

Council Assessment Panel Minutes

17 June 2024

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 Stephen Smith
Mr Mark Adcock
Mr Ros Bateup
Mr Julian Rutt
Cr Christel Mex

Staff Geoff Parsons, Manager Development Assessment & Regulatory Services
Kieran Fairbrother, 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 20 MAY 2024**

**Moved by Cr Mex and Seconded by Mr Adcock
Carried**

4. DECLARATION OF INTERESTS

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 24003919 - PROSKE ON BEHALF OF G&A
– 18 TRINITY STREET, COLLEGE PARK

DEVELOPMENT NO.:	24003919
APPLICANT:	Proske on behalf of G&A
ADDRESS:	18 TRINITY ST COLLEGE PARK SA 5069
NATURE OF DEVELOPMENT:	Single storey alterations and additions to existing dwelling (Local Heritage Place) including the construction of a basement (with associated earthworks), a swimming pool and new side and rear boundary fencing
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) • Historic Area • Hazards (Flooding - General) • Local Heritage Place • 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 Site Area (Minimum site area for a detached dwelling is 900 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels) • Site Coverage (Maximum site coverage is 40 per cent)
LODGEMENT DATE:	29 Feb 2024
RELEVANT AUTHORITY:	Assessment panel at City of Norwood Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2024.3 15/02/2024
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Kieran Fairbrother, Senior Urban Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Council Heritage Advisor City Arborist Consultant Hydrological Engineer

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 5:	Representations
ATTACHMENT 1:	Application Documents	ATTACHMENT 6:	Response to Representations
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ATTACHMENT 3:	Zoning & Overlay Maps	ATTACHMENT 8:	Public Notification Documents
ATTACHMENT 4:	Representation Map		

BACKGROUND:

By way of development application 22020951, the applicant has development authorisation for alterations and additions to the dwelling, including the construction of the freestanding fireplace and the front fence as shown on the plans in **Attachment 1**. Some of the representations make reference to these structures and so it is important to highlight that these do not form part of the subject application, but in fact are already approved structures.

DETAILED DESCRIPTION OF PROPOSAL:

This proposal involves:

- The demolition of side and rear boundary fencing and the existing garage/outbuilding;
- The construction of a large single storey dwelling addition that includes a double garage, linked to the existing dwelling by a glazed walkway;
- The construction of a large basement under the dwelling addition that extends a length of 33.7m 600mm from the southern side boundary;
- The construction of a swimming pool and associated outbuilding with a sauna and toilet;
- The construction of new boundary fencing along the rear and side boundaries; and
- Associated earthworks and landscaping

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 18 TRINITY ST COLLEGE PARK SA 5069

Title ref.: CT
5282/931

Plan Parcel: F136330
AL79

Council: THE CITY OF NORWOOD PAYNEHAM AND
ST PETERS

Shape:	regular
Frontage width:	approx. 28.8 metres
Area:	approx. 1200m ²
Topography:	relatively flat, with a slight gradient from east to west
Existing Structures:	a large single-storey dwelling (Local Heritage Place) and an outbuilding at the rear of the site
Existing Vegetation:	very little

Locality

The locality chosen for this assessment is shown in **Attachment 2** and includes all of Trinity Street and part of the grounds of St Peter's College. Trinity Street is characterised by low density living in the form of predominantly single storey detached dwellings on large, spacious allotments with generous gardens. This, combined with the wide, tree-lined street provides a high level of amenity to this locality.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
 - Dwelling addition: Code Assessed - Performance Assessed
 - Building Alterations: Code Assessed - Performance Assessed
 - Fence: Code Assessed - Performance Assessed
 - Demolition: Code Assessed - Performance Assessed

Swimming pool or spa pool and associated swimming pool safety features: Code Assessed - Performance Assessed
Outbuilding: Code Assessed – Performance Assessed

- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
The proposal involves the construction of boundary walls that exceed 8m in length and 3.2m in height
- **LIST OF REPRESENTATIONS**

First Name	Family Name	Address	Position	Wishes to be heard?
Phillip	Brunning	On behalf of the occupiers of 16 Trinity Street, College Park	Opposed	Yes
Nick	LeMessurier	PO Box 2643 KENT TOWN DC 5071	Opposed	No
Dianne	Craddock	13 Trinity Street COLLEGE PARK 5069	Opposed	No
Leanne	Dibbens	14 Trinity Street COLLEGE PARK 5069	Opposed	Yes
Anna	van den Broek	9 Trinity Street COLLEGE PARK 5069	Support, with concerns	Yes
James	Cudmore	15 Trinity Street COLLEGE PARK 5069	Opposed	Yes

- **SUMMARY**

The concerns raised by the six (6) representors can be generally summarised as follows:

- Whether the proposed additions can be considered additions or as a second dwelling on the land;
- The potential damage for the proposed development to constitute a tree-damaging activity with respect to the regulated street tree adjacent the front boundary of the subject land;
- The proposed building footprint being too large and leaving little room for landscaping;
- The proposed building footprint and setbacks are inconsistent with the valued streetscape characteristics of the historic area;
- The proposed boundary development will negatively impact neighbouring visual outlook and access to sunlight and is at odds with the quantitative measures in the DPFs of the Established Neighbourhood Zone;
- The loss of vegetation on neighbouring land as a consequence of the boundary development proposed;
- Concerns regarding structural instability to neighbouring land resulting from the proposed basement excavation;
- Concerns about excavating into the water table;
- The garage being too dominant in the streetscape and dominating the Local Heritage Place;
- The picket front fence shown on the renders as being out of character (*note: the fence does not form part of this application*);
- The basement being out of character with the street.

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

- David Brown, Heritage Advisor
 - Council’s Heritage Advisor is supportive of the proposal.

- Matthew Cole, City Arborist
 - Council’s City Arborist is supportive of the proposal, subject to appropriate conditions that mitigate any potential adverse effects being caused to the regulated street tree.

- Tonkin, Hydrological Engineer (external consultant engaged by the Council)
 - The consultant at Tonkin is supportive of the proposal from a flooding and stormwater perspective.

PLANNING ASSESSMENT

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

Land Use

Several representors, in their submissions, raised the question of whether this proposal can accurately be described as involving dwelling additions. Conversely, the representors submitted that the development involves the construction of ‘ancillary accommodation’ rather than a dwelling addition by virtue of the addition containing all necessary elements to constitute ‘ancillary accommodation’, or alternatively that it was a second dwelling on the land. One representor suggested the development may constitute an outbuilding, but definitionally that cannot be the case since an outbuilding is ‘non-habitable’.

Council administration have turned their mind to this question, and specifically to whether the proposal is for a second dwelling on the land and therefore whether it also involves the conversion of the existing detached dwelling into a residential flat building containing two dwellings.

By way of background, the following definitions are relevant:

Ancillary Accommodation:

Means accommodation that:

- (a) *Is located on the same allotment as an existing dwelling; and*
- (b) *Can be (but need not be) a self-contained residence; and*
- (c) *Contains no more than 2 bedrooms or rooms or areas capable of being used as a bedroom;*
and
- (d) *Is subordinate to and does not have separate connections to utilities and services... to those servicing the existing dwelling.*

Dwelling:

Means a building or part of a building used a self-contained residence.

Detached dwelling:

Means a detached building comprising 1 dwelling on its own site and has a frontage to a public road...

Residential flat building:

Means a single building in which there are 2 or more dwellings.

The proposed development cannot be ancillary accommodation because it includes more than “2 bedrooms or rooms or areas capable of being used as a bedroom”. Thus, the question is whether the proposed development constitutes a dwelling in its own right and therefore involves the conversion of the existing detached dwelling into a residential flat building, or whether the proposed development is simply additions to the existing detached dwelling as described by the applicant.

Relevantly, the proposed development includes all things necessary to be a self-contained residence. The building has: 2 bedrooms (plus other rooms capable of being used as bedrooms), an open-plan living area that includes a lounge room, a kitchen and a dining area, a double garage, a laundry, a pantry, and an outdoor alfresco. The existing dwelling has 3 bedrooms, each with their own bathroom, an open-plan living area including a lounge room and kitchen/dining area, a study, a ‘music room’, but no separate laundry. Notably, the site is served by two vehicle crossovers also, so it is reasonable to view the proposed development as involving the construction of a second dwelling on the land. However, it is the applicant’s submission that this development be considered and assessed as, amongst other things, additions to an existing detached dwelling, and not as a second dwelling on the allotment.

In determining the nature of this development, it is important to consider case law on this point. Wells J in *Prestige Car Sales Ltd v Town of Walkerville and Shuttleworth* (1979) 20 SASR 514 said at [520], in respect of the use of land:

the object of the survey should be to decide whether, having regard to the purpose of the former use of the subject building, and to the purpose of the use that would be made of it after execution of the proposals, there would, as a matter of fact and degree, be a change in the essential nature of the existing use if consent were granted.... No one factor is necessarily decisive. There should be no resort to a convenient, but undiscriminating and over simplified, formulae.

The ERD Court in *Stewart v McQuade* [1997] EDLR 267 held, at [11], that whilst the form of a building may considerably influence its use, form cannot be decisive in determining use. For example, a building may look like a dwelling but be used as an office.

This case concerned alterations to an existing outbuilding to include a stove and sink, which the Council submitted amounted to a change in use to a dwelling. However, there was an existing and valid condition on the use of the existing outbuilding which prevented it being used as a separate place of habitation (e.g. a dwelling), which would still apply after the installation of the stove and sink. In its decision, the Court held that while this building contains all things necessary to be considered a self-contained residence, it remained an outbuilding because existing and continuing planning conditions prevented otherwise.

In *Cairo v The Corporation of the City of Norwood Payneham & Anor* [2018] SAERDC 11, the Court considered whether a room that appeared as a garage (with a roller door) was a garage by matter of fact or law, despite the approved plans describing it as a “store/games room”. The Court held, at [58]:

... I am not persuaded that these rooms are in fact ‘garages’. The rooms are approved as ‘store/games rooms’. There is nothing inherently deficient with respect to the dimensions or functionality of these rooms which dictates that they cannot be utilised for and function as a store/games rooms. It does not matter, in my opinion, whether they look like garages or can, in certain circumstances, function like garages. Importantly, the approval which the Council has granted contain an express condition precluding the rooms from being used as garages.

With respect to the subject proposal, the form of the proposed development lends itself to being viewed as constituting a second dwelling on the land and therefore involving a change of use of the existing detached dwelling to a residential flat building. The fact that there is no separate private open space for what could be considered to be two separate dwellings does not derogate from this perception, nor does the absence of a second, separate covered car parking structure.

Nonetheless, the application was described by the applicant as being for additions to the existing dwelling, and while it is up to the relevant authority to determine the nature of the development, some weight must be placed on that sought by the applicant. In this case there is no intention by the landowner/applicant to seek to have the proposed development separately occupied by lease or other agreement, nor has the landowner/applicant applied for the division of the land either. Further, there is nothing in the definition of 'dwelling' or 'self-contained residence' that prevents such from having more than one kitchen or more than one living area or more than a certain number of bedrooms. Whether or not the multiplicity of such constitutes a different use of the land will be a matter of fact and degree.

With respect to this development, consistent with the decision in *Prestige Car Sales*, the use of the land, and the whole building upon completion of the development will, *prima facie*, remain as a detached dwelling. Accordingly, the proposed development is, among other things, additions to the existing dwelling and not the construction of a second dwelling.

If the Panel is inclined to grant consent to this application (after consideration of all other pertinent matters), it may wish to impose a condition restricting the separate lease or occupation of these additions. Recent changes to the *State Planning Commission Practice Direction 12 (Conditions) 2020* prohibits the imposition of a condition that prevents the leasing, renting or occupation of ancillary accommodation (my emphasis), but not for detached dwellings, or part thereof. Accordingly, Council administration is of the view that a condition to the following effect would be valid and enforceable, if the Panel felt so inclined to impose it:

"The dwelling additions herein approved shall only be used in conjunction with the existing dwelling and by persons resident therein and shall not be separately occupied, rented or leased."

Demolition

Performance Outcome 7.3 of the Historic Area Overlay states:

"Buildings or elements of buildings that do not conform with the values described in the Historic Area Statement may be demolished."

Performance 6.2 of the Local Heritage Place Overlay states:

"The demolition, destruction or removal of a building, portion of a building or other features is appropriate where it does not contribute the heritage values of the Local Heritage Place."

The proposal involves the demolition of the existing garage/outbuilding and boundary fencing. Neither of these buildings contribute to the heritage values of the Local Heritage Place or conform with the values described in the Historic Area Statement and therefore may be demolished.

Building Height

Performance Outcome 4.1 of the Established Neighbourhood Zone states:

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

The corresponding Designated Performance Feature includes a Technical and Numeric Variation of 2 levels for maximum building height.

Performance Outcome 1.1 of the Historic Area Overlay states:

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

In respect of building height, the Historic Area Statement says: *"single storey, two storey in some locations"*.

Performance Outcome 2.1 of the Historic Area Overlay states:

“The form and scale of new buildings and structures that are visible from the public realm are consistent with the prevailing historic characteristics of the historic area.”

Performance Outcome 2.2 of the Historic Area Overlay states:

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

Performance Outcome 1.2 of the Local Heritage Place Overlay states:

“Massing, scale and siting of development maintains the heritage values of the Local Heritage Place.”

The existing dwelling is single storey in height with an unusual front elevation comprising asymmetrical gables and steeply pitched roofs (50°). The existing dwelling is approximately 6.4m tall to the highest ridge, with external street-facing wall heights of approximately 3.5m.

The proposed garage has 3.5m external wall heights, a 40° pitched gable roof and measures 6m tall to the ridge. The gable structure is sympathetic to the gable roofs of the Local Heritage Place and with slightly shorter wall and roof heights is a contextually appropriate response.

The remainder of the additions are flat-roofed and have varying wall heights of between 2.25m and 4.8m. The taller of these walls are set well back into the property such that they do not diminish the heritage values of the Local Heritage Place, and the balance of the additions are consistent with the building and wall heights in this historic area per the above Performance Outcomes.

Site Coverage, Setbacks, and Impacts on Neighbouring Properties

Performance Outcome 3.1 of the Established Neighbourhood Zone states:

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

The corresponding Designate Performance Feature suggests a maximum of 40% site coverage might be one way to satisfy the Performance Outcome.

Performance Outcome 21.1 of the Design in Urban Areas module states:

“Dwellings are provided with suitable sized areas of usable private open space to meet the needs of occupants.”

This development proposes a site coverage of approximately 51.7%, above the 40% suggested by DPF 3.1 of the Zone. Notwithstanding, as will be explained in following sections, the proposed footprint does not detract from the streetscape appearance of the site nor the opportunity to provide meaningful soft landscaping and private open space. In fact, approximately 310m² of private open space and 334m² of soft landscaping will be provided for this site upon completion of this development. The consequent visual impact will be discussed further below, but the footprint of the building is not considered to be at variance with PO 3.1 of the Zone, and PO 21.1 of the Design in Urban Areas module is equally considered to be satisfied.

Performance Outcome 7.1 of the Established Neighbourhood Zone states:

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

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.”*

Performance Outcome 9.1 of the Established Neighbourhood Zone states:

“Buildings are set back from rear 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*
- (c) *Private open space*
- (d) *Space for landscaping and vegetation.”*

Performance Outcome 2.4 of the Historic Area Overlay states:

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

Performance Outcome 20.3 of the Design in Urban Areas module states:

“The visual mass of larger buildings is reduced when viewed from adjoining allotments or public streets.”

The proposed dwelling additions are predominantly contained to the south of the subject land and so it is the neighbours to the south and the west that will be most impacted by this development.

With respect to the rear boundary, the proposal involves a boundary wall measuring 4.7m in height and 7m in length abutting a smaller wall of 3.2m tall and 900mm wide. These walls are located adjacent the tennis court on the neighbouring allotment. These walls do not unreasonably impact the neighbour’s solar access or ventilation, nor do they produce an unreasonable visual outlook given their distance from the main areas of private open space and habitable windows on the neighbouring land.

As discussed in a later section of this report, this zero rear boundary setback does not preclude sufficient private open space and soft landscaping being provided on the subject land and accordingly the development is considered to sufficiently align with Performance Outcome 9.1 of the Zone. Further, the minimal setback to the rear boundary is not inconsistent with the pattern of development in this historic area per Performance Outcome 2.4 of the Historic Area Overlay.

With respect to the southern side boundary, the proposal includes:

- A 3.34m tall and 6.5m wide boundary wall for the garage;
- A 2.25m tall and 2.8m wide boundary wall adjacent the lightwell for the basement;
- A 3.69m tall and 13.5m wide boundary wall for the balance of the additions; and
- The balance of the additions being set back between 840mm and 1.75m.

The Site Plan on page 2 of **Attachment 1** demonstrates the relationship between these walls and the neighbouring site and building. The garage wall abuts the driveway of the neighbouring dwelling and consequently maintains approximately 4.2m of separation from the neighbouring dwelling. As such, there is no direct visual outlook onto this wall from the neighbouring dwelling except possibly from the one window that is within the front section of the dwelling. In this context, the garage wall satisfies Performance Outcome 7.1 of the Zone.

As for the remaining 16.3m length of boundary walling, this similarly abuts the neighbouring driveway as well as the neighbouring carport and approximately 3.8m of the rear yard behind the carport. Although the wall is taller and longer than typically expected of boundary development, it is conveniently sited adjacent to the neighbour’s driveway and carport, and conveniently away from most of their private open space. While the neighbour does have two habitable room windows facing this boundary, according to their representation,

the impact of this wall on their outlook and solar access is considered acceptable because this side boundary is currently heavily vegetated by tall trees/shrubs that would limit solar access into these windows to an extent and the carport roof similarly limits solar access and outlook. The small section of the wall that extends into the rear yard area of the neighbouring property is not considered to pose an unreasonable outlook to the neighbour nor detrimentally affect the amenity of their private open space. Notably, this proposal is afforded the benefit of abutting the neighbour's driveway and carport rather than proximate habitable room windows and/or private open space – if the latter was the case then the extent of proposed boundary development may be problematic. Notwithstanding, the proposal is considered to sufficiently satisfy the abovementioned Performance Outcomes in respect of the proposed boundary development.

The outbuilding located in the north corner of the site involves a boundary wall measuring 2.75m in height and 7.3m in width. This is unlikely to produce any unreasonable visual impact to the neighbour nor will it inhibit solar access due to its siting south of the neighbouring dwelling. Accordingly, this wall is acceptable.

Heritage, Design & Appearance

Performance Outcome 4.2 of the Established Neighbourhood Zone states:

“Additions and alterations do not adversely impact on the streetscape character.”

Performance Outcome 10.2 of the Established Neighbourhood Zone states:

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

Performance Outcome 10.2 of the Established Neighbourhood Zone states:

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

Performance Outcome 1.1 of the Local Heritage Place Overlay states:

“The form of new buildings and structures maintain the heritage values of the Local Heritage Place.”

Performance Outcome 1.2 of the Local Heritage Place Overlay states:

“Massing, scale and siting of development maintains the heritage values of the Local Heritage Place.”

Performance Outcome 1.3 of the Local Heritage Place Overlay states:

“Design and architectural detailing (including but not limited to roof pitch and form, openings, chimneys and verandahs) maintains the heritage values of the Local Heritage Place.”

Performance Outcome 1.5 of the Local Heritage Place Overlay states:

“Materials and colours are either consistent with or complement the heritage values of the Local Heritage Place.”

Performance Outcome 2.1 of the Local Heritage Place Overlay states:

“Alterations and additions complement the subject building and are site to be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the Local Heritage Place or its setting.”

Although the Planning & Design Code provides no context in this respect, it is the view of the administration that more weight should be placed on an assessment against the provisions of the Local Heritage Place Overlay than the Historic Area Overlay, which is why the Performance Outcomes of the former Overlay have been listed above and not those of the latter Overlay (notwithstanding they take similar forms anyway).

This application was referred to the Council's Heritage Advisor for comments on the design approach taken by the applicant, in the context of the Local Heritage Place and the historic area more generally. Council's

Heritage Advisor, like Council administration, is supportive of this aspect of the proposal for the following reasons.

The garage is the only element of this proposal that will be readily visible from the street. The garage will be set back approximately 4.7m behind the building line of the Local Heritage Place, being the southern projecting gable-ended wall, with 3m of separation between the two buildings. Although standing at 6m tall to the ridge, the garage has been designed sympathetic to the Local Heritage Place with a similar gable roof and the use of pale stone cladding. The timber-clad tilt up door is not a traditional material or element but is not considered to be detrimental to the Local Heritage Place or the streetscape. Accordingly, the design and appearance of the garage is considered acceptable in the context of the Local Heritage Place and is not at odds with the abovementioned Performance Outcomes.

The balance of the additions are sufficiently separated from the Local Heritage Place to not be considered obtrusive or dominant over the Local Heritage Place, aided further by the fact that the overall height of the additions is lower than that of the existing dwelling. Aside from the garage, the additions maintain a contemporary flat roof design, and will be finished in a light render colour and shale grey roofing. This provides clear visual separation between 'old' and 'new' in a manner complementary to the Local Heritage Place and without diminishing the heritage values of the Place, in accordance with the above Performance Outcomes.

Overshadowing

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

"Overshadowing of habitable room windows of adjacent residential land uses in a neighbourhood-type zone is minimised to maintain access to direct winter sunlight."

The corresponding Designated Performance Feature suggests that one possible way of satisfying this Performance Outcome might be:

"North-facing windows of habitable rooms of adjacent residential land uses in neighbourhood-type zone receives at least 3 hours of direct sunlight between 9:00am and 3:00pm on 21 June."

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

"Overshadowing of the primary area of private open space of adjacent residential land uses in a neighbourhood-type zone is minimised to maintain access to direct winter sunlight."

The corresponding Designated Performance Feature suggests that one possible way of satisfying this Performance Outcome might be:

"Development maintains 2 hours of direct sunlight between 9:00am and 3:00pm on 21 June to adjacent residential land uses in a neighbourhood-type zone:

(a) for ground level private open space, the smaller of the following:

(i) half the existing ground level open space, or

(ii) 35m² of the existing ground level open space (with at least one of the area's dimensions measuring 2.5m)"

Overshadowing diagrams provided by the applicant (**Attachment 1**) show both the existing overshadowing conditions during the winter solstice (21 June) and the resultant overshadowing conditions following completion of the proposed development. These diagrams demonstrate that during the winter solstice, more than half of the neighbouring private open space will retain direct sunlight for at least 3 hours between 9:00am and 3:00pm, consistent with PO/DPF 3.2 above.

With respect to the north-facing windows of the neighbouring dwelling, the shadow diagrams are of limited assistance as they only show the horizontal shadowing onto this property, and not shadowing along a vertical plane. Accordingly, it is difficult to determine whether the proposed overshadowing is any worse than the existing overshadowing. However, a comparison between the horizontal depth of the shadow cast pre-development versus post-development shows not significant difference between the two and therefore the administration is satisfied that the proposed development does not result in an unreasonable extent of overshadowing in accordance with PO 3.1 above.

Access and Parking

Access will be obtained via the existing vehicle crossover.

Performance Outcome 5.1 of the Transport, Access and Parking module states:

“Sufficient on-site vehicle parking...is provided to meet the needs of the development or land use having regard to [a variety of] factors that may support a reduced on-site rate...”

Table 1 of this module, which sets the standard approach to car parking provisions, states that a detached dwelling with 2 or more bedrooms should provide 2 on-site car parking spaces, 1 of which must be covered. This development provides space for 2 vehicles within the double garage, while also leaving space for an additional 2 vehicles to be parked, 1 on the driveway in front of the garage and 1 on the driveway adjacent the northern boundary of the site. Thus, the development provides sufficient on-site parking in accordance with PO 5.1 above.

Landscaping and Regulated Tree Impacts

Performance Outcome 22.1 of the Design in Urban Areas module states:

“Soft landscaping is incorporated into development to:
(a) Minimise heat absorption and reflection
(b) Contribute shade and shelter
(c) Provide for stormwater infiltration and biodiversity
(d) Enhance the appearance of land and streetscapes.”

The corresponding Designated Performance Feature suggests that 25% of the total site should be comprised of soft landscaping and at least 30% of the front setback area should be the same.

Performance Outcome 6.2 of the Historic Area Overlay states:

“Development maintains the valued landscape patterns and characteristics that contribute to the historic area, except where they compromise safety, create nuisance, or impact adversely on building or infrastructure.”

The Historic Area Statement references *“open landscape character to front garden, which enhances dwelling and streetscape quality.”*

The proposal includes a total of 334m² of soft landscaping, which equates to 28.6% of the total site, and includes 57% of the front setback area. The landscaping plan provided with the application shows meaningful landscaping being implemented across the whole of the site, including numerous trees, shrubs and hedges. The existing dwelling is constructed closer to the primary street boundary than other dwellings along the street, and so the opportunity to provide the same extent of expansive front garden landscaping on this site is lesser than others. Notwithstanding, the proposed areas of landscaping and the proposed plantings therein are sufficient to satisfy the abovementioned Performance Outcomes.

Concerns were raised by several representors that the proposed development, and the garage in particular, may cause damage to the regulated street tree in front of this site. Council's Arborist has visited the site to determine whether the proposed garage will have any effect on this tree. Per the Arborist's assessment (see **Attachment 7**), the tree has an estimated Tree Protection Zone of 10.44m and the garage is proposed to be located just on the edge of this TPZ. Council's Arborist is of the opinion that the proposed development will not adversely affect the health or structure of this tree, and more specifically that the construction of the garage is not of concern. The Arborist did opine, however, that the driveway should be constructed of permeable paving to allow continued stormwater infiltration into the root zone of this tree, to best ensure its ongoing health, and a condition to this effect has been recommended if the Panel chooses to grant planning consent to this proposal.

Basement

Representor 1 raised concerns regarding the basement excavation and the likely loss of vegetation along the shared boundary between 16 and 18 Trinity Street as well as the potential of this excavation and consequent construction to affect the soil moisture profile and therefore affect the structural stability of neighbouring land. The vegetation that may be lost is not comprised of any regulated or significant trees and so, as regrettable as their loss may be, do not require consideration from a planning perspective (that is not to say however, that there are not considerations from a civil perspective between the two parties). Similarly, any structural or geotechnical assessment required for the excavation of the basement is an engineering consideration to be undertaken during building consent, not planning consent. Accordingly, as valid as the representor's concerns are, they are not planning considerations.

Consideration of 'Seriously at Variance'

Having considered the proposal against the relevant provisions of the Planning & Design Code (version 2024.3, 15.02.2024), the proposal is not considered to be seriously at variance with the provisions of the Planning & Design Code for the following reasons:

- The proposal involves additions to an existing detached dwelling, a land use envisaged within the Established Neighbourhood Zone per DO1 and PO 1.1;
- The additions are single storey in height, consistent with the surrounding pattern of development and the associated Local Heritage Place;
- The additions do not unreasonably impact streetscape character, or the setting of the associated Local Heritage Place per PO 2.1 of the LHP Overlay; and
- The site maintains sufficient private open space and soft landscaping provision in accordance with POs 21.1 and 22.1 of the Design in Urban Areas module respectively.

CONCLUSION

The proposed development is a well-conceived, sympathetic addition to the existing Local Heritage Place. The garage will not be a dominant feature in the streetscape and will not impact the setting of the Local Heritage Place. The additions have been sympathetically designed to respond to the existing dwelling, and they warrant support in this respect. Although extensive, the overall site coverage and extent of boundary development is higher than might normally be anticipated or permissible, but in the context of this site and the siting of buildings and private open space on neighbouring allotments, is acceptable. Sufficient private open space is maintained for the occupants of the dwelling and ample room remains for meaningful landscaping to contribute to both streetscape character and the environmental performance of the site.

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 24003919, by Proske on behalf of G&A is granted Planning Consent subject to the following conditions:

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

The new driveway for the garage shall be constructed of permeable pavers. Details of such pavers shall be provided with the documentation for Building Consent to the reasonable satisfaction of the Assessment Manager.

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 next available planting season after the occupation of the premises to the reasonable satisfaction of the Assessment Manager and such plants, as well as any existing plants which are shown to be retained, 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 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.

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), or works that require the closure of the footpath and / or road to undertake works on the development site, 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 Brunning addressed the Council Assessment Panel from 7:07pm until 7:13pm

Professor Dibbens addressed the Council Assessment Panel from 7:14pm until 7:18pm

Ms van den Broek addressed the Council Assessment Panel from 7:18pm until 7:23pm

Mr Cudmore addressed the Council Assessment Panel from 7:26pm 7:33pm

Mr King from URPS addressed the Council Assessment Panel from 7:34pm until 7:42pm

Ms Crowden from Proske answered questions from the Council Assessment Panel from 7:45pm until 7:51pm

Moved by Mr Rutt

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 24003919, by Proske on behalf of G&A is granted Planning Consent subject to the following conditions:*

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

The new driveway for the garage shall be constructed of permeable pavers. Details of such pavers shall be provided with the documentation for Building Consent to the reasonable satisfaction of the Assessment Manager.

Condition 3

All areas nominated as landscaping or garden areas on the approved plans shall be planted with a suitable mix and density of advanced trees, shrubs and groundcovers within the next available planting season after the occupation of the premises to the reasonable satisfaction of the Assessment Manager and such plants, as well as any existing plants which are shown to be retained, 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 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

The dwelling additions herein approved shall only be used in conjunction with the existing dwelling and by persons resident therein and shall not be separately occupied, rented or leased.

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), or works that require the closure of the footpath and / or road to undertake works on the development site, 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 Mr Bateup
CARRIED**

**5.2 DEVELOPMENT NUMBER 24011283 – AUSTRALIAN VENUE COMPANY C/- URPS PTY LTD
– 319 – 327 PAYNEHAM ROAD ROYSTON PARK**

DEVELOPMENT NO.:	24011283
APPLICANT:	Australian Venue Company (AVC), c/- URPS Pty Ltd
ADDRESS:	319-327 PAYNEHAM RD ROYSTON PARK SA 5070
NATURE OF DEVELOPMENT:	Variation to Application ID 22042866 to: - Relocate the 'children's play area' from the northern beer garden to the southern beer garden - Install 3 internal walls within the proposed southern beer garden - Update condition 3.7 of the planning consent to accurately reflect the new location of the 'children's play area'
ZONING INFORMATION:	Zones: • General Neighbourhood • Suburban Business Overlays: • Airport Building Heights (Regulated) • Affordable Housing • Heritage Adjacency • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Transport Routes • Urban Tree Canopy Technical Numeric Variations (TNVs): • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	30 Apr 2024
RELEVANT AUTHORITY:	Assessment panel at City of Norwood Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2024.7 18/04/2024
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	No
RECOMMENDING OFFICER:	Kieran Fairbrother, Senior Urban Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 3:	Zoning & Locality Map
ATTACHMENT 1:	Application Documents	ATTACHMENT 4:	Approval Documents DA 22042866
ATTACHMENT 2:	Subject Land Map		

BACKGROUND:

By way of development application ID 22042866, the applicant obtained planning consent for “additions and alterations to existing hotel comprising partial demolition, the construction of two beer gardens, the removal of 10 car parking spaces and the construction of illuminated signage”.

This development application was originally refused by the Council Assessment Panel in July 2023 for the following reasons:

1. The proposed development does not satisfy Performance Outcome 1.3 and 1.4 of the General Neighbourhood Zone; and
2. The proposed development does not satisfy Performance Outcomes 1.2 and 4.5 of the Interface Between Land Uses module.

In essence, the Panel was of the view that the then-proposed development would detriment existing residential amenity through noise emissions from the beer gardens and kids play area.

The applicant appealed this decision through the Environment, Resources and Development Court. A compromise proposal was then put to the Panel in September 2023 which included:

- 2.1m high fencing along the southwest boundary (to mitigate noise impacts to those adjoining dwellings);
- Full enclosure of the children’s play area in the northern beer garden to reduce noise emissions;
- A reduction in capacity of the northern beer garden from 151 persons to 130 persons;
- The installation of an audio noise limiting device in both beer gardens to ensure continued compliance with the relevant noise criteria; and
- The provision of a Hotel Management Plan.

This compromise proposal was accepted by the Panel and consequently endorsed and granted planning consent by the ERD Court. The documents approved by the ERD Court are contained in **Attachment 4**, along with a copy of the acoustic report that accompanied those plans.

This variation now seeks to relocate the children’s play area from the northern beer garden to the southern beer garden. Because the application does not involve a change of use and the “building work” involved is internal building work (which is Accepted development), the proposal does not involve “development” that requires planning consent, per the definition in section 3(1) of the *Planning, Development and Infrastructure Act 2016*. Therefore, this application does not require public notification for the purposes of section 107(3) of the Act. However, as the original relevant authority was the Council Assessment Panel (CAP), they must remain the relevant authority for this variation per section 128(2)(b) of the Act; hence why this Application is being presented to the CAP.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 319-327 PAYNEHAM RD ROYSTON PARK SA 5070

Title ref.: CT 6127/587	Plan Parcel: F103917 AL3	Council: THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Location reference: 319-327 PAYNEHAM RD ROYSTON PARK SA 5070

Title ref.: CT 6127/586	Plan Parcel: F103920 AL6	Council: THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Location reference: 319-327 PAYNEHAM RD ROYSTON PARK SA 5070

Title ref.: CT 6127/589	Plan Parcel: F125980 AL1	Council: THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Location reference: 319-327 PAYNEHAM RD ROYSTON PARK SA 5070

Title ref.: CT 6286/541 **Plan Parcel:** F257313 AL50 **Council:** THE CITY OF NORWOOD PAYNEHAM AND ST PETERS

Location reference: 319-327 PAYNEHAM RD ROYSTON PARK SA 5070

Title ref.: CT 6192/816 **Plan Parcel:** F3832 AL81 **Council:** THE CITY OF NORWOOD PAYNEHAM AND ST PETERS

Shape:	irregular
Frontage width:	approx. 101.3 metres
Depth:	varying between 42.5 metres and 95.4 metres
Area:	approx. 7884m ²
Topography:	relatively flat
Existing Structures:	single-storey hotel together with attached drive-through bottle shop (with a total floor area of approx. 1620m ²), freestanding advertisements, bitumen car park, perimeter sheet metal fencing
Existing Vegetation:	low-level vegetation across the site's frontage and a number of large (including regulated) trees around the site and throughout the car parking area

Locality

The locality considered for the purposes of this assessment is depicted in **Attachment 3**. It can be described particularly as the area bound by Battams Road to the north, First Avenue to the west, Salisbury Avenue to the south, and extending approximately 50m east of the subject land.

This locality can be divided into two distinct areas of character. The first, Payneham Road, is characterised by a mix of land uses and building types. More specifically, the eastern side of Payneham Road contains a mix of single- and two-storey commercial buildings comprising a mixture of uses including offices, consulting rooms and shops. Behind (east of) these uses are low-to-medium density housing. Similarly, the western side of Payneham Road contains the subject tavern, a two-storey office building, consulting rooms, a shop and some single-storey dwellings in the form of residential flat buildings. The second area of character within this locality is to the north and west of the subject land along First Avenue and Battams Road, which is comprised solely of low-density detached dwellings, most of which are historic dwellings identified as Representative Buildings.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Other - Commercial/Industrial - Variation: Code Assessed - Performance Assessed
Building Alterations: Accepted
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed

- **REASON**
P&D Code

AGENCY REFERRALS

None required.

INTERNAL REFERRALS

None required.

PLANNING ASSESSMENT

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

Pursuant to section 128(2)(b) of the Act, this assessment is necessarily limited to the extent of the proposed variation and does not provide consideration for elements or aspects of the development that are not proposed to be amended (for example, land use, traffic and parking impacts, soft landscaping, etc).

Setbacks, Design & Appearance

The proposed variation does not include any changes to the external appearance of the building and/or its materiality. Specifically, the northern beer garden will retain the solid roof over the corner portion that included the children's play area, as well as the floor-to-ceiling acoustic glazing around this corner. The southern beer garden was already roofed, which will remain so, and the external acoustic glazing remains per the original development application. Thus, the only building changes involved in this proposal is the relocation of the three walls that internally surround the children's play area from the northern beer garden to the southern beer garden.

Noise Emissions

Thus, the only planning consideration in respect of this variation proposal is any consequent changes to noise emissions as a result of the relocation of the children's play area.

Performance Outcome 1.4 of the General Neighbourhood Zone states:

"Commercial activities improve community access to services are of a scale and type to maintain residential amenity."

Performance Outcome 1.2 of Interface Between Land Uses module 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."

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

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

Performance Outcome 4.5 of the Interface Between Land Uses module states:

"Outdoor areas associated with licensed premises (such as beer gardens or dining areas) are designed and/or sited to not cause unreasonable noise impact on existing adjacent sensitive receivers (or lawfully approved sensitive receivers)."

This variation does not seek to amend the hours of operation or patronage limits of the two respective beer gardens/outdoor dining areas.

The applicant once again engaged Sonus Pty Ltd to undertake acoustic modelling of the development following relocation of the children's play area to the southern beer garden, to predict the consequent noise levels emitted for this development. As demonstrated by their report in **Attachment 1**, the predicted noise levels for the whole development remain unchanged as a result of this variation.

Council administration did not consider it necessary to engage their own acoustic engineer to undertake their own modelling because the external building, acoustic protection, hours of operation and patronage are not changing. It was therefore anticipated that the modelling would likely produce the same results. Because the previous modelling undertaken by Sonus was accepted by the Panel and the ERD Court as part of the compromise proposal, those results should be relied upon. Thus, the new modelling undertaken by Sonus that consider this variation can equally be relied upon.

With there being no change in the predicted noise levels for the development as a result of this variation, the abovementioned Performance Outcomes are considered satisfied.

Consideration of 'Seriously at Variance'

Having considered the proposal against the relevant provisions of the Planning & Design Code (version 2024.3, dated 25/02/2024), the proposal is not considered to be seriously at variance with the provisions of the Planning & Design Code for the following reasons:

- The variations do not change the use of the land;
- The variations do not alter the footprint or external appearance of the approved development; and
- The variations do not change the outputs derived from the acoustic modelling undertaken for the approved development.

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 2401283, by Australian Venue Company (AVC), c/- URPS Pty Ltd is granted Planning Consent subject to the following conditions:

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), noting that all previous stamped plans and documentation, including conditions previously granted planning consent for Development Application ID No. 22042866 are still applicable except where varied by this authorisation.

Condition 2

Condition No. 3.7 previously granted planning for Development Application ID No. 22042866 is hereby deleted and replaced as follows:

The hours of operation of the beer garden additions and children's play area shall be restricted to the following times:

Southern beer garden and children's play area:

- Sunday to Thursday: 07:00am to 10:00pm
- Friday and Saturday: 07:00am to 12:00am

Northern beer garden:

- 07:00am to 10:00pm, 7 days a week

Condition 3

Condition No. 3.8.8 previously granted planning for Development Application ID No. 22042866 is hereby amended to read as follows:

- 3.8.8 installation of a solid roof over a portion of the Bistro beer garden as shown on the approved plans

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

This approval varies the original consent / approval to which it applies, but it does not extend nor vary the operative date of the original consent / approval. The consent / approval must be acted upon within the operative date applicable, unless extended by the relevant authority via separate submission.

Advisory Note 3

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 Twine addressed the Council Assessment Panel from 8:23pm until 8:24pm

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*
2. *Development Application Number 24011283, by Australian Venue Company (AVC), c/- URPS Pty Ltd is granted Planning Consent subject to the following conditions:*

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), noting that all previous stamped plans and documentation, including conditions previously granted planning consent for Development Application ID No. 22042866 are still applicable except where varied by this authorisation.

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ADVISORY NOTES

Planning Consent

Advisory Note 1

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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 Mr Adcock
CARRIED**

6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT

7. REVIEW OF ASSESSMENT MANAGER DECISIONS

Mr Parsons advised the Panel Members an application has been submitted for ID 23012613, Unit 6, 72 Queen Street Norwood for The Removal of Significant Tree and Construction of Carport (Replacement)

8. ERD COURT APPEALS

114A Osmond Terrace Norwood – Hearing was held on 5 - 7 March 2024, awaiting outcome.

9. OTHER BUSINESS

The Panel discussed the approach regarding making a determination as to whether a proposal is “seriously at variance”.

10. CONFIDENTIAL REPORTS

11. CLOSURE

The Presiding Member declared the meeting closed at 8:32pm

Stephen Smith
PRESIDING MEMBER

Geoff Parsons
DEVELOPMENT ASSESSMENT & REGULATORY SERVICES