an undue distraction to road users or cause conflict with signalised intersections.

Performance Outcome 5.3 of the Advertisements module of the General Development Policies states:

“Advertisements and/or advertising hoardings do not create a hazard to drivers by... obscuring or impairing drivers’ view of features of a road that are potentially hazardous (such as junctions, bends...”

The corresponding Designated Performance Feature states that signs should be located wholly outside of a 4.5m x 4.5m ‘Corner Cut-Off Area’ (see **Appendix 1**), to satisfy this PO. In this case, the pylon sign is located outside of this corner cut-off area and therefore is considered to not cause any hazard to drivers. It should be noted in this respect that the Commissioner of Highways raised no concerns about the advertisements during the referral process.

CONCLUSION

In respect of built form, setbacks, traffic, access and car parking, landscaping, noise emissions and advertisements, the proposed development has merit. However, the use of land within an Employment Zone for a child care centre (a sensitive receiver) is fundamentally inappropriate. The Employment Zone seeks the types of land uses that by their very nature will produce some kind of emissions but seeks to contain those within the Zone and employ appropriate mitigation measures to prevent those emissions from encroaching into neighbouring zones and having a detrimental effect therein. To approve a sensitive receiver within such a Zone would be to approve an incompatible land use that will only further restrain future development within the Zone.

Additionally, although the finished floor levels of the building provide freeboard protection in a 1% AEP flood event, the children's play area at the rear is not provided the same freeboard which raises serious concerns about the safety of vulnerable young children in a serious flood event. The development also fails to provide an appropriate overflow path for flood waters in such an event which in turn increases the flooding of adjacent sites and the road network contrary to the principles of the relevant flooding Overlays.

Overall, although a well-designed and compatible building in the streetscape and locality, the land use incompatibility within the Employment Zone and the serious flooding risks render this application unworthy of support.

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 22010614, by 164 Property Group Pty Ltd is refused Planning Consent for the following reasons:

REFUSAL REASONS

Consent is refused as the proposed development is not considered to accord sufficiently with the provisions of the Planning & Design Code for the following reasons:

1. The proposal is at odds with Performance Outcome 1.1 of the Employment Zone;
2. The proposal is at odds with Performance Outcome 1.1 of the Interface Between Land Uses module of the General Development Policies;
3. The proposal is at odds with Performance Outcome 1.1 of the Hazards (Flooding – General) Overlay and Performance Outcome 6.1 of the Hazards (Flooding) Overlay; and
4. The proposal fails to satisfy Performance Outcomes 3.2, 3.3, 3.6 and 5.1 of the Hazards (Flooding) Overlay.

ADVISORY NOTES

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 Thomson addressed the Council Assessment Panel from 7:04pm until 7:06pm

Moved by Ms Mex

- 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 22010614, by 164 Property Group Pty Ltd is refused Planning Consent for the following reasons:*

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Consent is refused as the proposed development is not considered to accord sufficiently with the provisions of the Planning & Design Code for the following reasons:

- 1. The proposal is at odds with Performance Outcome 1.1 of the Employment Zone;*
- 2. The proposal is at odds with Performance Outcome 1.1 of the Interface Between Land Uses module of the General Development Policies;*
- 3. The proposal is at odds with Performance Outcome 1.1 of the Hazards (Flooding – General) Overlay and Performance Outcome 6.1 of the Hazards (Flooding) Overlay; and*
- 4. The proposal fails to satisfy Performance Outcomes 3.2, 3.3, 3.6 and 5.1 of the Hazards (Flooding) Overlay.*

ADVISORY NOTES

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.

Seconded by Mr Bateup
CARRIED

5.2 DEVELOPMENT NUMBER 23022021 – MARK THOMAS – 4 MORRIS STREET, EVANDALE

DEVELOPMENT NO.:	23022021
APPLICANT:	Mark Thomas
ADDRESS:	4 MORRIS ST EVANDALE SA 5069
NATURE OF DEVELOPMENT:	Two storey detached dwelling
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 (Minimum frontage is 13m) • Minimum Site Area (Minimum site area is 600 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels) • Minimum Side Boundary Setback (Minimum side boundary setback is 1m for the first building level; 3m for any second building level or higher) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	9 Aug 2023
RELEVANT AUTHORITY:	Assessment panel at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	09 August 2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Mark Thomson Consultant Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

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

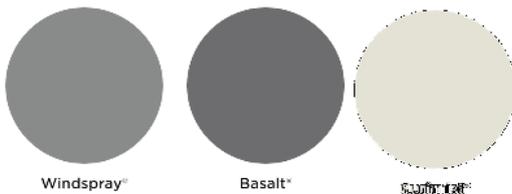
DETAILED DESCRIPTION OF PROPOSAL:

The proposal comprises the construction of a two storey detached dwelling. The dwelling has three bedrooms (one at ground level and two at upper level) and a total floor area of 260m² including an alfresco and two car carport.

The dwelling has a gabled roof form, both over the single storey component at the front and the two storey component at the rear.

At ground level, the façade is proposed to be clad in scyon axon, painted 'surfmist', with a feature brick element alongside the entry portico. Other ground level walls are to be clad in a combination of colorbond corrugated iron and scyon axon, with more feature brick forming a wall to the alfresco. Upper level walls are proposed to be clad in colorbond corrugated iron in 'windspray' for the front and rear elevations and 'basalt' for the side elevations. The various colours proposed are shown in Image 1 below.

Image 1. Proposed colorbond colours



The proposed carport has a 'flat' (2 degree pitch) roof and is 3.3m wide with a length of 11.15m to enable two cars to park 'end on end'.

BACKGROUND:

When the development application was lodged, the upper level was located 1.7m behind the single storey facade, which had a pitching point (gutter height) of 2.7 metres. This is shown in Image 2 below.

After concerns were expressed by the Assessment Manager's delegate, the applicant amended the application by:

- increasing the distance between the single storey façade and the upper level to 6.0m;
- increasing the pitching point of the single storey element to 3.0m (thereby reducing the visibility of the upper level); and
- changing the cladding of the upper level walls from a combination of scyon axon and colorbond corrugated iron to entirely colorbond corrugated iron.

These changes, which represent the current proposal, are shown in Image 3 below.

Image 2. Plans as Lodged

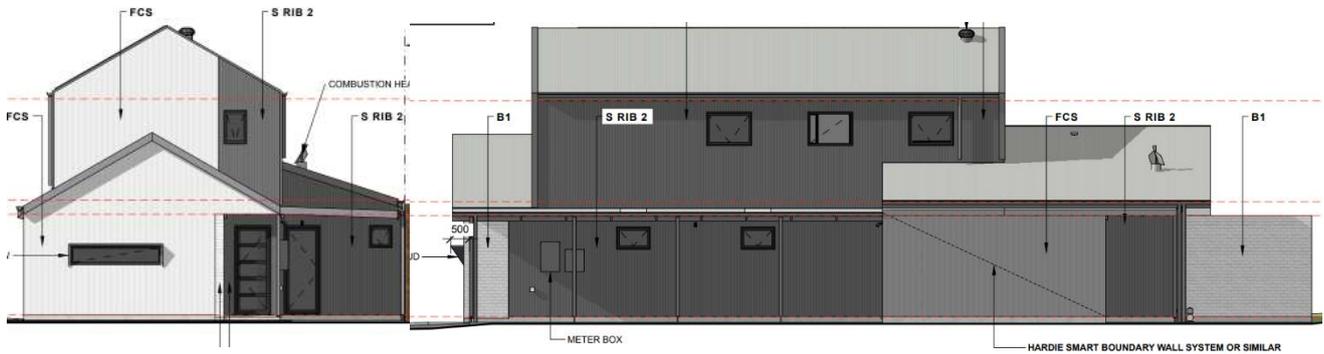
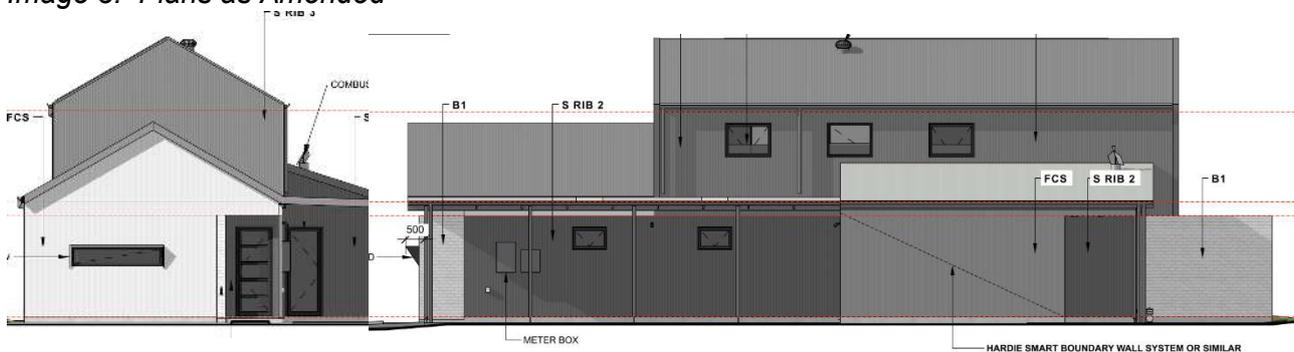


Image 3. Plans as Amended



SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 4 MORRIS ST EVANDALE SA 5069

Title ref.: CT
5262/340

Plan Parcel:
F135246 AL95

Council: THE CITY OF NORWOOD PAYNEHAM
AND ST PETERS

The subject land is a rectangular shape allotment with a frontage to Morris Street of 12.19m and a depth of 36.65m, resulting in an area of 447m². The topography is almost flat, with a fall of just 400mm over the 36.65m depth from back to front.

A stone fronted inter-war bungalow currently occupies the land. It is not listed as a heritage place and due to being located outside of a Historic Area Overlay, is able to be demolished without any form of development authorisation.

Two trees are located at the rear of the allotment. Neither tree is regulated and therefore both are able to be removed without any form of development authorisation.

Locality

The locality of the subject land is characterised by single storey character dwellings, almost exclusively inter-war bungalows, at low density. Morris Street is a relatively narrow street with mature street tree plantings, front gardens and generally open style front fences creating a consistent, pleasant streetscape.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Detached dwelling: Code Assessed - Performance Assessed
New housing

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

- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
The proposal involves a structure that is proposed to be situated on an allotment boundary and the length of the proposed structure exceeds 8m.

- **LIST OF REPRESENTATIONS**

First Name	Surname	Business Name	Address	Position	Wishes to be heard?
Evonne	Moore	St Peters Residents Association	12 St Peters Street, St Peters	Opposed	Yes
Daniel	Oliver	N/A	432 South Road, Marlestone	Support	No

- **SUMMARY**

Mr Oliver supports the proposal and has advised that he hopes the proposal “works well for the area” and “works well for the adjoining neighbours”.

Ms Moore has raised concern with the following aspects of the proposal:

- demolition of the existing dwelling;
- removal of the existing tree at the rear of the property;
- dominance of the carport over the front doorway;
- small size of the front window; and
- bulk and scale of the upper level element.

The applicant has responded to the representations, providing details of the reasoning behind the design elements of concern to Ms Moore and the intended tree removal.

AGENCY REFERRALS

The application was not referred to any statutory referral agencies.

INTERNAL REFERRALS

The application was not referred internally for technical advice.

PLANNING ASSESSMENT

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

Land Use and Intensity

The proposal to construct one detached dwelling on the existing allotment is consistent with Performance Outcomes 1.1 and 2.1 of the Established Neighbourhood Zone. Specifically PO 1.1 seeks predominantly residential development, while PO 2.1 seeks to ensure allotments for residential purposes are of a suitable size to accommodate the anticipated dwelling form. The associated Designated Performance Feature (DPF 2.1) includes ensuring that development will not result in more than 1 dwelling on an existing allotment as one of the standard ways of achieving this performance outcome.

Building Height

The subject land is located within the Character Area Overlay. According to Desired Outcome 1 (DO1), this overlay contains policies which are intended to ensure:

“Valued streetscape characteristics and development patterns are reinforced through contextually responsive development, design and adaptive reuse that responds to the attributes expressed in the Character Area Statement.”

In relation to building height, the Character Area Statement states:

“Single storey, with some two storey to the rear of buildings (with single storey appearance to primary street frontage).”

Performance Outcome 2.2 of the Character Area Overlay states:

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

The prevailing building height in the locality and broader area is single storey. Therefore if PO 2.2 is applied rigidly without the context provided by DO1, all development should be consistent with this; ie. it should be single storey in height.

However, it is evident from DO1 and the Character Area Statement referred to therein, that the Character Area Overlay policies are intended to guide streetscape outcomes. Other planning outcomes such as amenity impacts of development on adjoining properties are addressed elsewhere in the Code, including at the zone level and within General Development Policies.

In this context, the practical way to apply PO 2.2 is to ensure that development is consistent with the prevailing building and wall heights as viewed within the relevant streetscape; enabling dwellings to have two storey elements at the rear.

Although the upper level component of the proposed dwelling would be visible within the streetscape, it would appear sufficiently recessive so as not to detract from or 'jar' with the single storey character of the street. This is primarily due to:

- the distance which the upper level is set back from the single storey façade (6m);
- the use of grey colorbond corrugated iron cladding for the upper level walls, creating a 'roof language' in contrast to the light colour scyon cladding of the single storey façade.

The fact that the dwelling on the adjoining property to the north at 2 Morris Street has an upper level partially concealed within the roof space further assists with the integration of the proposed recessed upper level into the streetscape.

Site Coverage

Designated Performance Feature 3.1 of the Established Neighbourhood Zone is a maximum site coverage of 50%; representing a standard method of achieving Performance Outcome 3.1, which 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 footprint of the proposed dwelling is 188m² in area, representing 42% of the site area. As well as being well below the 50% Designated Performance Feature, the footprint is consistent with the character and pattern of the neighbourhood.

Setbacks

Performance Outcome 2.4 of the Character Area Overlay states:

"Development is consistent with the prevailing front and side boundary setback pattern in the character area."

With respect to front/street setbacks, this wording differs slightly from Performance Outcome 5.1 of the Established Neighbourhood Zone, which states:

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

There is a Designated Performance Feature associated with PO 5.1, seeking the average setback of existing buildings on adjoining allotments. That said, to the extent of any inconsistency between zone policy and overlay policy, overlay policy takes precedence and as such, the most relevant consideration in relation to the front/street setback of the proposed dwelling is whether it is consistent with the prevailing setback pattern in the character area.

The proposed dwelling is set back 6.4 metres from Morris Street to the building line. This equates to the setback of the verandah of the existing dwelling on the allotment and is 1.5m closer to the street than the building line (front wall) of the existing dwelling. Image 4 below shows the existing setback pattern in the locality. The white lines represent the street boundaries, the yellow lines represent the building lines (front walls) of existing dwellings and the dotted red line represents a 6.4m setback distance on the eastern side of Morris Street.

Image 4. Setback Pattern in the Locality



There are three existing dwellings in the locality on the eastern side of Morris Street which have a street setback equal to or less than the proposed 6.4 metre setback. The closest such dwelling to the subject land is one allotment removed, at 8 Morris Street. The remaining dwellings are set further back, with the greatest setback being that of the dwelling at 2 Morris Street, with a setback of 9m to the building line.

Having regard to the existing pattern of street setbacks, the proposed 6.4m setback is considered reasonably consistent.

With respect 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 associated Designated Performance Feature (DPF 8.1) specifies a minimum of 1m for ground level walls and 3m for upper level walls from side boundaries.

On the northern side, the proposed dwelling has a setback of 2.9m at ground level and 3.6m at upper level. On the southern side, the proposed dwelling wall is set back 3.3m at ground level for the first 11 metres, at which point the dwelling is proposed on the side boundary. The upper level is set back 3.3m from the southern side boundary.

The proposed boundary wall is contrary to Designated Performance Feature 7.1, which states that dwellings “do not incorporate side boundary walls where a side boundary setback value is returned in (a) below” and (a) returned a setback value of 1m. The associated Performance Outcome (PO 7.1) states:

“Walls on boundaries are limited in height and length to manage visual and overshadowing impacts on adjoining properties.”

The proposed boundary wall corresponds with a boundary wall of the dwelling on the adjoining property at 6 Morris Street and will therefore have no impact on the occupants of that dwelling.

The proposed carport extends along the southern side boundary for a distance of 11m, of which 10.3m would be visible from the adjoining property. In particular, there are two small windows in the side of the dwelling at 6 Morris Street which face in the direction of the proposed carport. With the carport being open sided and located 1.2m from these windows, the resultant impacts (visual outlook and overshadowing) are considered acceptable.

Appearance

Performance Outcomes 2.3 and 2.5 of the Character Area Overlay respectively state:

“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.”

“Materials are either consistent with or complement those within the character area.”

The proposed dwelling has a gabled roof form consistent with the roof form of the many inter-war bungalows within the locality. The proportions of the single storey front component of the dwelling are similar to those of dwellings in the locality, with 3m external wall height and the façade occupying approximately 60% of the allotment frontage.

Despite being in line with the dwelling façade, the proposed carport is minimal in its design, being open fronted and open sided and having a ‘flat’ roof. It is not considered to dominate the appearance of the dwelling.

The selected materials are compatible with materials found in the area. The grooved fibre cement scyon axon cladding proposed for the façade is similar in appearance to the infill material used in the gable of bungalows. The feature brick wall at the front is reflective of brick pillars of bungalows and the corrugated iron roof and wall cladding is typical of roofing of dwellings in the locality.

The front door is recessed 1.2m from the facade, sufficiently addressing the street and providing a legible entry point for visitors, consistent with Performance Outcome 17.2 of the Design in Urban Areas section of the General Development Policies.

The window in the dwelling façade is 2.4m wide x 0.5m high, giving a window area of 1.2m². In addition, the front door is proposed to be glazed, adding approximately 1.25m² window area. The resultant aggregate window area of 2.45m² exceeds the 2.0m² minimum specified in Designated Performance Feature 17.1(b) of the Design in Urban Areas section of the General Development Policies.

Despite achieving DPF 17.1(b), the window is not consistent with the traditional window proportions of character dwellings in the area. This aspect of the design is therefore inconsistent with PO 2.3 of the Character Area Overlay.

Despite the unconventional window proportion, on balance, the proposed dwelling is considered to present to the street in a form and style which will contribute positively to the established character of the locality.

Fencing

It appears from the perspective drawings provided, that there is an intention to replace the existing front fence with a similar timber picket fence and driveway gate. Fences of this nature (non-masonry up to 2.1m) do not require development approval and therefore do not need to form part of the development application. Given the range of front fences in the locality, a fence of this nature would not detract from the streetscape or proposed dwelling.

Overlooking

All upper level windows are proposed to contain obscure glass to a height of 1500mm above floor level, consistent with Designated Performance Feature 10.1 of the Design in Urban Areas section of the General Development Policies.

Access and Parking

No change to the current access arrangement is proposed. The proposed amount of car parking exceeds the minimum criteria of 1 covered space located 5.5m from the street boundary.

CONCLUSION

The proposed dwelling is considered to suitably address the Character Area Overlay policies. It presents to the street with a single storey gable roofed form with generous side boundary setbacks and uses compatible materials. Although visible, the upper level is sufficiently set back so as not to compromise the streetscape character.

The extent of boundary development along the southern boundary is considered reasonable, as the adjoining dwelling also has a boundary wall and the proposed carport is open-sided.

RECOMMENDATION

It is recommended that the Council Assessment Panel/SCAP 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 23022021, by Mark Thomas is granted Planning Consent subject to the following reasons/conditions/reserved matters:

CONDITIONS

Planning Consent

Condition 1

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

Condition 2

All upper floor windows shall either have sill heights of 1500mm above floor level or be treated to a height of 1500mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person within the room to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained at all times.

ADVISORY NOTES

Planning Consent

Advisory Note 1

The Applicant is reminded of its responsibilities under the *Environment Protection Act 1993*, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.

Advisory Note 2

The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.

The Applicant's attention is particularly drawn to the requirements of the *Fences Act 1975* regarding notification of any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.

Advisory Note 3

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 4

The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council pursuant to the *Local Government Act 1999* prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 5

The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected

by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.

Advisory Note 6

The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

Advisory Note 7

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.

Advisory Note 8

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 9

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.

Mr Thomas addressed the Council Assessment Panel from 7:24pm until 7:26pm

Moved by Mr Bateup

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*
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All upper floor windows shall either have sill heights of 1500mm above floor level or be treated to a height of 1500mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person within the room to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained at all times.

Condition 3

All areas nominated as landscaping or garden areas on the approved plans shall be planted with a suitable mix and density of trees, shrubs and groundcovers within the following planting season after the occupation of the premises to the reasonable satisfaction of Assessment Manager or its delegate.

Condition 4

All stormwater from buildings and paved areas shall be disposed of in accordance with recognised engineering practices in a manner and with materials that does not result in the entry of water onto any adjoining property or any building and does not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into either the adjacent street kerb & water table or a Council underground pipe drainage system.

Condition 5

Rainwater tanks(s) must be installed in accordance with DTS/DPF 1.1 of the Stormwater Management Overlay in the Planning and Design Code (as at the date of lodgement of the application) within 12 months of occupation of the dwelling(s).

Condition 6

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.

ADVISORY NOTES

Planning Consent

Advisory Note 1

The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.

Advisory Note 2

The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.

The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.

Advisory Note 3

The Applicant is advised that construction noise is not allowed:

- 1. on any Sunday or public holiday; or*
- 2. after 7pm or before 7am on any other day*

Advisory Note 4

The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council pursuant to the Local Government Act 1999 prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 5

The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.

Advisory Note 6

The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

Advisory Note 7

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.

Advisory Note 8

Consents issued for this Development Application will remain valid for the following periods of time:

- 1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;*
- 2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;*
- 3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.*

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 9

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.

Seconded by Ms Newman
CARRIED

5.3 DEVELOPMENT NUMBER 23021334 – ACCESS HARDWARE – 45 & 47 AMHERST AVENUE, TRINITY GARDENS

DEVELOPMENT NO.:	23021334
APPLICANT:	Access Hardware
ADDRESS:	45 AMHERST AV TRINITY GARDENS SA 5068 47 AMHERST AV TRINITY GARDENS SA 5068
NATURE OF DEVELOPMENT:	Construction of a bulky goods outlet with associated warehouse/store, and an office, together with associated carparking and landscaping
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Employment <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Advertising Near Signalised Intersections • Hazards (Flooding - General) • 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 (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	1 Sept 2023
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham & St. Peters
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) - Version 2023.13 - 31/08/2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Kieran Fairbrother Senior Urban Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Matthew Cole Ken Schalk Gayle Buckby

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 5:	Representations
ATTACHMENT 1:	Application Documents	ATTACHMENT 6:	Response to Representations
ATTACHMENT 2:	Subject Land Map	ATTACHMENT 7:	Internal Referral Advice
ATTACHMENT 3:	Zoning & Locality Map	ATTACHMENT 8:	Applicant's Responses
ATTACHMENT 4:	Representation Map		

DETAILED DESCRIPTION OF PROPOSAL:

This application seeks to construct a two-storey commercial building that will be comprised of a retail showroom (bulky goods outlet), warehousing, and ancillary workshop and administration rooms at ground level, with offices for staff on the second level. At-grade car parking is to be constructed around the south and west elevations of the building, containing 21 car parking spaces, with landscaped areas proposed between the building and the northern and eastern street boundaries. Two-way access to the site will be available from Amherst Avenue, and one-way “out-only” movements will be available to Jones Avenue. Access from Amherst Avenue will require the remove of one (1) Council street tree, but the two (2) existing crossovers on Amherst Avenue will be reinstated to upright kerb & gutter. Up to 2.65m high combined retaining and fencing will be constructed along the southern boundary, to achieve the finished site levels necessary for flood protection.

The proposed hours of operation for the facility are 7:00am to 5:00pm, Monday to Friday.

BACKGROUND:

In 2021, development authorisation was granted to demolish the existing dwellings on the land and change the use of the land from residential to a timber yard and store, authorising the use of the land that had been unlawfully taking place for some time prior. The dwellings were demolished sometime between May and October 2022, and the Council’s understanding is that the land has remained vacant since. Access Hardware (the Applicant) is a door hardware supplier who currently operate from a facility in Marleston. They currently employ 29 staff, 12 of whom are mobile workers (i.e. not wholly based on-site), which is expected to remain the same in the proposed premises.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 45 AMHERST AV TRINITY GARDENS SA 5068

Title ref.: CT 5639/642	Plan Parcel: D1143 AL268	Council: THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Location reference: 47 AMHERST AV TRINITY GARDENS SA 5068

Title ref.: CT 5699/638	Plan Parcel: D1143 AL271	Council: THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Shape:	regular
Frontage width:	approx. 40.8 metres to Amherst Avenue and 44.2 metres to Jones Avenue
Area:	approx. 1804m ²
Topography:	relatively flat
Existing Structures:	nil, vacant land

Locality

The locality is depicted in **Attachment 3**. It broadly encompasses the area extending 100m north and south of the subject site, and 50m east and west. Within this locality there is a complex mix of land uses, which reflects the various different zones caught up within this area. The eastern side of Amherst Avenue is comprised of low-density housing within an Established Neighbourhood Zone. The western side of Amherst Avenue is zoned within the Employment Zone and Community Facilities Zone and – for the section contained within the chosen locality – includes an educational establishment north of the subject land, and two dwellings, a landscaping supplies business, an office/warehouse and a motor repair station south of the subject land. Similarly, the east side of Portrush Road (west of the subject land) contains the same mix of land uses.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Shop: Code Assessed - Performance Assessed
Advertisement: Code Assessed - Performance Assessed
Office: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
The proposal involves the construction of a shop and offices, and the subject land is adjacent to a site (or land) used for residential purposes in a neighbourhood-type zone. Pursuant to Table 5 of the Employment Zone, public notification is therefore required.

- **LIST OF REPRESENTATIONS**

First Name	Surname	Address	Position	Wishes to be heard?
Laura	Watt	2/45 Devitt Avenue PAYNEHAM SA 5070	Opposed	No
John	Babadimas	32A Amherst Avenue TRINITY GARDENS SA 5068	Opposed	No
Anthony	Cirocco	L1, 502 Lower North East Road CAMPBELLTOWN SA 5074	Opposed	No

- **SUMMARY**

The reasons for opposition submitted by the three representors can be summarised as follows:

- Potential for traffic conflict with the adjacent school (and child safety);
- An increase in on-street parking demand;
- An increase in traffic along Amherst Avenue and Jones Avenue, particularly heavy vehicle traffic;
- Opposition to the development of a non-residential use/building on a residential street;
- Concerns about overlooking into properties;
- Increased noise emissions and a reduction in amenity for neighbours; and
- A desire for a 3m-high precast concrete fence along the western boundary of the site

The applicant's planning consultant has responded to these concerns in their response (**Attachment 6**).

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

- Matthew Cole, City Arborist
 - Generally supportive of the street tree removal because the Council can offset the loss with more plantings
- Ken Schalk (Tonkin), Hydrological (Flooding) Engineer
 - Supportive of the proposal from a flooding perspective
- Gayle Buckby, Manager, Traffic & Integrated Transport
 - Generally not supportive of the traffic conflicts that will be created between the proposed development and the adjacent primary school, nor of heavy vehicle traffic through Amherst Avenue (but recognises that this arises primarily because of the zoning of the subject land)

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 of the Employment Zone seeks:

“A diverse range of low-impact light industrial, commercial and business activities that complement the role of other zones accommodating significant industrial, shopping and business activities.”

Performance Outcome 1.1 of the Employment Zone seeks:

“A range of employment-generating light industrial, service trade, motor repair and other compatible businesses servicing the local community that do not produce emissions that would detrimentally affect local amenity.”

Corresponding Designated Performance Feature 1.1 of the Employment Zone specifically lists “office”, “shop” and “warehouse” and envisaged land uses within the Zone. Pursuant to Part 7 of the Planning & Design Code – Land Use Definitions – “shop” includes “bulky goods outlet”.

Performance Outcome 1.2 of the Employment Zone states:

“Shops provide convenient day-to-day services and amenities to local businesses and workers, support the sale of products manufactured on-site and otherwise complement the role of Activity Centres.”

Corresponding Designated Performance Feature 1.2 of the Employment Zone suggests that a bulky goods outlet is one of the types of shops sought by PO 1.2. Consequently, the proposed use of the land as offices and a bulky goods outlet with associated warehousing is consistent with those land uses sought within the Employment Zone.

Interface Issues

Noise Emissions

As mentioned above, PO 1.1 of the Employment Zone seeks non-residential uses *“that do not produce emissions that would detrimentally affect local amenity”*.

Additionally, Performance Outcome 2.1 of the Interface Between Land Uses module of the General Development Policies states:

“Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its hours of operation having regard to:

- (a) The nature of the development*
- (b) Measures to mitigate off-site impacts*
- (c) The extent to which the development is desired in the zone*
- (d) Measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.”*

The proposed hours of operation are 07:00am to 5:00pm, Monday to Friday. These align with the acceptable hours suggested in corresponding Designated Performance Feature 2.1 for both shops and offices and are considered acceptable when considered in the context of the Employment Zone in which the subject land resides.

Performance Outcome 4.1 of the Interface Between Land Uses module of the General Development Policies states:

“Development that emits noise (other than music) does not unreasonable impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).”

By virtue of their very nature, retail showrooms and offices are not typically noise-generating land uses, and there is nothing peculiar about the proposed use to expect anything different. Generally,

the only sources of noise will come from traffic volumes, the loading/unloading of vehicles, waste collection and any plant and equipment (discussed further below). In this case, a small area of the ground floor building is used for repairs and servicing. This has the potential to generate some noise but given that they occur within the building and will occur during what are considered to be reasonable hours of operation, the potential impacts of this noise are not considered to be unreasonable.

Performance Outcome 4.2 of the Interface Between Land Uses module of the General Development Policies states:

“Areas for the on-site manoeuvring of service and delivery vehicles, plant and equipment, outdoor work spaces (and the like) are designed and sited to not unreasonable impact the amenity of adjacent sensitive receivers (or lawfully approved sensitive receivers) and zones primarily intended to accommodate sensitive receivers due to noise and vibration by adopting techniques including:

- (a) Locating openings of buildings and associated services away from the interface with the adjacent sensitive receivers and zones primarily intended accommodate sensitive receivers*
- (b) When sited outdoors, locating such areas as far as practicable from adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers*
- (c) Housing plant and equipment within an enclosed structure or acoustic enclosure*
- (d) Providing a suitable acoustic barrier between the plant and/or equipment and the adjacent sensitive receiver boundary or zone.”*

Notably, the building has been designed and sited such that the loading area is adjacent the western side of the building, away from the interface between the subject land and adjacent sensitive receivers (dwellings) in the Established Neighbourhood Zone on the east side of Amherst Avenue; thus mitigating any potential impacts that service and delivery vehicles will have on the amenity of those dwellings. Notwithstanding, Conditions 11 and 12 have been recommended to ensure that waste collection and the loading/unloading of vehicles do not take place earlier than 7am (i.e. earlier than the operating hours of the business) to minimise further any potential nuisance being caused by such activity.

It should be further noted that the primary school on the north side of Jones Avenue is also a sensitive receiver per the definition in the Planning & Design Code. There is no separation between the loading area and the school except for the road reserve between. However, the noise produced by heavy vehicles that attend the subject site is not considered unreasonable in the context of the site being located within the Employment Zone, the proposed land use being one envisaged within the Zone, and the operating hours of the facility aligning with those reasonably anticipated for such uses.

It is worth noting that there are dwellings located both west and south of the subject land, but these are all contained within the Employment Zone – a Zone that does not envisage residential land uses (Desired Outcome 1, PO 1.1). Turning back to PO 2.1 of the Interface Between Land Uses module (above) when considering potential interface issues, it is important to consider context – specifically desired land uses within the zone. In this case, the Employment Zone envisages several noisy land uses such as light industry and motor repair stations but not dwellings (sensitive receivers). As such, the dwellings that abut this site to the west and south can expect a lower level of amenity than those on the east side of Amherst Avenue (within the Established Neighbourhood Zone).

With respect to traffic noise, the Applicant's traffic consultant – Frank Siow & Associates – has undertaken a traffic impact analysis for this development, comparing the peak demand of Access Hardware's current premises in Marlestone with existing traffic flows in Jones Avenue. Specifically, they found:

- Between 8am and 9am, the number of vehicle trips recorded for the Marlestone site were 22 vehicles;
- Between 4pm and 5pm, the number of vehicle trips recorded for the Marlestone site were 13 vehicles;
- In the AM peak hour (exact time unknown), 263 vehicles trips per hour were recorded in Jones Avenue;
- In the PM peak hour (exact time unknown), 117 vehicles trips per hour were recorded in Jones Avenue.

The peak parking demand for the Marlestone site was between 9am and 1pm, where between 18 and 22 cars were parked on the premises. From this data, it is reasonable to deduce that the volumes of traffic generated from the proposed development is unlikely to dramatically increase the total volumes of traffic along both Jones Avenue and Amherst Avenue. Accordingly, the noise generated from these additional vehicle trips are unlikely to be appreciably observed by adjacent sensitive receivers. Notwithstanding, the anticipated volume of vehicle trips arising from the proposed development are reasonable in the context of the size of the subject site and the scale of the proposed use.

Consequently, the potential noise emissions arising from the use of the land are considered acceptable.

Building Height

Performance Outcome 3.5 of the Employment Zone states:

“Building height is consistent with the form expressed in any relevant Maximum Building Height (Levels) Technical and Numeric Variation [TNV] layer... or is generally low-rise to complement the established streetscape and local character.”

Hence, there are two ways that a proposal may satisfy this PO. The relevant and applicable TNV for this site sets a maximum building height of 2 levels. The proposed building is two levels and therefore satisfies this PO.

Performance Outcome 3.6 of the Employment Zone states:

“Buildings mitigate visual impacts of building massing on residential development within a neighbourhood-type zone.”

The corresponding Designated Performance Feature provides that if a building is “constructed within a building envelope provided by a 45-degree plan, measured from a height of 3m above natural ground level at the boundary of an allotment used for residential purposes in a neighbourhood-type zone” then this Performance Outcome may be satisfied.

Performance Outcome 3.8 of the Employment Zone states:

“Buildings on an allotment fronting a road that is not a State maintained road, and where land on the opposite side of the road is within a neighbourhood-type zone, provides an orderly transition to the built form scale envisaged in the adjacent zone to complement the streetscape character.”

There is approximately 15 metres of road reserve between the subject site and the adjoining Established Neighbourhood Zone to the east and so the proposed building falls easily within the building envelope suggested by DPF 3.6 (above). Notwithstanding, the second building level is set back further from Amherst Avenue than the ground level to reduce the visual bulk of the building even further.

As shown in **Attachment 3**, the east side of Amherst Avenue is located within the Established Neighbourhood Zone. Further, a Character Area Overlay applies to this area. The built form scale envisaged within this area is one of low-density dwellings that may be two storeys high providing they maintain a single-storey appearance to the primary street frontage. Accordingly, the proposed building’s modulation between the ground level and the second level provides a respectful transition between the two adjoining zones in a manner that complements the streetscape character (there is more discussion on the design elements in this respect in the “Design and Appearance” section below).

Performance Outcome 3.1 of the Interface Between Land Uses module of the General Development Policies states:

“Overshadowing of habitable room windows of adjacent residential land uses in... other zones is managed to enable access to direct winter sunlight.”

Performance Outcome 3.2 of the Interface Between Land Uses module of the General Development Policies states:

“Overshadowing of the primary areas of private open space or communal open space of adjacent residential land uses in... other zones is managed to enable access to direct winter sunlight.”

The second level of the proposed building will be set back 11.6m from the southern boundary of the subject land. The neighbouring dwelling is set back approximately 8.5m further from this shared boundary, with its private open space separated a similar distance. Consequently, there is over 20 metres of separation between the proposed building and the adjacent dwelling to the south. The proposed building is 9.2m tall at its highest point and so sufficient separation exists between the building and the neighbouring dwelling and its POS for overshadowing not to be a concern for this development.

Setbacks

Performance Outcome 3.1 of the Employment Zone states:

“Buildings are set back from the primary street boundary to contribute to the existing/emerging pattern of street setbacks in the streetscape.”

The building will be set back from Amherst Avenue by 3.70 metres at ground level and 4.5 metres at the second level. Jones Avenue separates the subject land from the school to the north, and the car park associated with the proposed building separates it from the neighbouring dwelling to the south by approximately 20 metres. Accordingly, due to this separation on both sides, any consistency between the setback of the proposed building and that of those on adjoining sites won't be easily read in the streetscape. Notwithstanding, the proposed ground level setback aligns with that of the neighbouring building to the south which is a good streetscape outcome and achieves the intent of Performance Outcome 3.1 above.

Performance Outcome 3.2 of the Employment Zone states:

“Buildings are set back from a secondary street boundary to accommodate the provision of landscaping between buildings and the street to enhance the appearance of land and buildings when viewed from the street.”

The corresponding Designated Performance Feature suggests that a 2-metre setback from a secondary street boundary is sufficient to meet this Performance Outcome, which is exactly what has been proposed here. Importantly, the application also proposes landscaping between the building and the Jones Avenue boundary. Specific plantings have not been identified on the plans provided, and so a reserved matter is suggested to ensure that a detailed landscaping plan is provided prior to development approval being granted that demonstrates suitable plantings between the building and the street boundaries.

Design & Appearance

Performance Outcome 2.1 of the Employment Zone states:

“Development achieves distinctive building, landscape and streetscape design to achieve high visual and environmental amenity particularly along arterial roads, zone boundaries and public open spaces.”

Performance Outcome 2.2 of the Employment Zone states:

“Building facades facing a boundary of a zone primarily intended to accommodate residential development, public roads, or public open space incorporate design elements to add visual interest by considering the following:

- (e) Using a variety of building finishes*
- (f) Avoiding elevations that consist solely of metal cladding*
- (g) Using materials with low reflectivity*
- (h) Using techniques to add visual interest and reduce large expanses of blank walls including modulation and incorporation of offices and showrooms along elevations visible to a public road.”*

As mentioned in the “Height” section above, the building provides an orderly transition between the scale of built form envisaged in the Established Neighbourhood Zone on the eastern side of Amherst Avenue and the scale of development envisaged within the subject Employment Zone. However, setbacks are just one part of the equation – the building also needs to achieve high visual interest per Performance Outcomes 2.1 and 2.2 above.

In respect of materials, the building is comprised of a mix of face brick, perforated metal screens and metal cladding on the Amherst Avenue elevation. Along Jones Avenue, the face brick wall at ground level returns for a small section with the balance of the two-storey walling being comprised of cement sheeting. The applicant has broken up what is otherwise a bland two-storey wall by continuing the perforated metal screens around this elevation, incorporating two different paint colours to the wall, and including the company's logo on the wall.

There is a good level of articulation and modulation throughout the building to complement the adjacent Established Neighbourhood Zone and provide visual interest to both street frontages. Importantly, the materials chosen are of a low reflectivity. Additionally, the ground level showroom and the second level office both face onto Amherst Avenue and are made visible through a good level of fenestration. The proposed building is therefore considered to satisfy Performance Outcomes 2.1 and 2.2 above.

Performance Outcome 1.5 of the Design module of the General Development Policies states:

"The negative visual impact of outdoor storage, waste management, loading and service areas is minimised by integrating them into the building design and screening them from public view (such as fencing, landscaping and built form) taking into account the form of development contemplated in the relevant zone."

The building has been appropriately sited in the northeast corner of the site, allowing for the loading area to be sited adjacent the western boundary. One representor suggested that the loading area should be located on the east side of the building to protect the amenity of the neighbouring dwelling to the west. It is less appropriate that the loading area be located closer to the interface with the Established Neighbourhood Zone, and instead the proposed location is the most suitable – as mentioned above, those existing dwellings within the subject Employment Zone should expect a lower level of amenity by virtue of their setting. (Waste storage is discussed in the "Environmental Factors" section below.)

Performance Outcome 5.1 of the Employment Zone states:

"Landscaping is provided to enhance the visual appearance of development when viewed from public roads and thoroughfares."

Performance Outcome 5.2 of the Employment Zone states:

"Development incorporates areas for landscaping to enhance the overall amenity of the site and locality."

Performance Outcome 7.5 of the Design module of the General Development Policies states:

"Street level parking areas incorporate soft landscaping to improve visual appearance when viewed from within the site and from public places."

The proposal includes 173m² of soft landscaping, which equates to 9.6% of the site. The majority of this is contained between the building and the north and east boundaries (the two street frontages), with a small portion located also between the southern boundary and the car parking spaces. As touched on in an earlier section, providing that these areas are planted with a suitable mix and

density of trees, shrubs and groundcovers, the landscaped areas will have the effect of softening the appearance of the development from the public realm and therefore enhancing the overall amenity of the site. Further, this will complement the adjacent residential streetscape that is within the Established Neighbourhood Zone on the opposite side of Amherst Avenue. Thus, sufficient areas of landscaping are provided for the development, and the proposed reserved matter seeks to ensure that appropriate plantings are incorporated to ensure the above Performance Outcomes are satisfied, and continue to be satisfied throughout the life of the development.

Traffic Impact, Access and Parking

Performance Outcome 3.5 of the Transport, Access and Parking module of the General Development Policies states:

“Access points are located so as not to interfere with street trees, existing street furniture... or infrastructure services to maintain the appearance of the streetscape, preserve local amenity and minimise disruption to utility infrastructure assets.”

The application seeks to construct a new two-way access point on Amherst Avenue and modify an existing crossover on Jones Avenue as an exit-only egress point.

The existing crossover on Jones Avenue is located very close to an existing street tree. Positively, this development seeks to relocate the crossover west, further away from the tree to allow for necessary vehicle egress from the site. The proposed crossover will maintain 3 metres of separation from the street tree, and at 4.6 metres wide (flaring to 6.2 metres at the kerb), is sufficiently wide to accommodate the anticipated vehicle types that will access the site.

In respect of the Amherst Avenue access point, this seeks to remove a street tree and relocate a “crossing ahead” sign to facilitate access. Council’s internal staff have confirmed that relocation of the sign is not problematic. Council’s City Arborist has undertaken an assessment of the street tree and concluded that its health, structure, shape and form are good and therefore its removal cannot be supported from an arboricultural point of view. Notwithstanding, Council’s City Arborist did acknowledge that alternative planting locations will be made available if the development proceeds because of the two existing crossovers that will be reinstated to upright kerb and gutter.

In the context of the zoning of the subject land and the surrounding locality, the proposed development is considered appropriate in terms of land use, scale, design, and siting. As such, despite the arboricultural advice, there exists no better alternative for access and therefore removal of the street tree has been supported by the Manager, Development Assessment (with an appropriate fee charged to the Applicant to cover the cost of removal).

The ability for the Council to plant additional street trees along Amherst Avenue upon completion of the development (via reinstatement of the redundant crossovers) will help offset the loss of this one street tree and help maintain local amenity.

Performance Outcome 3.4 of the Employment Zone states:

“Buildings are sited to accommodate vehicle access to the rear of a site for deliveries, maintenance and emergency purposes.”

Performance Outcome 6.6 of the Transport, Access and Parking module of the General Development Policies states:

“Loading areas and designated parking spaces for service vehicles are provided within the boundary of the site.”

As discussed earlier, the development includes a loading area at the rear (west) of the building, consistent with the above Performance Outcomes.

Performance Outcome 1.4 of the Transport, Access and Parking module of the General Development Policies states:

“Development is sited and designed so that loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.”

By placing the dedicated loading area at the rear of the site, traffic movements near the site’s access point on Amherst Avenue are not interrupted, and thus queuing on public roads are practicably avoided (noting that Jones Avenue will be exit-only). In respect of manoeuvrability, the Applicant’s traffic consultant has provided swept-path movement diagrams for the largest types of vehicles anticipated to visit the site (including waste and delivery vehicles) that demonstrate safe and convenient access through the site.

Performance Outcome 3.1 of the Transport, Access and Parking module of the General Development Policies states:

“Safe and convenient access minimises impact or interruption on the operation of public roads.”

Council’s Manager, Traffic & Integrated Transport expressed several concerns about this development (see **Attachment 7**). Specifically, they are concerned about the conflict between large vehicles and the adjacent primary school, both in respect of vehicles and pedestrians, and the existing traffic congestion issues along Jones Avenue that will be exacerbated by the proposed development.

In respect of congestion concerns, the Applicant’s traffic consultant, Mr Siow, suggests that the development will create an additional 8 to 11 vehicle trips per hour on Jones Avenue. Comparatively, peak traffic flows surveyed by Mr Siow on Tuesday 3 July 2023 showed that 263 and 117 vehicles per hour were recorded in the AM and PM peak periods, respectively. Therefore, Mr Siow concludes, the additional traffic generated by this development will have an inappreciable impact on the surrounding road network. It is notable in this respect that the subject land is currently vacant, and it is the Council’s understanding that the two dwellings that previously existed on the site were unoccupied for at least 18 months prior to being demolished. Accordingly, existing traffic volumes in Jones Avenue cannot be expected to be maintained unless the subject land remains undeveloped an/or unoccupied, which is not a reasonable expectation or outcome.

In respect of traffic conflicts, the Employment Zone envisages various land uses that would inherently involve the use of large/heavy vehicles (e.g. light industry, service trade premises and warehouse). Consequently, there is arguably an inevitability to there being heavy vehicle traffic movements along Amherst Avenue and Jones Avenue. The fact that Jones Avenue is designated for out-only movements is a positive feature of the development that will limit the extent of heavy

vehicle traffic in Jones Avenue and therefore limit the conflict between the use of the subject land and the adjacent school.

The abovementioned Performance Outcome talks about access to a site being designed to *minimise* the impact or interruption to the operation of public roads. This development achieves that, despite the likelihood that some conflict will exist. Specifically, siting the building in the northeast corner of the site, and therefore locating traffic movements away from the intersection of Jones Avenue and Amherst Avenue achieves this. Limiting the Jones Avenue crossover to exit-only movements also minimises the impact that the development will have on that road network, as does siting the loading/delivery areas at the rear of the building and away from the two-way access point on Amherst Avenue. Naturally it would be preferable to have any delivery and waste collection vehicles attend the site wholly outside of the school’s drop-off and pick-up times, but it is Council staff’s opinion that a condition to this effect would be too onerous and unreasonable, and therefore inappropriate, especially in the context of Conditions 11 and 12. Nonetheless, an advisory note to this effect has been included in the recommendation to the Panel below.

Performance Outcome 5.1 of the Transport, Access and Parking module of the General Development Policies 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 [various] factors that may support a reduced on-site rate.”

The corresponding Designated Performance Feature suggests that car parking supply consistent with Table 1 of the Transport, Access and Parking Module may be one way of satisfying this Performance Outcome. The table below demonstrates a calculation of the rates prescribed in Table 1 applicable to this development.

Land Use	Car Parking Rate per 100m ² of Gross Leasable Floor Area (GLFA)	Total GLFA of development comprised of this use	Total Car Parking Demand
Office	4 spaces	440m ²	18 spaces
Showroom	2.5 spaces	150m ²	3.75 spaces
Warehouse (including ancillary workshop areas)	0.5 spaces	458m ²	2.3 spaces
			<u>24 spaces</u>

The development includes provision for 21 car parking spaces and 4 bicycle parking spaces (which is not an expectation in the Employment Zone). Accordingly, there is a shortfall of 3 car parking spaces when balanced against the rates prescribed by Table 1.

The Applicant’s traffic consultant, Frank Siow, calculated different GLFAs for the respective land use components of the development, and concluded a total theoretical demand of 22 spaces using Table 1. Accordingly, Mr Siow was able to justify a shortfall of one space based on existing car parking

demands at Access Hardware's present site in Marleston (see "Noise Emissions" section earlier). Notwithstanding the difference in car parking demand calculations between Council staff and Mr Siow, the same justification can be applied to the shortfall of 3 spaces.

Information provided by the Applicant (see **Attachment 8**) states that 12 of the 29 staff members employed by Access Hardware are mobile (i.e. not primarily based on-site). Further, the parking survey undertaken by Mr Siow shows that the car parking areas are rarely at capacity throughout the day. It should not be ignored that on-street car parking availability along Jones Avenue and Amherst Avenue is typically very low, especially any time the school is operating. Nonetheless, the proposed development is unlikely to need to rely on on-street parking to support its operations and so this is not considered problematic.

It is also worth noting that currently there is room for two (2) on-street car parking spaces adjacent the Amherst Avenue frontage of the subject site. If the proposed development proceeds and the existing crossovers are reinstated to upright kerb and gutter (as recommended by Condition No 13), then one (1) additional on-street parking space can be accommodated on Amherst Avenue.

Environmental Factors

Waste Management

Performance Outcome 1.5 of the Design module of the General Development Policies states:

"The negative visual impact of outdoor storage, waste management... is minimised by... screening them from public view (such as fencing, landscaping and built form) ..."

All bins are located on the northern side of the building/loading area, surrounded by a 1.8m high Colorbond fence to screen them from public view. This location is ideal because it places the bins adjacent to the loading area from where private waste collection is proposed to take place. The Applicant has suggested that waste is collected weekly, and sometimes twice a week. Noting that the proposed land use is not expected to generate the kind of waste that would release foul odour emissions, the storage location and frequency of collections are considered reasonable and will not unreasonably impact on the occupiers of adjacent land.

Site Contamination

Performance Outcome 1.1 of the Site Contamination module of the General Development Policies states:

"Ensure land is suitable for use when land use changes to a more sensitive use."

As a result of the unlawful activity that had previously taken place on the subject site – the use as a builder's yard – the proposed development involves a more sensitive use of the land. Consequently, the applicant was requested to undertake a Preliminary Site Investigation (**PSI**) and provide a site contamination declaration form, in accordance with Practice Direction 14.

The site contamination declaration form states that a potentially contaminating class 2 activity may have taken place on the land. However, the form then goes on to state that 'site observations and soil results did not exceed guidelines for the proposed redevelopment for commercial purposes.

Therefore, potential is not considered to be actual with respect to contamination...’ This conclusion is consistent with the findings in the PSI.

Accordingly, the land is considered to be suitable for the proposed development in respect of any potential contamination concerns.

Flood risk & Stormwater

Performance Outcome 1.1 of the Hazards (Flooding – General) Overlay states:

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

The corresponding Designated Performance Feature suggests that a finished floor level of at least 300mm above the height of a 1% AEP flood event is sufficient to meet the Performance Outcome.

The subject land is partially located within the Hazards (Flooding – General) Overlay, and so the application was necessarily referred to the Council’s external hydrological engineer for advice. The advice received (see **Attachment 7**) states that the proposed finished floor level of 59.5mAHD provides just over 200mm freeboard to the 1% AEP flood event. However, given that the depths of flooding in the area are relatively shallow, the proposed finished floor levels are considered to provide adequate flood protection, thereby satisfying PO 1.1 above.

A consequence of these minimum finished floor levels is that up to 850mm of retaining walls along the western boundary and up to 750mm of retaining along the southern boundary are required. The application proposes a 1.8m solid Colorbond fence on top of these walls to provide security to the site.

Performance Outcome 9.1 of the Design module of the General Development Policies states:

“Fences, walls and retaining walls are of sufficient height to maintain privacy and security without unreasonably impacting the visual enmity and adjoining land’s access to sunlight or the amenity of public places.”

Notwithstanding that the retaining walls are necessary to achieve flood protection for the proposed development, and a 1.8m solid fence atop is a reasonable expectation, it is worth noting that there is sufficient separation between the affected boundaries and the adjoining dwellings to avoid any unreasonable overshadowing or amenity impacts arising from the construction of this fencing and retaining.

Performance Outcome 42.3 of the Design in Urban Areas module of the General Development Policies states:

“Development includes stormwater management systems to mitigate peak flows and manage the rate and duration of stormwater discharges from the site to ensure that development does not increase peak flows in downstream systems.”

As a result of the increase in impervious area arising from this development, the applicant was asked

to provide a stormwater management plan that addresses this Performance Outcome. Specifically, the following request was made:

A Stormwater Management Plan shall be provided for the development.

Calculations are required to demonstrate detention storage meets the minimum requirements of Council. The detention requirements for the site are to detain the post

development 1 in 100 year ARI storm event, with discharge being at the pre development 1 in 5 year ARI rate.

The "Siteworks and Drainage Plan" prepared by Jack Adcock Consulting Pty Ltd (**Attachment 1**) was referred to Council's hydrological engineer for assessment against this request. Ken Schalk has advised that the stormwater management plan complies with the above requirements and therefore satisfies PO 42.3 (above). In addition to this, all stormwater from the building and car park is designed to be taken to the street water table, which is the expected outcome and is proposed to be reinforced as an ongoing requirement by way of a condition should the Panel choose to grant consent to this application.

Signage

Performance Outcome 1.1 of the Advertisements module of the General Development Policies states:

"Advertisements are compatible and integrated with the design of the building and/or land they are located on."

Performance Outcome 1.5 of the Advertisements module of the General Development Policies states:

"Advertisements and/or advertising hoardings are of a scale and size appropriate to the character of the locality."

Performance Outcome 2.1 of the Advertisements module of the General Development Policies states:

"Proliferation of advertisements is minimised to avoid visual clutter and untidiness."

The application proposes two (2) advertisements, both of which individually address each street frontage of the subject land, which is consistent with Performance Outcome 2.1 above. Both signs are simplistic in design, involving the company's logo and, on the Amherst Avenue frontage, the name of the business. They are located on the second level walls of the building, well-integrated with the design of the building so as to not attract unnecessary attention. Importantly, the simplistic design also results in signage that does not detract from the character of the locality. The signs are not illuminated in anyway and so won't cause distraction to motorists or nuisance to neighbours. Accordingly, the two advertisements are considered contextually appropriate, consistent with the above Performance Outcomes.

CONCLUSION

This proposal is for a two-storey building, car parking area and associated landscaping on two allotments that are currently vacant. The proposed land use for showroom, offices and warehousing is consistent with the kinds of land uses sought by the Employment Zone and will not, by virtue of their operations, unreasonably impact on the adjacent Established Neighbourhood Zone to the east or primary school to the north. The building and its associated signage have been designed and sited in a manner that is complementary to the adjacent Established Neighbourhood Zone, provides an orderly transition in built form, and will positively contribute to both streetscapes. Further, stormwater is adequately detained and discharged from the site to avoid any flooding impacts both within the site and on any adjoining neighbours in significant rainfall events.

Access to and from the site, and vehicle manoeuvrability within, is demonstrably safe and convenient, although there is potential for conflict between heavy vehicles that attend the site and the adjacent primary school. That being said, the Employment Zone envisages land uses that necessitate heavy vehicle traffic meaning this conflict is arguably inevitable. Notwithstanding, the siting of the building, car parking areas, loading zone and access points results in a development of the land that is consistent with that sought by the Employment Zone while also minimising traffic impacts on public roads and conflicts with adjacent land uses.

The proposed development will result in the loss of an existing juvenile street tree, but that loss can be offset by additional tree plantings along both street frontages. Further, an extra on-street car parking space will be provided upon completion of the development, which will offer a slight improvement to the existing traffic issues on Amherst Avenue and Jones Avenue.

RECOMMENDATION

Grant Planning Consent

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 23021334, by Access Hardware is granted Planning Consent subject to the following conditions and reserved matters:

RESERVED MATTER

A detailed landscaping plan showing a suitable mix and density of trees, shrubs and groundcovers shall be provided to the reasonable satisfaction of the Assessment Manager prior to Development Approval being granted. Without limiting the requirements of the landscaping plan, the plan needs to provide for suitable tree plantings between the building and both street frontages, as well as appropriate shrubs and groundcovers in the landscaped area between the southern boundary and the car parking area.

Upon satisfaction of this reserved matter, the Council Assessment Panel delegates authority to the Assessment Manager to impose any additional conditions on this Planning Consent as they see fit to impose.

CONDITIONS

Planning Consent

Condition 1

The development granted Planning Consent shall be undertaken and completed in accordance

with the stamped plans and documentation, except where varied by conditions below (if any).

Condition 2

All areas nominated as landscaping or garden areas on the approved plans shall be planted within the next available planting season after the occupation of the premises to the reasonable satisfaction of the Assessment Manager, and such plants shall be nurtured and maintained in good health and condition at all times, with any diseased or dying plants being replaced, to the reasonable satisfaction of the Assessment Manager or its delegate.

Condition 3

All stormwater from buildings and paved areas shall be disposed of in accordance with the Siteworks and Drainage Plan herein approved (prepared by Jack Adcock Consulting Pty Ltd, Drawing No. JAC2304523-DRG-C002, dated 25-10-2023). Stormwater disposal should not result in the entry of water onto any adjoining property or any building, and not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into either the adjacent street kerb & water table or a Council underground pipe drainage system.

Condition 4

Prior to construction works associated with the approved development commencing, payment must be made to the Council in the amount of \$500.00 for the cost of removing the street tree by Council, necessary to enable vehicular access to the proposed development. Upon the issuing of full Development Approval and payment of the said amount please contact the Council's Planning Dept. to arrange for removal of the tree.

Condition 5

The levels of the footpath after works to the crossover shall remain as per the existing levels, with any cross fall or change in levels accommodated entirely within the site's boundaries, to the reasonable satisfaction of the Assessment Manager or their delegate.

Condition 6

All car parking spaces shall be line marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.

Condition 7

Wheel stopping devices shall be placed at the end of each parking bay so as to prevent damage to adjoining fences, buildings or landscaping to the reasonable satisfaction of the Assessment Manager or its delegate.

Condition 8

All loading and unloading of vehicles shall be carried out entirely upon the subject land.

Condition 9

Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.

Condition 10

The hours of operation of the premises shall be restricted to the following times:

- Monday to Friday, 7:00am to 5:00pm

Condition 11

All deliveries to the site shall occur only during the approved operating hours of the premises.

Condition 12

All waste collection from the site shall be restricted to the following times:

- Monday to Saturday, 7:00am to 7:00pm

Condition 13

The existing crossovers (or part thereof) on Amherst Avenue that will be made redundant as a result of this development shall be reinstated to upright kerb and gutter prior to completion of the development and occupation of the premises, in accordance with the Council's standards and specifications and to the satisfaction of the Assessment Manager or its delegate. All costs associated with this work shall be borne by the applicant.

ADVISORY NOTES

Planning Consent

Advisory Note 1

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.

Advisory Note 2

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 3

To minimise traffic conflicts between the adjacent primary school and the proposed development, deliveries to/from the site and waste collection from the site should, as far as reasonably practicable, occur outside of the school's peak pick-up and drop-off times.

Advisory Note 4

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.

Advisory Note 5

The Applicant is reminded of its responsibilities under the *Environment Protection Act 1993*, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.

Advisory Note 6

The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.

The Applicant's attention is particularly drawn to the requirements of the *Fences Act 1975* regarding notification of any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.

Advisory Note 7

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 8

The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council pursuant to the *Local Government Act 1999* prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 9

The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.

Advisory Note 10

The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

Mr McInnes addressed the Council Assessment Panel from 7:52pm until 7:54pm

Moved by Ms Newman

Grant Planning Consent

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Planning Consent

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

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Advisory Note 10

The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

**Seconded by Mr Adcock
CARRIED**

6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT

7. REVIEW OF ASSESSMENT MANAGER DECISIONS

**7.1 REVIEW OF ASSESSMENT MANAGER'S DECISION – DEVELOPMENT NUMBER
23010962 – DITARA PTY LTD – 1 KENSINGTON ROAD, NORWOOD & 37-39 CLARKE
ST, NORWOOD**

DEVELOPMENT NO.:	23010962
APPLICANT:	Ditara Pty Ltd
ADDRESS:	1 Kensington Road, NORWOOD SA 5067 37-39 Clarke Street, NORWOOD SA 5067
NATURE OF DEVELOPMENT:	Removal of a significant River Red Gum tree
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Suburban Business <p>Overlays:</p> <ul style="list-style-type: none"> • Prescribed Wells Area • Regulated and Significant Tree • Traffic Generating Development • Airport Building Heights (Regulated) • Future Road Widening • Hazards (Flooding - General) • Major Urban Transport Routes • State Heritage Place • Heritage Adjacency <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	21 April 2023
RELEVANT AUTHORITY:	Assessment panel / Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	21 April 2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	No
RECOMMENDING OFFICER:	Geoff Parsons Manager Development Assessment / Assessment Manager
REFERRALS STATUTORY:	None applicable
REFERRALS NON-STATUTORY:	Matt Cole City Arborist

CONTENTS:

ATTACHMENT 1: Council Assessment Panel Review of Decisions of the Assessment Manager Policy	ATTACHMENT 6: ERDC Judgement – 21-12-2022
ATTACHMENT 2: Application to Assessment Panel and accompanying correspondence	ATTACHMENT 7: PD Code Rules Applicable at Lodgement
ATTACHMENT 3: Decision Notification Form – DA 23010962	ATTACHMENT 8: Minutes of Special CAP Meeting held 15 August 2023
ATTACHMENT 4: Delegated Assessment Report – DA 23010962	ATTACHMENT 9: Applicant Submissions in response to CAP Resolution
ATTACHMENT 5: Application Documentation – DA 23010962	

INTRODUCTION

Section 202(1)(b)(i)(A) of the *Planning, Development and Infrastructure Act 2016* provides an applicant with a right to apply to the Council Assessment Panel for a review of the Assessment Manager's decision relating to a prescribed matter.

A prescribed matter is defined as follows:

Prescribed matter, in relation to an application for a development authorisation, means -

- (a) *any assessment, request, decision, direction or act of a relevant authority under this Act that is relevant to any aspect of the determination of the application; or*
- (b) *A decision to refuse to grant the authorisation; or*
- (c) *The imposition of conditions in relation to the authorisation; or*
- (d) *Subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in relation to the authorisation.*

To assist with undertaking a review under Sections 201-203 of the *Planning, Development & Infrastructure Act 2016*, the Council Assessment Panel adopted a procedure to guide the consideration of an application for such at its meeting held on 10 February 2021. A copy of that Policy is provided in **Attachment 1**.

It is noted that the attached Policy was due for review in February 2023. A review of the Council Assessment Panel Terms of Reference and Meeting Procedures has been completed. The review of the attached Policy will commence shortly.

The Panel should also be aware that the South Australian Government made changes to the *Planning, Development & Infrastructure (General) Regulations 2017* on 25 May 2023. An amended regulation was introduced which states:

- (2) *An applicant to an assessment panel for a review of a prescribed matter must be given an opportunity to provide the assessment panel with the applicant's submissions in relation to the review (and, if the assessment panel determines to hold a hearing, must be given written notice of the date of the hearing and an opportunity to appear and make submissions at the hearing in person)*

Council (together with the rest of the local government sector) has received advice in relation to the new regulation and such advice confirms that an Applicant should be provided with the right to make submissions (both written and verbal).

When the matter was previously considered at the Panel Meeting held on 15 August 2023, the Applicant's written submission was provided (and can again be seen in **Attachment 2**) and both the Applicant and Assessment Manager were provided an opportunity to make verbal submissions.

In response to the Council Assessment Panel's resolution from the meeting held on 15 August 2023, the Applicant has made a further written submission. That appears as **Attachment 9**.

BACKGROUND

As Members will recall, this matter was previously considered at the Council Assessment Panel meeting held on 15 August 2023.

At that meeting, the Panel resolved as follows:

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 to Development Application 23010962 to enable the applicant to provide information to the Panel to demonstrate that all options, such as carpark reconfiguration in addition to tree pruning, have been exhausted and proven to be ineffective in relation to retaining the tree.

CARRIED

Attachments 1 – 7 are identical to those which were before the Panel on the agenda presented at the meeting held on 15 August 2023. **Attachments 8** and **9** are additional to those previously provided and include:

- **Attachment 8** – A copy of the Minutes from the Panel Meeting held on 15 August 2023; and
- **Attachment 9** – The additional written submission from the Applicant in response to the resolution of the Panel from the meeting held on 15 August 2023.

The original report and all applicable information is provided for in **Attachment 8**. Accordingly, it won't be repeated for the purposes of this report.

A list of possible resolutions is also provided for at the end of the report to enable the Panel to either:

- Affirm the decision of the Assessment Manager;
- Vary the decision of the Assessment Manager;
- Set aside the decision of the Assessment Manager; or
- Defer consideration of the matter.

REVIEW OF ASSESSMENT MANAGER DECISION – ADDITIONAL INFORMATION

The Applicant has responded to the resolution of the Council Assessment Panel at its meeting held on 15 August 2023 with correspondence from both:

- Hilditch Lawyers; and
- MFY.

It is considered that the Applicant has adequately responded to the resolution of the Panel and has provided the requested information sought. It is not necessary for this report to summarise the information provided other than to suggest the information and arguments put forward are reasonable and considered.

The additional information that has been provided was obviously not available to the Assessment Manager at the time the decision on Development Application 23010962 was made. Following consideration of the additional information, the position of the Assessment Manager has not changed. The Assessment Manager maintains their original position that Development Application 23010962 was appropriately refused for the purposes of Planning Consent.

To assist the Panel in understanding the Assessment Manager's position, the following is provided:

1. Pruning is ineffective – There is a fundamental proposition in both the additional information and original documentation provided for the Review of the Assessment Manager's Decision that pruning of the tree (which occurred following the outcome of the most recent Environment Resources and Development Court hearing / judgement) was ineffective due to another limb failure post pruning.

It is clearly the view of both the Council's City Arborist and Consultant Arborist (Mr Selway) that such limb failures are not unexpected following pruning. Pruning activities can change the wind loading that trees are subjected to, and some limb failure can reasonably be expected.

Mr Selway has previously provided evidence that on-going pruning, maintenance and monitoring of the tree will be required to ensure that the risk of any limb failure is mitigated to a reasonable degree.

The only evidence that has been supplied to demonstrate that pruning has been ineffective is one further branch failure (supported with documented evidence from a qualified and experienced arborist), which the Council's expert advice suggests can be reasonably expected.

Based on the evidence before the Assessment Manager, it cannot reasonably be concluded that pruning of the tree has been ineffective.

2. ERD Court Judgement – There appears to be some dispute between the Applicant and the Assessment Manager with respect to the relevance of the ERD Court hearing and judgement. The Applicant asserts (in both the additional information provided and the verbal submissions made at the original hearing of the Review of the Assessment Manager Decision) that the Panel can and should have regard to the evidence provided to, and judgement of, the ERD Court in respect of this matter.

That is not, and never has been, disputed. It is appropriate for a planning authority to have regard to established case law as part of undertaking its functions.

In the report present to the Council Assessment Panel on 15 August 2023, the Assessment Manager stated:

While it could be argued that the Environment Resources and Development Court Judgement is not relevant to the matter before the Panel it is respectfully submitted that it provides useful background information for the Panel about the history of the matter and the arguments both for and against the proposed development.

However, the Panel is not constrained by, and should not be influenced by, that judgement. The Panel must consider the matter afresh having regard to the information presented and the submissions that have / will be made.

The intent of those words was to highlight that the Panel can have regard to the evidence supplied during the hearing, but it is not constrained such that it needs to make the same decision as the Court (i.e. find in favour of the Council / Assessment Manager, as the Court did previously). In other words, what is being suggested is that the Panel is open to form a

view that the tree should be removed. It does not have to arrive at the same determination as the ERD Court did.

Essentially any argument about the relevance of the ERD Court Judgement is not in dispute. It is appropriate for the Panel to have regard to it, but they are not bound by it.

3. The assessment against the Regulated and Significant Tree Overlay has not changed – The additional information does not dispute the tree is worthy of retention as per the criteria outlined in Performance Outcome 1.2 of the Regulated and Significant Tree Overlay. Nothing has altered in that regard.

The request from the Panel for additional information did not require the Applicant to submit further information around the inability of pruning to be effective, and accordingly no further evidence has been supplied which would alter the view originally formed by the Assessment Manager. The Assessment Manager maintains the view that all reasonable remedial treatments have not been ineffective.

The Panel has now been provided with the additional information it requested via resolution at the Panel Meeting held on 15 August 2023, together with the Assessment Manager's submissions in respect of the additional information.

CONCLUSION

As outlined above, it is considered that the Applicant has adequately responded to the Panel's request for additional information.

The Panel must now consider whether to affirm, vary or set aside the original decision of the Assessment Manager (or defer consideration again). Relevant options for the consideration of the Panel are outlined below.

RESOLUTION OPTIONS

Resolution to affirm the decision of the Assessment Manager

The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application 23010962 is not seriously at variance with the Planning and Design Code, but that it does not warrant Planning Consent for the following reasons:

1. *The tree displays attributes worthy of its retention in accordance with Performance Outcome 1.2 of the Regulated and Significant Tree Overlay;*
2. *The removal of the tree is not justified by any of the criteria in Performance Outcome 1.3 of the Regulated and Significant Tree Overlay.*

Resolution to vary a decision of the Assessment Manager

The Council Assessment Panel resolves to vary the decision of the Assessment Manager in relation to Development Application 23010962 by including the following reasons for refusal:

- *[insert additional / alternate reasons]*

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 23010962 and substitute the following decision:

- *Development Application 23010962 is not seriously at variance with the Planning and Design Code and Planning Consent is granted to the application subject to the following conditions and notes:*

Conditions

1. *The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).*
2. *A minimum of three (3) replacement tree(s), in accordance with the Landscape Plan prepared by oxigen (dated 19.07.22 and marked "Revision A"), shall be planted on the subject land as soon as is practical within 12 months of the date of this Approval. The replacement trees shall not be planted within 10 metres of a dwelling or in ground swimming pool and cannot be of a species identified in Regulation 3F(4)(b) of the Planning, Development and Infrastructure (General) Regulations 2017.*
3. *The Applicant shall plant trees and plants and install irrigation in accordance with the plan prepared by oxigen dated 19.07.22 and marked "Revision A" in the next planting season following the removal of the tree and thereafter shall maintain the new trees and plants and replace any diseased or dying plants, all to the reasonable satisfaction of the Assessment Manager for the City of Norwood Payneham and St Peters.*

Notes

1. *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.*
2. *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.*
3. *Consents issued for this Development Application will remain valid for the following periods of time:*
 - a. *Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;*
 - b. *Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;*
 - c. *Works must be substantially completed within 3 years of the date on which Development Approval is issued.*

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

4. *The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council pursuant to the Local Government Act 1999 prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.*
5. *The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.*

The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of any neighbours affected by new boundary development or boundary

fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.

6. *The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.*
7. *The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.*
8. *The Applicant is advised that construction noise is not allowed:*
 - a. *on any Sunday or public holiday; or*
 - b. *after 7pm or before 7am on any other day*

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 to Development Application 23010962 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)].*

Recommendations to Allow Consideration of the Matter in Confidence Following the Hearing

That pursuant to Regulation 13(2)(a)(ix) and Regulation 13(2)(b) of the Planning Development & Infrastructure (General) Regulations 2017, together with clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager, the Council Assessment Panel orders that the public, with the exception of the Council's Senior Urban Planners and Planning Assistant, be excluded from the meeting.

That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy, the discussion shall remain confidential.

CONCLUSION

As outlined above, it is considered that the Applicant has adequately responded to the Panel's request for additional information.

The Panel must now consider whether to affirm, vary or set aside the original decision of the Assessment Manager (or defer consideration again). Relevant options for the consideration of the Panel are outlined below.

*Mr Hilditch addressed the Council Assessment Panel from 8:05pm until 8:09pm
Ms Mellen addressed the Council Assessment Panel from 8:10pm until 8:12pm
Mr Brunning addressed the Council Assessment Panel from 8:16pm until 8:17pm
Dr Nicole addressed the Council Assessment Panel from 8:18pm until 8:20pm
Mr Cole answered questions from the Council Assessment Panel from 8:22 until 8:27pm
Mr Parsons addressed the Council Assessment Panel from 8:28pm until 8:32pm*

Moved by Cr Mex

Recommendations to Allow Consideration of the Matter in Confidence Following the Hearing That pursuant to Regulation 13(2)(a)(ix) and Regulation 13(2)(b) of the Planning Development & Infrastructure (General) Regulations 2017, together with clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager, the Council Assessment Panel orders that the public, with the exception of the Council's Senior Urban Planners and Planning Assistant, be excluded from the meeting.

Seconded by Ms Newman
CARRIED

Moved by Mr Bateup

Resolution to affirm the decision of the Assessment Manager
The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application 23010962 is not seriously at variance with the Planning and Design Code, but that it does not warrant Planning Consent for the following reasons:

- 1. The tree displays attributes worthy of its retention in accordance with Performance Outcome 1.2 of the Regulated and Significant Tree Overlay;*
- 2. The removal of the tree is not justified by any of the criteria in Performance Outcome 1.3 of the Regulated and Significant Tree Overlay.*

Seconded by Ms Newman
CARRIED

Moved by Ms Newman

That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy, the discussion shall remain confidential.

Seconded by Mr Bateup
CARRIED

8. ERD COURT APPEALS

Cr Mex declared conflict of interest for item 8.1 and left the meeting at 9:07pm

Moved by Mr Bateup

That pursuant to Regulation 13(2)(a)(viii) and (ix) and Regulation 13(2)(b) of the Planning, Development & Infrastructure (General) Regulations 2017, together with Clause 8.9 of the Council Assessment Panel Meeting Procedures, the Council Assessment Panel orders that the public, with the exception of Council's Manager Development Assessment, Senior Urban Planners and Planning Assistant, be excluded from the meeting.

Seconded by Ms Newman
CARRIED

8.1 CONFIDENTIAL MATTER – DEVELOPMENT NUMBER 21008794

Moved by Mr Adcock

That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 8.9 of the Council Assessment Panel Meeting Procedures, the discussion, decision and documentation shall remain confidential, other than where required to be released in the management of the Environment Resources and Development Court Appeal process, at the discretion of the Assessment Manager.

Seconded by Mr Bateup
CARRIED

Cr Mex returned to the meeting at 9:21pm

Moved by Ms Newman

That pursuant to Regulation 13(2)(a)(viii) and (ix) and Regulation 13(2)(b) of the Planning, Development & Infrastructure (General) Regulations 2017, together with Clause 8.9 of the Council Assessment Panel Meeting Procedures, the Council Assessment Panel orders that the public, with the exception of Council's Manager Development Assessment, Senior Urban Planners and Planning Assistant, be excluded from the meeting.

Seconded by Mr Adcock
CARRIED

8.2 CONFIDENTIAL MATTER – DEVELOPMENT NUMBER 23004961

Moved by Mr Adcock

That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 8.9 of the Council Assessment Panel Meeting Procedures, the discussion, decision and documentation shall remain confidential, other than where required to be released in the management of the Environment Resources and Development Court Appeal process, at the discretion of the Assessment Manager.

Seconded by Cr Mex
CARRIED

9. OTHER BUSINESS

Nil

9.1 STATE PLANNING COMMISSION CORRESPONDENCE – COUNCIL ASSESSMENT PANEL CONDUCT AND ADMINISTRATION

PURPOSE OF REPORT

The purpose of the report is to provide a copy of correspondence received from the State Planning Commission (dated 5 October 2023) regarding the conduct and administration of Council Assessment Panels / Regional Assessment Panels and their members.

BACKGROUND

The State Planning Commission (“the Commission”) is the body responsible for investigating complaints lodged against the conduct of Council Assessment Panel / Regional Assessment Panel Members, pursuant to Regulation 11 of the *Planning, Development and Infrastructure (General) Regulations 2017*. Any such complaint must be in writing, contain the particulars of the allegation(s) and be confirmed by a statutory declaration. It must also be lodged within 6 months of the date of the alleged incident.

In response to a complaint, the Commission has a number of options but essentially it can either refuse to deal with the complaint (if for example, it believes it is unjustified / vexatious), refer the matter to the Panel Member in question, investigate the matter and / or take action to remove the Member from office or take other action it sees fit.

The attached correspondence confirms the Commission received eleven (11) complaints during the 2023 calendar year (to date – as of 5 October 2023) relating to alleged breaches of the Code of Conduct. It is noted that some complaints were substantiated and sanctions / disciplinary actions were recommended to the appointing entities.

Given the activities of the Commission with respect to Panels throughout the year, the Commission thought it timely to write to the appointing authorities for Panels reminding them of the obligations applicable to Panels and their Members. The correspondence is attached.

DISCUSSION

In particular, the Commission has raised the following matters:

- Induction – Noting appointing entities should ensure that all newly appointed members are appropriately inducted prior to commencing in the role, including information regarding the Code of Conduct obligations on Members.
- Code of Conduct – All members must ensure they act in accordance with the Code of Conduct at all times. To assist in that the Commission has created the “Code of Conduct – Guidance Material”. This document is attached to this report as **Attachment 3**.
- Training – The importance of undertaking training to ensure the role of a CAP Member can be undertaken with the necessary skills and experience and the requirements for accreditation can be met.

The correspondence also notes that some specific forms of training should be considered, including training for Panel Chairs on the effective management of meetings, and training for all members on conflict-of-interest obligations.

Each Independent Member of the Norwood Payneham & St Peters Council Assessment Panel is accredited and undertakes the necessary training to maintain their accreditation. The Council has all relevant Notice of Appointment Forms on file (or in the process of being completed) and Primary and Ordinary Returns are regularly completed.

Training was arranged for the Panel in the first quarter of 2023. That training resulted in benefits for Members becoming familiar with some of the matters highlighted by the Commission – it also resulted in a revised set of Terms of Reference and Meeting Procedures which provide the Panel with greater clarity and guidance regarding its role and operations.

Regular training is likely to be beneficial for Members and will be considered by the administration on an “as needs” basis. The term of the current Members is due to expire in April 2024 and if new Members are appointed at that time, the required level of training will be arranged.

CONCLUSION

The correspondence is a timely reminder regarding the obligations that are placed upon Council Assessment Panel Members with respect to their conduct and the sensitive and critical functions carried out by Panels.

Panel Members should ensure they comply with the Code of Conduct at all times and that accreditation certificates and other important forms and requirements for appointment are completed. The administration will continue to assist wherever possible.

Pleasingly the City of Norwood Payneham & St Peters Council Assessment Panel continues to function efficiently and effectively, and the Council acknowledges and appreciates the diligence with which Members approach their roles and conduct.

COMMENTS

Nil.

ATTACHMENTS

1. SPC Correspondence
2. Code of Conduct for Assessment Panel Members
3. Code of Conduct – Guidance Material
4. Fact Sheet – Elected Members on Assessment Panels
5. Assessment Panel Member Complaint Form
6. FAQ – Assessment Panel Member Complaints

RECOMMENDATION

1. That the report be noted.

Moved by Mr Adcock

1. *That the report be noted.*

Seconded by Cr Mex
CARRIED

10. **CONFIDENTIAL REPORTS**

11. **CLOSURE**

The Acting Presiding Member declared the meeting closed at 9:44pm

Terry Mosel
PRESIDING MEMBER

Geoff Parsons
MANAGER DEVELOPMENT ASSESSMENT