

# Development Assessment Panel Minutes

**18 April 2016**

## **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** Mayors Parlour, Norwood Town Hall

**HOUR** 7pm

**PRESENT**

**Panel Members** Mr Phil Smith  
Mr Carlo Dottore  
Mr Kevin Duke  
Ms Fleur Bowden  
Ms Jenny Newman  
Mr Don Donaldson  
Ms Evonne Moore  
Mr John Minney

**Staff** Mr Mark Thomson (Manager Development Assessment)  
Ms Emily Crook (Urban Planner)  
Mr Graeme Gibson (Acting Senior Urban Planner)

**APOLOGIES** Mr Terry Mosel

**ABSENT** Nil

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE DEVELOPMENT ASSESSMENT PANEL HELD ON 21 MARCH 2016**

*Mr Minney moved that the minutes of the Meeting of the Development Assessment Panel, held on 21 March 2016 be taken as read and confirmed,*

*Seconded by Mr Donaldson and carried.*

**2. STAFF REPORTS**

- Items to be starred (2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7)

## 2. STAFF REPORTS

### 2.1 DEVELOPMENT APPLICATION 155/0903/2015 – ST JOSEPH’S SCHOOL PAYNEHAM – 9 MARIAN ROAD, PAYNEHAM SOUTH

<b>DEVELOPMENT APPLICATION:</b>	<b>155/0903/15</b>
<b>APPLICANT:</b>	<b>St Joseph’s School Payneham</b>
<b>SUBJECT SITE:</b>	<b>9 Marian Road, Payneham South (Certificate of Title - Volume: 5613, Folio: 662)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Change of use from a dwelling site to a play area associated with St Joseph’s School, with associated fencing and landscaping</b>
<b>ZONE:</b>	<b>Residential Zone – Norwood Payneham and St Peters (City) Development Plan (dated 2 July 2015)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 3</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for a change of use from a dwelling site to a play area associated with St Joseph’s School, with associated fencing and landscaping.

Staff do not have delegated authority to determine the Application, as the proposed development is a Category 3 development for the purposes of public notification.

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

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

#### **Subject Land Attributes**

Shape:	regular
Frontage width:	24.0 metres
Depth:	78.0 metres
Area:	1872m <sup>2</sup>
Topography:	essentially flat
Existing Structures:	nil
Existing Vegetation:	nil

The subject land was previously occupied by a detached dwelling and associated outbuildings. The site was recently cleared of all structures and vegetation. The subject land is located in the Residential Zone.

Whilst not relevant to this assessment, it is noted that the subject land is proposed to be rezoned to Community Zone as part of the proposed Educational Establishments Review Development Plan Amendment (DPA). The Educational Establishments Review DPA is currently being drafted for public consultation. The Community Zone is proposed to include all of the existing schools within the Council area with the addition of some adjacent and nearby land (such as the subject land) to provide the schools with opportunities for future expansion.

### Locality Attributes

Land uses:	mix of residential, educational and community uses
Building heights (storeys):	predominantly single storey
Streetscape amenity	moderate due to mixed building stock and proximity to Portrush Road

The subject land is bounded by St Joseph's School to the west and south, the Payneham Parish of the Catholic Church to the west and residential development of various forms to the east and north.

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

### Proposal in Detail

The Applicant seeks consent to change the use of the land from a dwelling site to a play area associated with St Joseph's School, with the associated construction of fencing and the establishment of landscaping.

The subject land abuts St Joseph's School and would effectively form a contiguous expansion of the existing school into the adjacent land.

The subject land is proposed to be used primarily as a children's recreation and play area in association with the School. The majority of the subject land is to comprise open space with artificial turf. A 1.0 metre wide landscaping strip is proposed adjacent to the Marian Road property boundary and rear portion of the eastern side property boundary. A larger garden bed is proposed adjacent to the southern internal boundary with the School.

An existing 4.5 metre high black netting fence is proposed to be relocated from the western boundary of the subject land to the eastern boundary of the subject land, with the fence to be set back 1.0 metre from the eastern boundary where landscaping is proposed.

A 4.5 metre black chain mesh fence is proposed adjacent to Marian Road, which is to be set back 1.0 metre from the Marian Road boundary, behind the proposed landscaping strip.

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

### Notification

The proposal has been identified and processed as a Category 3 form of development.

Two (2) representations were received (both opposed) in response to this notification, copies of which are contained in **Attachment C**. The key issues raised by representors are, in summary:

- the proposed net fence would have an unreasonable impact on the visual amenity of the adjacent property occupiers;
- on-street car parking associated with pick-ups and drop-offs may obstruct access to driveways;
- additional traffic associated with the school expansion will have an adverse impact on adjacent residents;
- the school should look to restrict enrolments rather than expanding into residential land;
- the proposed vegetation screening is inadequate to reduce the environmental impact of noise pollution which will occur. Relocating the soccer pitch adjacent to residential land will create additional noise for residents;
- the proposed 4.5 metre high fence will have an adverse impact on the character of the streetscape;
- no access should be provided from the subject land to Marian Road (i.e. pedestrian access should remain via the existing driveway);
- whilst the subject land is proposed to be used for a play area presently, the occupation of the subject land by the school may lead to future applications for additional classrooms;
- the proposed expansion of the school could lead to further expansions in the future;

- a high brick wall should be constructed adjacent to Marian Road to reduce the visual and auditory impact of the development on adjacent residents; and
- the proposed recreation area should be a passive play area with adequate landscaped areas to buffer residents from noise. Constructing a soccer pitch is not appropriate in this location.

The following representors desire to be heard personally by the Development Assessment Panel (DAP):

- *Mr & Mrs George & Dimi Nikolaidis; and*
- *Mr & Mrs David & Lisabeth Brittan.*

The Applicant has responded to the representations received and a copy of their response is contained in **Attachment D**.

A summary of the response is provided below:

- the School actively consults with its neighbours and has a traffic management plan in place to control and supervise traffic and car parking during drop-off and pick-up times and during special school events;
- the development of the subject land as a play area means that the School can combine the junior and senior school lunch periods (they are currently staggered), which will reduce the length of time that outside play noise will impact on adjacent residents. Combining the proposed play area with the School's other outside play areas, will mean that noise can be dispersed, which will reduce the overall noise factor;
- the land acquisition does not mean an increase in enrolments for the School. The School does not intend to use any of the outside play space for more buildings;
- no additional traffic will be created as a result of the proposed development;
- the proposed pedestrian access path between the proposed play area and the Parish will provide access to the Parish from the car parking area in the School on weekends (which will reduce demand for on-street car parking) and will provide safer access for students by removing pedestrian access from the existing driveway in the mornings. The pedestrian gate will be closed in the afternoons; and
- the proposed black netting fence along the eastern property boundary is proposed to reduce the likelihood of balls going over the fence. The fencing will be erected at the School's cost.

Following the public notification period, Council staff met with the Principal of St Joseph's School, Mr Laurie Sammut, to discuss some of the representor's concerns.

Mr Sammut advised the Council that it was not the School's intent to relocate the soccer pitch to the subject land and that the Architect had illustrated a soccer pitch on the land for illustrative purposes only. The reference to a soccer pitch has since been removed from the application plans.

Staff expressed concern with the appearance of the proposed 4.5 metre high netting fence, when viewed from the adjacent properties private open space area and the 4.5 metre high black chain mesh fence which was proposed along the Marian Road property boundary. The School has since amended their plans to incorporate a 1.0 metre wide landscaping strip adjacent to the private open space area of 11 Marian Road and adjacent to Marian Road.

The proposed 4.5 metre high fences have been set back 1.0 metre from the common boundary with 11 Marian Road, adjacent to the private open space area; and 1.0 metre from the Marian Road property boundary. The landscaping areas will be planted with pencil pines and low shrubs to assist in screening the proposed fences when viewed from adjacent land and the street.

The representors have been provided with a copy of the amended plan when they were notified of the Panel meeting.

### **State Agency Consultation**

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

## Discussion

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

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

### Land Use

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

Residential Zone Desired Character Statement	
Residential Zone Objectives:	3
Residential Zone PDC's:	1 & 4
City Wide Objectives:	1, 7, 10, 26, 27 & 82-85
City Wide PDC's:	1, 3, 4, 12, 19, 80, 82-85 & 306-308

The subject land is located within the Residential Zone. Development within the Residential Zone should primarily be for residential purposes, which is reinforced by the range of developments envisaged by Principle of Development Control 1 for the Zone.

However, whilst the Zone should be primarily for residential land uses, some non-residential development is envisaged within the Zone. Principle of Development Control 4 of the Residential Zone states:

*“Non-residential development should be of a nature and scale that:*  
*(a) serves the local community;*  
*(b) is consistent with the desired character of the locality; and*  
*(c) does not detrimentally impact on the amenity of nearby residents.”*

As such, it is considered important that any non-residential land use proposed within the Residential Zone is consistent with Zone PDC 4. The proposed change of use to a play area associated with St Joseph's School is assessed against these criteria below.

#### *Does the development serve the local community?*

St Joseph's School is a primary school that services the local community. City Wide Objective 82 envisages appropriate community facilities conveniently accessible to the population they serve. The explanatory text for Objective 82 states (in part):

*“A sound education system and an adequate health service provide the basis for the social well-being of a community. Therefore, schools, hospitals, cemeteries and other institutions, must be located conveniently for the people they serve.*

*Primary schools should be within reasonable walking distance of children's homes, and so located that children do not have to cross main traffic routes on their way to and from school. State primary schools are usually located about one kilometre apart, each school serving a population of approximately 6500 persons.*

*The practical difficulties in meeting the standards for the siting of primary schools make the acquisition, or reservation, of sites well ahead of requirements particularly important.”*

Whilst St Joseph's School is a private school, it forms an important part of an educational system that contributes to the social well-being of the local community. The explanatory text above highlights the practical difficulties associated with acquiring or the reservation of land for the purposes of primary schools.

In this instance, the School has been able to acquire land that is contiguous to the school for the purpose of providing additional open space for children to play.

City Wide Principle of Development Control 306 states that community facilities should be conveniently located in relation to the population they are to serve. By implication, primary schools are likely to be located either within or directly adjacent to residential zones. Where schools already exist, it is reasonable to expect that some expansion may occur over time.

City Wide Principle of Development Control 308 states that community facilities should be operated in co-ordination with each other for efficiency in the delivery of services. The St Joseph's School already has close ties with the adjacent Payneham Parish of the Catholic Church, which is located at 7 Marian Road, Payneham South. The proposed development includes a pedestrian path that will provide a link from the school grounds, which are used for car parking of parishioners on weekends. The proposed development is considered to be a good example of community facilities being operated in co-ordination with each other, consistent with City Wide PDC 308.

In this context, the proposed development is considered to serve the local community, in accordance with part (a) of Residential Zone PDC 4.

*Is the development consistent with the desired character of the locality?*

The Desired Character Statement for the Residential Zone primarily envisages residential development. However, non-residential development is anticipated within the Zone, particularly along arterial roads.

The Desired Character Statement for the Residential Zone states (in part):

*“Along arterial roads, some opportunity for the establishment of non-residential uses will be provided through the conversion of existing dwellings, small-scale purpose built buildings and on the ground floor of mixed-use buildings in close proximity to centres. Careful management of the building envelope and vehicle access/egress arrangements for this type of development will be required to ensure that it does not have an unreasonable impact on the amenity of residents located to the rear of arterial road sites and on local and arterial road networks.”*

St Joseph's School has a frontage to Portrush Road, which is an arterial road as identified within Map NPSP/1 (Overlay 1) Part A. The subject land would form a contiguous expansion of the school.

Whilst the Desired Character Statement for the Residential Zone does not specifically refer to schools or other community uses, it does provide some guide for non-residential development adjacent to arterial roads. Importantly, it reiterates that non-residential development should not have an unreasonable impact on the amenity of residents in the local area, which brings us to part (c) of Residential Zone PDC 4.

*Does the development detrimentally impact on the amenity of nearby residents?*

The proposed development has the potential to impact on the amenity of nearby residents in several ways, all of which were identified by the representors during the public notification period. These impacts include:

- compromising the residential streetscape character of Marian Road by replacing a detached dwelling with open space associated with the School;
- compromising the visual outlook of adjacent residents with the construction of 4.5 metre high black netting and chain mesh fencing in the residential area; and
- compromising the amenity of adjacent and nearby by residents with additional noise from children playing in the proposed recreation area.

In terms of the streetscape, the replacement of a detached dwelling effectively with open space, landscaping and fencing is not considered to result in an unreasonably compromised streetscape character.

The Applicant has agreed to set the proposed 4.5 metre high black chain-mesh fencing 1.0 metre back from the Marian Road property boundary and to provide a 1.0 metre wide landscaping strip that will include pencil pines and low level plantings to assist in screening the fence and reducing its impact on the Marian Road streetscape. The proposed fence is the same height as the existing chain mesh fence which is located along the Marian Road street frontage adjacent to the existing soccer pitch.



The Applicant has also agreed to set the proposed 4.5 metre high black netting fence back 1.0 metre from the common side boundary with 11 Marian Road, adjacent to the dwellings private open space area, and to provide additional landscaping in this location. The proposed 1.0 metre setback would enable the neighbour to retain their palm trees without the need for any significant pruning, which would assist in screening views of the proposed fence from their private open space area.

In terms of noise, one of the representors had concerns that the subject land would be used as a soccer pitch (as a soccer pitch was illustrated on the plans that were notified) and suggested that if the Council were to approve the development, the area should be used as a passive play area with adequate vegetative areas to buffer residents from noise.

The Applicant has amended the proposed plans to remove the reference to a soccer pitch and have advised that it was never their intention to utilise the area for formal sport. The area is proposed to be used as an informal play area for students, to enable all students to have their lunch break at the same time (lunch breaks are currently staggered due to the lack of outside open space).

Whilst the subject land will remain primarily open recreation space for students, the time used for informal play (i.e. lunch time) will be halved from the existing staggered lunch breaks. It is these times where the most noise is likely to be generated. Outside of lunch breaks, the subject land would be used for children in organised classes with supervision from their teachers, such that noise levels would be somewhat reduced.

Given the context described above, noise associated with the School is not expected to be exacerbated to an unreasonable extent as a result of the proposed development.

As such, the proposed development is considered to be acceptable from a land use perspective, as the proposed development is considered to be reasonably consistent with Residential Zone PDC 4, insofar as the development serves the local community; is reasonably consistent with the desired character of the locality; and will not have an unreasonable impact on the amenity of nearby residents.

Streetscape/bulk/scale/height/character

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

Residential Zone Desired Character Statement

Residential Zone Objectives: 3  
Residential Zone PDC's: 6

City Wide Objectives: 8, 18, 22 & 25,  
City Wide PDC's: 28, 30, 37, 40, 59, 63 & 79

As mentioned above, the replacement of a detached dwelling effectively with open space, landscaping and fencing is not considered to result in an unreasonably compromised streetscape character.

The proposed 4.5 metre high black chain-mesh fencing is proposed to be set back 1.0 metre from the Marian Road property boundary, with the establishment of a 1.0 metre wide landscaping strip which includes pencil pines and low level plantings to assist in screening the fence and reducing its impact on the Marian Road streetscape.

City Wide Principle of Development Control 79 provides some guidelines for the construction of fences. City Wide PDC 79 states:

*“Fences and walls, including retaining walls, should:*

- (a) not result in damage to neighbouring trees;*
- (b) be compatible with the associated development and with existing predominant, attractive fences and walls in the locality;*
- (c) enable some visibility of buildings from and to the street or laneway (only where it is the primary street) to allow casual surveillance;*
- (d) incorporate articulation or other detailing, where there is a large expanse of wall facing the street;*

- (e) *assist in highlighting building entrances;*
- (f) *be sited and limited in height, to ensure adequate sight lines for motorists and pedestrians especially on corner sites;*
- (g) *in the case of side and rear boundaries, be of sufficient height to maintain privacy and/or security without adversely affecting the visual amenity or access to sunlight of adjoining land; and*
- (h) *be constructed of non-flammable materials.”*

Whilst the proposed fencing is considerably higher than front fences associated with residential development in the locality, the proposed fence is the same height as the existing chain mesh fence that is located along the Marian Road street frontage adjacent to the existing soccer pitch, which would maintain a reasonable co-ordinated presentation to the street.

The proposed wire mesh fence is proposed with a black PVC coating which will minimise glare and the visual prominence of the fence. Black PVC coated wire mesh is commonly used for residential tennis court fences as it is quite recessive and blends well to any background.

The proposed wire mesh fence, by its very nature, will enable visibility of the open space beyond to allow for casual surveillance, consistent with the above PDC and general Crime Prevention through Environmental Design (CPTED) principles.

The proposed landscaping and associated screening plants will add depth, shadow and articulation to the presentation of the fence when viewed from Marian Road.

In terms of the side boundary, the proposed black netting fence is of a sufficient height to maintain privacy and security, without unreasonably affecting the visual amenity of the adjacent occupants or access to sunlight.

Given that the proposed fencing is associated with the School, the institutional nature of the fence and the overall bulk and scale are considered to be acceptable, having considered the criteria within City Wide PDC 79 and the non-residential nature of the development.

#### Car-parking/access/manoeuvring

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

City Wide Objectives:	34
City Wide PDC's:	95, 96, 98, 104, 113 & 120

#### Table NPSP/9

The Applicant has advised the Council that the subject land has been acquired exclusively for the purpose of providing additional play space for the students. The School has made it clear that they do not currently have any plans to expand student numbers or to construct any additional classrooms.

As such, the proposed development will not result in any additional demand for on-site (or on-street) car parking. No additional vehicular access points are proposed and the existing traffic management strategy will remain in place.

Access to the School in the mornings will be safer as a result of the proposed development, by providing a pedestrian access point which is separate to the existing shared access point for vehicles and students. This is considered to be a positive aspect of the proposed development.

#### Trees (regulated, mature & street) and landscaping

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

City Wide Objectives: 24  
City Wide PDC's: 73-78

The subject land has been cleared of all vegetation and no street trees will be affected by the proposed development. The adjacent land at 11 Marian Road has several non-regulated palm trees located adjacent to the common boundary with the subject land. The canopy of these trees encroaches over the subject land.

The proposed 4.5 metre high black netting fence will be set back 1.0 metre from the common boundary to provide additional clearance for the adjacent palm trees. This is considered to be a positive aspect of the proposed development as the palm trees can remain in-situ without significant pruning.

The Applicant has proposed 1.0 metre wide landscaping strips adjacent to the Marian Road frontage and along the rear third of the eastern property boundary. A larger garden bed is proposed at the southern end of the subject land, adjacent to the toilet block within the school. The landscaping strips are proposed to include pencil pines and low-level shrubs.

The majority of the proposed play area will be covered with artificial turf, which while synthetic in nature, will provide a neat green space that will complement the school and the locality. The school has selected artificial turf as it is easier to maintain and uses no water. Over time, the cost associated with laying the artificial turf will be off-set by the minimal maintenance costs.

#### Environmental Sustainability

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

City Wide Objectives: 42  
City Wide PDC's: 148

The proposed artificial turf and landscaping areas are completely pervious, such that rainfall and/or stormwater can filter through the artificial turf to the water table. As such, stormwater runoff from the subject land will be reduced as a result of the proposed development (compared to the previous dwelling and associated structures on the land).

The use of artificial turf will mean that water usage will only be required to irrigate the proposed landscaping beds.

The proposed play area will provide an outdoor activity area for students to play and learn which will assist in facilitating a healthier lifestyle and outdoor education activities.

#### **Summary**

Whilst the proposed use of the subject land as a play area associated with St Joseph's School is not specifically anticipated within the Residential Zone, the proposed change of use represents a reasonable expansion of an existing land use, which has been designed such that it will not have an unreasonable impact on the character or amenity of adjacent and nearby residential property occupiers.

The subject land will be developed as open space with some peripheral landscaping, which will provide a physical separation between the school buildings, the Church and the adjacent residents. The proposed netting and wire mesh fencing will reasonably complement the existing school fencing and has been set back from the property boundaries to reduce the impact on the streetscape character and the visual outlook from the private open space area at 11 Marian Road.

Having a source of noise relocated closer to residential properties is not ideal and is considered to be a negative aspect of the proposed development. However, the primary use of the area as a passive play area and the infrequent use of the area outside of lunch play-time will not unreasonably compromise the amenity of adjacent and nearby property occupiers.

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

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/0903/15 by St Joseph's School Payneham to change the use of the land from a dwelling to a play area associated with St Joseph's School, with associated fencing and landscaping; on the land located at 9 Marian Road, Payneham South; subject to the following requirements, conditions and notes:

### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:

- the site plan and elevations prepared by Architects Ink, received by the Council on 22 March 2016; and
- the supporting letter prepared by St Joseph's School Payneham, dated 15 December 2015, received by the Council on 16 December 2016.

### Conditions

1. 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 prior to the occupation of the premises, to the reasonable satisfaction of the Council or its delegate.
2. All plants existing and/or within the proposed landscaped areas 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 Council or its delegate.
3. All plants shall be watered through the installation of a suitable irrigation system which shall be maintained to the reasonable satisfaction of the Council or its delegate.
4. The proposed chain wire fence shall be coated with black PVC to reduce the prominence of the fence when viewed from adjacent land.

### Notes to Applicant

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 on 8204 2004.
2. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.

3. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513. All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
5. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
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.

*Mr Smith declared a conflict of interest in this matter due to his history of involvement with the school.*

*Mr Duke declared a conflict of interest in this matter due to his history of involvement with the school.*

*Mr Smith and Mr Duke left the meeting at 7:03pm.*

*Mr Donaldson chaired the meeting in Mr Smith's absence.*

*Mr & Mrs George & Dimi Nikolaidis; addressed the Panel from 7:04pm until 7:07pm.*

*Mr Laurie Sammut addressed the Panel from 7:07pm until 7:13pm.*

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*Ms Newman moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/0903/15 by St Joseph's School Payneham to change the use of the land from a dwelling to a play area associated with St Joseph's School, with associated fencing and landscaping; on the land located at 9 Marian Road, Payneham South; subject to the following requirements, conditions and notes:*

*Relevant Plans*

*Pursuant to Section 44 (2) and (3) of the Development Act 1993 and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:*

- *the site plan and elevations prepared by Architects Ink, received by the Council on 22 March 2016; and*
- *the supporting letter prepared by St Joseph's School Payneham, dated 15 December 2015, received by the Council on 16 December 2016.*

*Conditions*

1. *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 prior to the occupation of the premises, to the reasonable satisfaction of the Council or its delegate.*

2. *All plants existing and/or within the proposed landscaped areas 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 Council or its delegate.*
3. *All plants shall be watered through the installation of a suitable irrigation system which shall be maintained to the reasonable satisfaction of the Council or its delegate.*
4. *The proposed chain wire fence shall be coated with black PVC to reduce the prominence of the fence when viewed from adjacent land.*
5. *The proposed fencing to Marian Road shall be set back 2 metres to enable a greater extent and variety of landscaping with layering forward of the fence. A revised landscaping plan shall be submitted to the satisfaction of the Council or its delegate.*
6. *The existing crossover adjacent to the property shall be reinstated to upright kerb and gutter at the Applicant's cost.*

Notes to Applicant

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 on 8204 2004.*
2. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*
3. *The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.*
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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513. All works on Council owned land required as part of this development are likely to be at the Applicant's cost.*
5. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*
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.*

*Seconded by Ms Bowden and carried.*

*Mr Smith and Mr Duke returned to the meeting at 7:26pm.*

## 2. STAFF REPORTS

### 2.2 DEVELOPMENT APPLICATION 155/555/2015 – TK BUILDING DESIGN – 3 LUHRS ROAD, PAYNEHAM SOUTH

<b>DEVELOPMENT APPLICATION:</b>	<b>155/555/2015</b>
<b>APPLICANT:</b>	<b>TK Building Design</b>
<b>SUBJECT SITE:</b>	<b>3 Luhrs Road, Payneham South (Certificate of Title Volume 5172 Folios 536 &amp; 540)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Construction of three (3) single storey and four (4) two storey group dwellings with associated landscaping, fencing and retaining walls.</b>
<b>ZONE:</b>	<b>Residential Zone Norwood, Payneham and St Peters (City) Development Plan (dated 2 July 2015)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for the construction of three (3) single storey and four (4) two storey group dwellings with associated landscaping, fencing and retaining walls.

Staff do not have delegated authority to determine the Application, as it involves the replacement of one (1) dwelling with more than two (2) dwellings. As such, the Application is referred to the Panel for determination.

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

#### **Subject Land Attributes**

Shape:	regular
Frontage width:	30.48m
Depth:	84.48m
Area:	2575m <sup>2</sup>
Topography:	gently sloping from south to north
Existing Structures:	vacant allotments
Existing Vegetation:	small trees and shrubs

The subject land is vacant and devoid of vegetation.

#### **Locality Attributes**

Land uses:	predominantly residential
Building heights (storeys):	mix of single storey and two storey

The locality is predominantly characterised by residential development along Luhrs Road, with a mix of commercial and residential properties along Portrush Road. To the east of the subject land is a two storey nursing home (Trowbridge House) operated by Eldercare, with an allotment located between Trowbridge House and the subject land (i.e. 5 Luhrs Road) comprising an unsealed informal car parking area with an ancillary storage shed, associated with the nursing home. To the west of the subject land, all properties adjoining the subject land are residential, however commercial properties exist in the wider locality at 102 and 108 Portrush Road. Dwellings are also located to the rear (north) of the subject land and adjacent the subject land on the southern side of Luhrs Road.

Building heights within the locality are predominantly single storey, with the only two storey property being the adjacent nursing home, Trowbridge House. The locality is characterised by landscaped front yards and mature street tree plantings. Portrush Road is serviced by public transport, with a bus stop located approximately 100m from the subject land.

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

### **Proposal in Detail**

The Applicant proposes to construct three (3) single storey and four (4) two storey group dwellings, with associated landscaping, fencing and retaining walls.

The proposed dwellings have hipped roofs, a mix of rendered and face brick external walls, aluminium windows and concrete roof tiles.

Dwellings 1 and 2 at the front of the site are proposed to be conventional two storey dwellings. Dwellings 3 and 4, in the centre of the site, are proposed to have the upper floor level concealed within the roof space. Dwellings 5, 6 and 7, at the rear of the site, are single storey dwellings.

Dwellings 1 and 2 contain a combined kitchen/meals/family area, a master bedroom with walk in robe and ensuite, a study, a laundry, a toilet, covered alfresco and a garage at ground level; with three (3) bedrooms, a lounge and a bathroom at the first floor level.

Dwellings 3 and 4 contain a combined kitchen/meals/family area, a master bedroom with walk in robe and ensuite, a study, a laundry, a bathroom and a garage with two further bedrooms and a bathroom at the first floor level.

Dwellings 5, 6 and 7 contain a combined kitchen/meals/family area, a master bedroom with walk in robe and ensuite, two additional bedrooms, a study, a laundry, a bathroom and a garage.

Fencing and retaining walls are proposed along the eastern, northern and western boundaries of the subject land, with a maximum combined height of 2.35m at the northern boundary of the site.

Four (4) dedicated visitor car parking spaces are located within the common area for visitors to the dwellings. The proposed development includes a landscaping scheme comprising a range of small trees, shrubs and ground covers.

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



**TABLE 1: DEVELOPMENT DATA:**

Consideration	Dwellings 1 & 7 (front dwellings)	Dwellings 2 & 6 (middle dwellings)	Development Plan Merit Assessment Quantitative Guideline
Site Areas (excluding common areas)	303.6 m <sup>2</sup>	285.7m <sup>2</sup>	325m <sup>2</sup> average excluding common areas (Residential Zone PDC 7)
Site Width	12.24m	24.5m	N/A
Site Depth	24.5m	12.24m	N/A
External Wall Height*	5.5m	3.4m	N/A
Maximum Overall Height (to roof apex)*	7.7m	6.8mm	Two-storey (Residential Zone PDC 8)
Floor Area (total)	256m <sup>2</sup>	224.8m <sup>2</sup>	N/A
Floor Area (footprint)	157m <sup>2</sup>	180m <sup>2</sup>	N/A
Site Coverage	51.7%	63%	60% overall (Residential Zone PDC 8)
Private Open Space	57.7 m <sup>2</sup> (19% of site areas)	76m <sup>2</sup> (26% of site areas)	20% of allotment area & 50% uncovered (CW PDC's 225(a) & 229)
Street Setback	6.0m	N/A	6.0m (Residential Zone PDC 8)
Side Setbacks (ground level)	2.5m (front dwellings - PDC 202 does not apply)	2.5m	2.5m (CW PDC 202)
Side Setbacks (upper level)	2.5m (front dwelling - PDC 203 does not apply)	2.5m	4.5m (CW PDC 203)
Rear Setback	Nil	N/A	2.5m – ground 4.5m - first floor (CW PDC's 202 & 203)
Car Parking Provision	2 spaces	2 spaces	3 spaces per dwelling plus 1 visitor space for every 2 dwellings (Table NPSP/8)

**TABLE 1: DEVELOPMENT DATA (cont.):**

Consideration	Dwellings 3 & 5 (Rear Dwellings)	Dwelling 4 (Rear middle dwelling)	Development Plan Merit Assessment Quantitative Guideline
Site Areas (excluding common areas)	344m <sup>2</sup>	289.4m <sup>2</sup>	325m <sup>2</sup> average excluding common areas (Residential Zone PDC 7)
Site Width	10.16mm	10.16m	N/A
Site Depth	35.48m	28.48m	N/A
External Wall Height*	2.7m	2.7m	N/A
Maximum Overall Height (to roof apex)*	4.5m	4.5m	Two-storey (Residential Zone PDC 8)
Floor Area (total)	184m <sup>2</sup>	192.4m <sup>2</sup>	N/A
Floor Area (footprint)	184m <sup>2</sup>	192.4m <sup>2</sup>	N/A
Site Coverage	53%	66.5%	60% overall (Residential Zone PDC 8)
Private Open Space	140.8m <sup>2</sup> (41% of site areas)	57.4m <sup>2</sup> (19.8% of site areas)	20% of allotment area & 50% uncovered (CW PDC's 225(a) & 229)

**TABLE 1: DEVELOPMENT DATA (cont.) continued....**

Consideration	Dwellings 3 & 5 (Rear Dwellings)	Dwelling 4 (Rear middle dwelling)	Development Plan Merit Assessment Quantitative Guideline
Street Setback	N/A	N/A	6.0m (Residential Zone PDC 8)
Side Setbacks (ground level)	2.5m	Nil	2.5m (CW PDC 202)
Side Setbacks (upper level)	N/A	N/A	4.5m (CW PDC 203)
Rear Setback	5.65m	5.65m	2.5m – ground 4.5m - first floor (CW PDC's 202 & 203)
Car Parking Provision	1 Space each	2 spaces (1 undercover)	2 spaces per dwelling plus 1 visitor space for every 2 dwellings (Table NPSP/8)

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

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

#### Notification

The proposal has been identified and processed as a Category 2 form of development pursuant to Schedule 9, Part 2, 18(b) of the *Development Regulations 2008* as the proposal involves construction of two or more dwellings on the same site where at least one of those dwellings is two-storey.

Two (2) representations were received (one in favour and one neither in favour or opposed to the development) in response to the notification, a copy of which are contained in **Attachment C**. Mr & Mrs Sacardo live to the West of the subject land at 96 Portrush Road and have raised concerns with potential overlooking from the upper floor levels of the two storey dwellings. Mr Chris O'Grady on behalf of Eldercare (Trowbridge House Nursing Home), raised the following concerns with the proposed development:

- potential overshadowing as a result of the built form and raised finished floor levels;
- potential overlooking from upper level windows;
- the excessive site levels as a result of the proposed fill and the lack of detail on any future retaining wall and fencing required as a result of the development;
- the adequacy of the proposed car parking for occupants and visitors to the subject land, details of site storage facilities (mail, rubbish, etc.);
- Concerns regarding the proposed turning paths for access to the garages; and
- footpath/pedestrian circulation details.

Mr Michael Baak from TK Building Design has responded to the representation. A copy of Mr Baak's response is contained in **Attachment D**.

A summary of the response is provided below:

- the finished floor levels of the proposed dwelling have been amended to work with the contours of the land;
- retaining wall and fencing details have been provided;
- obscure treatments to all windows have been incorporated to at least 1700mm above the finished floor level for upper level windows; and
- sufficient parking is provided, and through minimising the number of crossovers, on street parking can be retained.

## State Agency Consultation

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

## Discussion

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

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

### Land Use and Density

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

Residential Zone Desired Character Statement	
Residential Zone Objectives:	1, 2
Residential Zone PDC's:	1, 3, 7
City Wide Objectives:	1, 2, 7, 8, 10, 55-57
City Wide PDC's:	1-4

The Desired Character Statement for the Residential Zone states (in part):

*"Most development within the zone will occur through the renovation of existing dwellings, the replacement of existing dwellings with one or two dwellings and to a lesser extent, new dwellings to the rear of existing dwellings. In locations where there are large allotments or where the amalgamation of allotments has occurred, there may be opportunity to develop low-rise (one or two-storey) group dwellings, row dwellings and residential flat buildings."*

Group dwellings are an anticipated land use and built form within the Residential Zone.

Residential Zone Principle of Development Control 7 sets out the minimum site area and frontage requirements for new dwellings in the Policy Area. In relation to group dwellings, Principle 7 states that there should be an average site area of 325m<sup>2</sup> per dwelling exclusive of common areas and that the development site should have a minimum frontage width of eighteen (18) metres.

In this instance, the subject land has an average site area, exclusive of common areas, of 308m<sup>2</sup> and a frontage width of 30.48 metres.

The proposed average site area, exclusive of common area, is 17m<sup>2</sup> or 5.2% less than that which is stated in Residential Zone PDC 7.

Having regard to the Desired Character Statement and the explicit provisions relating to allotment size and frontage and the amalgamation of two (2) allotments to form the subject land, the proposed land use and resulting dwelling density is considered to be reasonably consistent with the desired future character of the Residential Zone.

### Streetscape/bulk/scale/height/character

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

Residential Zone Desired Character Statement	
Residential Zone Objectives:	3
Residential Zone PDC's:	6, 8

City Wide Objectives: 18, 19 & 20  
City Wide PDC's: 28-32, 37, 39, 197, 201

Residential Zone Principle of Development Control 8 states that the maximum building height above natural ground level should be no more than two (2) storeys. As such, two-storey development can be reasonably anticipated within the Zone. Further to this, City Wide Principle of Development Control 201 states:

*“The height of a dwelling/s sited behind a dwelling/s fronting a public road on a battleaxe, hammerhead or similar configuration allotment or site (including those accommodating group dwellings) should not exceed one storey, nor should the dwelling contain a second storey in the roof space, except where:*

- (a) the predominant height of the surrounding existing dwellings is greater than one storey. In this instance the development should not be more than two storeys above the natural ground level; or*
- (b) a height greater than one storey is envisaged in the zone or policy area for such dwellings.”*

In relation to part (a) of Principle 201, whilst there are two storey dwellings in the locality, the predominant building height of surrounding existing dwellings is single storey; hence part (a) is not applicable in this instance. In relation to part (b), the Residential Zone anticipates two-storey group dwellings in certain circumstances.

The Desired Character Statement for the Residential Zone states (in part):

*“Most development within the zone will occur through the renovation of existing dwellings, the replacement of existing dwellings with one or two dwellings and to a lesser extent, new dwellings to the rear of existing dwellings. In locations where there are large allotments or where the amalgamation of allotments has occurred, there may be opportunity to develop low-rise (one or two-storey) group dwellings, row dwellings and residential flat buildings. Within the Medium Density Policy Area, opportunities for development of up to four (4) storeys will be considered in some locations.*

The subject land is the largest allotment within the locality (aside from Trowbridge House) and the proposed development includes the amalgamation of two (2) existing allotments. In this context, the subject land is considered to be appropriate for the development of two-storey group dwellings, in accordance with the Desired Character Statement for the Residential Zone and part (b) of City Wide Principle 201.

In terms of dwelling design, the Desired Character Statement for the Residential Zone states:

*“A variety of facade treatments will be permitted in the zone, allowing for individual preferences, however overall proportions of buildings as they present to the street, will be balanced and in accordance with good architectural practice, so as to provide a pleasant streetscape. Garages and carports will be located to the side or rear of dwellings and the placement of driveways will ensure minimal disruption to footpaths and street trees.”*

The group dwellings are proposed to be constructed and finished in a range of traditional building materials and a simple hipped roof form, which will reasonably complement other development within the locality. It is considered that the lack of direct vehicular access to Dwellings 1 and 7 is a positive aspect of the proposed development as the resultant streetscape is not dominated by paving and garage doors. The construction of two dwellings in the form of detached dwellings at the front of the allotment (noting that they are technically group dwellings) reinforces the rhythm of development and allotments in the locality. It is considered that the proposed dwellings will provide visual interest consistent with the Desired Character Statement for the Residential Zone and City Wide Principle of Development Control 30.

The proposed two-storey dwellings have been designed to reduce impacts on adjacent land, with the building height reducing from the front outwardly two storey dwellings down to the rear single storey dwellings. The specific impacts associated with the dwellings, is discussed in the following section of this report, dealing with setbacks and site coverage.

The visual appearance and scale of the dwellings are considered to be consistent with the relevant Residential Zone and City Wide Principles of the Development Plan and the tapering height design of the dwellings as they progress down the allotment is considered to be a positive aspect of the proposal.

### Setbacks and Site Coverage

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

Residential Zone PDC's:	8
City Wide PDC's:	202, 203, 208

Residential Zone Principle of Development Control 8 states that dwellings should have a minimum setback from the primary road frontage of six (6) metres. The proposal accords with this Principle.

In terms of side and rear setbacks, City Wide Principle of Development Control 202 states that a single storey dwelling on a battleaxe, hammerhead or similar configuration allotment or site and a side or rear boundary of the parent development site, should be no less than 2.5 metres. City Wide Principle of Development Control 203 states that the two-storey component of a two-storey dwelling on a battleaxe, hammerhead or similar configuration allotment or site and a side or rear boundary of the parent development site, should be no less than 4.5 metres.

The proposed development does not accord with City Wide Principle of Development Control 203, as the side setbacks of the middle dwellings (Dwellings 2 and 6) are less than 4.5m. Dwellings 2 and 6 have setbacks of 2.5m from the side boundaries of the parent allotment.

It is considered that the proposed 2.5m side setback for dwellings 2 and 6 are acceptable in this instance, as the proposed dwellings have wall heights that are akin to generously proportioned single storey dwellings, with only one (1) small dormer window facing adjoining properties.

In terms of site coverage, Principle of Development Control 8 of the Residential Zone states that the site coverage of dwellings fronting a public road should not exceed 60%. There is no quantitative site coverage policy for dwellings located behind dwellings fronting a public road. Dwellings 1 and 7 (fronting Luhrs Road) have a site coverage of 51.7% each, which is consistent with Principle of Development Control 8 of the Residential Zone.

The remaining dwellings, which do not have a frontage to a public road, cover between 51% and 66.5% of their exclusive site areas. It is worthwhile to note that none of the proposed dwellings incorporate covered areas of private open space. In the event that the development is approved, it is likely that subsequent applications will be lodged with the Council, for the construction of verandahs, which would result in an increased level of site coverage.

City Wide Principle of Development Control 184 states:

*No more than half of the open space (the area excluding all buildings and structures) around:*

- (a) *a dwelling located on a battleaxe allotment, hammerhead allotment or an allotment of a similar configuration;*
- (b) *a residential flat building; or*
- (c) *group dwellings;*

*should be used for uncovered car parking, vehicle manoeuvring areas and driveways.*

The proposed development results in approximately 31% of the open space on the subject land being used for uncovered parking, vehicle manoeuvring and driveways, which is consistent with City Wide Principle of Development Control 184.

### Overshadowing/Overlooking/Views

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

City Wide PDC's: 11, 31, 71, 72, 195, 196, 235 & 236

City Wide Principle of Development Control 196 states:

*“Unless otherwise specified in the relevant Zone and/or Policy Area, development should ensure that at least half of the ground level private open space of existing dwelling(s) receive direct sunlight for a minimum of two hours between 9.00am and 3.00pm on 21 June. Development should not increase the overshadowed area in cases where overshadowing already exceeds these requirements.”*

The Applicant has provided shadow diagrams, to demonstrate the extent of overshadowing that would result from the proposed development during the winter and summer solstice events. Overshadowing will impact on five (5) adjacent allotments at varying times of the day.

A copy of the shadow diagrams is contained in **Attachments B17 – B20**.

The shadow diagrams demonstrate that all adjacent properties will maintain direct sunlight to more than half of their respective private open space areas for a minimum of three (3) hours between 9.00am and 3.00pm during the winter solstice, in accordance with City Wide PDC 196. Overshadowing of adjacent living room windows will be negligible.

In terms of privacy, all of the side and rear facing first floor windows incorporate fixed obscure glazing in all portions of the windows that are less than 1700mm above the internal floor level, with the exception of bathroom windows which will have obscure glazing with 120mm opening restrictors to the awning windows.

No unreasonable overlooking will occur from the first floor windows that face the internal driveway. The dwellings and their associated garages are sited such that they will offer a reasonable level of privacy to their private open space areas. The internal facing windows will maintain good opportunities for passive surveillance of the common driveway area.

#### Private open space

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

City Wide PDC's: 222-225, 227, 229 & 230

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

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

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

All of the proposed dwellings have site areas greater than 250m<sup>2</sup> and, as such, should have a minimum area of private open space of at least 20% of the site areas. The proposed private open space areas range between 57.4m<sup>2</sup> (Dwelling 4) and 140.8m<sup>2</sup> (Dwellings 3 & 5), which equates to between 19% and 41% of their respective site areas. With the exception of Dwelling 4, which has a minor shortfall of private open space, the remainder of the dwellings are provided with areas of private open space consistent with City Wide Principle of Development Control 225(a).

The private open space areas of each dwelling are directly accessible from the main living areas of the respective dwellings. The private open space areas associated with Dwellings 3-5 have good orientation for solar access, while the private open space areas of Dwellings 1, 2, 6 and 7 have poor access to northern sun throughout the day. This is difficult to avoid due to the north south orientation of the subject land.

City Wide Principle of Development Control 229 states that fifty percent (50%) of the total private open space requirement provided at ground level should be open to the sky and developed in a manner to provide outdoor amenity, opportunities for landscaping and a reduction in stormwater runoff through the use of permeable surface treatments. The proposal accords with this, as there are no covered outdoor living areas incorporated in the proposal. It is considered that modest verandahs may be added by future occupiers and this is not considered likely to have an unreasonable impact on adjoining occupiers, subject to a full assessment.

Carparking/access/manoeuvring

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

City Wide Objectives:	38
City Wide PDC's:	98, 101, 104, 118, 120, 122, 181, 198, 200 & 219

Table NPSP/8

City Wide Principle of Development Control 120 states that development should include on-site car parking in accordance with the rates prescribed in Table NPSP/8. In relation to group dwellings, Table NPSP/8 states that 2 on-site car parking spaces should be provided for each three (3) bedroom dwelling, of which at least 1 should be covered. In addition, one (1) visitor space should be provided for every two (2) dwellings, resulting in a total demand of fourteen (14) occupant car parking spaces and four (4) visitor spaces.

Dwellings 1,2, 4, 6 and 7 all have two (2) covered vehicle spaces per dwelling. Dwellings 3 and 5 have a single garage for each dwelling. Four (4) visitor spaces are proposed towards the rear of the site, in close proximity to dwellings 2-6.

As such, the proposed development results in a shortfall of two (2) occupant car parking spaces (1 each for Dwellings 3 and 5). Given that Dwellings 3 and 5 each have 3 bedrooms (plus a study), there is a reasonable likelihood that the occupants will use the open-air car parking space adjacent to the garage for parking a second car. Therefore, in practice, it is likely that the 2 space shortfall will relate to visitor car parking. In the event that the remaining 2 common visitor car parking spaces are occupied and additional persons visit the development, opportunities for on-street parking will be available directly in front of the subject land, given that a single access point is proposed to serve the development.

City Wide Principle of Development Control 189 provides guidelines for the configuration of driveway and manoeuvring areas for battleaxe style allotments, so as to achieve safe and convenient access arrangements and appropriate landscaping of driveways. In relation to developments involving more than two (2) dwellings utilising a common driveway, Principle 189 states that the driveway should have a 6x6 metre paved carriageway at the front of the property, to enable safe and convenient access/egress for vehicles turning into and out of the site simultaneously.

Beyond the first six (6) metres, Principle 189 states that the paved carriageway width can be reduced to 5.0 metres. The proposed development is consistent with this Principle. The driveway handle should incorporate a combined total width of 1 metre of landscaping along the length of the driveway 'handle' unless the driveway abuts unfenced areas of landscaping. The proposed development incorporates a good provision of unfenced landscaping abutting the common driveway, consistent with City Wide PDC 189.

The 85<sup>th</sup> percentile vehicle turning templates within the Australian Standard for off-street car parking have been applied to the manoeuvring areas and it has been determined that vehicles are able to conveniently access and egress all car parking spaces.

Finished floor levels/flooding/retaining

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

City Wide PDC's:	53-58, 79, 164, 167-171
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The subject land falls approximately 670 millimetres from the front boundary to the rear boundary. The Applicant has proposed finished floor levels between 100mm above the adjacent top of kerb level and 100mm below the top of kerb level. The proposed levels will result in the need for a sump and pump stormwater system being utilised.

Retaining walls are proposed along the side and rear boundaries, up to 500mm in height, with 1800mm high colorbond fencing above, resulting in a maximum combined height of 2.3 metres, which is consistent with City Wide Principle of Development Control 58. The Applicant had originally proposed to raise the levels further, in order to achieve gravity fed stormwater disposal. The amended levels have been proposed in response to concerns from adjoining property owners and Council staff, and are considered a significant improvement in terms of the visual impacts of fencing on adjoining property occupiers.

The Applicant has proposed sump and pump stormwater system which has been reviewed by Councils Urban Services staff, who have concluded that it is acceptable. A copy of the advice from Councils Project Manager – Civil is contained in **Attachment E**.

Given the relatively high percentage of land that will be covered with impervious surfaces compared with the existing condition, it is considered appropriate that on-site detention be provided to ensure that stormwater leaving the site in a high rainfall event does not exceed current levels, consistent with City Wide Principle of Development Control 160.

As such, if the Panel determines to approve the development proposal, it is recommended that a condition be imposed requiring a Stormwater Management Plan be submitted with the documentation for Building Rules Consent, which confirms that stormwater disposal will be maintained at pre-development levels.

#### Trees (significant, mature & street) and landscaping

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

City Wide Objectives:	24
City Wide PDC's:	76, 220, 221

There are no regulated trees located on the subject land or adjacent land that would be affected by the proposed development. Several mature (non-regulated) trees were removed as part of the demolition process.

The Applicant has revised their landscaping plan to incorporate additional landscaping beds along the common driveway.

The landscaping plan provided is relatively basic, however designates sufficient areas for the establishment of meaningful landscaping on the subject land and includes a range of screen shrubs, small shrubs and grasses, which will assist in softening the development when viewed from the street and will provide for a reasonable level of amenity for future occupants.

Two (2) mature (non-regulated) Queensland Box street trees are located adjacent to the subject land. Both of the trees are in good condition and make a significant contribution to the character and amenity of the locality. The street trees are proposed to be retained, and the centralised common driveway will not have an impact on their health.

#### Environmental Sustainability

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

City Wide Objectives:	23 & 42
City Wide PDC's:	67-72, 147, 148, 151 & 159



The proposed dwellings and their private open space areas are well oriented for solar access. All dwellings have private open areas adjacent to the living areas with small eaves to provide some sun protection. None of the dwellings propose a covered outdoor entertaining area, although it is likely that the future occupiers of the dwellings will seek to establish a covered outdoor area adjacent to the living areas of the dwellings, which will assist in reducing the heat loading on those dwellings.

No details have been provided on the capacity of the proposed rainwater tanks, and it is recommended that if the Panel determines to Grant Development Plan Consent, a condition be imposed requiring the tanks to be at least 2 Kilolitres in size in accordance with City Wide Principle of Development Control 161. An alternative may be a 14 Kilolitre communal tank.

### Summary

The Residential Zone is intended to accommodate a greater range of dwelling types, such as residential flat buildings and group dwellings with a more contemporary design.

The proposed dwelling density is 5% higher than what the Development Plan envisages. This is considered to be acceptable, as the dwellings generally meet the other relevant quantitative provisions of the Development Plan, such as those relating to site coverage, setbacks, overshadowing, and private open space.

In terms of the qualitative provisions of the Development Plan, positive aspects of the proposal are the orientation for northern light provided to the rear dwellings living areas, the replication characteristics of other dwellings in the locality, through the incorporation of pitched roofs and traditional building materials and the ready access to public transport.

A negative aspect of the proposal is the relatively modest landscaping plan proposed, but it is considered there are sufficient opportunities for landscaping to be incorporated within the private yards and common areas of the development. The slight shortfall of occupant car parking spaces, whilst a negative aspect of the proposal, is not considered to be fatal to the overall scheme.

On balance, it is considered that the proposal is not seriously at variance with the Development Plan and the development sufficiently accords with the Development Plan to merit consent.

### RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/555/15 by TK Building Design to three (3) single storey and four (4) two storey group dwellings with associated landscaping, fencing and retaining walls, at 3 Luhrs Road, Payneham South, subject to the following conditions:

#### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:

- the site plan, floor plans, elevations and details prepared by TK Building Design Architects, received by the Council on 30 March 2016.

#### Conditions

1. The portion of all upper floor windows on the eastern and western elevations of Dwellings 1,2, 6 and 7 (front and middle dwellings) less than 1.7 metres above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)

2. 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.
3. A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.
4. A rainwater tank with a storage capacity not less than 2 kilolitre (2000 litres), shall be installed for each of the dwellings or alternatively, a 14 kilolitre communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.
5. All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, herein approved, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.

#### Notes to Applicant

1. The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.
2. 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 on 8204 2004.
3. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.  
  
The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
4. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
5. 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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.

All works on Council owned land required as part of this development are likely to be at the Applicant's cost.

6. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
  7. 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 Minney moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **refused** to Development Application No 155/555/15 by TK Building Design to three (3) single storey and four (4) two storey group dwellings with associated landscaping, fencing and retaining walls, at 3 Luhrs Road, Payneham South, for the following reasons:*

- 1. The development is contrary to City Wide Objectives 1, 18, 19 and 20, City Wide Principles of Development Control 12, 28, 73, and 74, and Table NPSP/8.*
- 2. The development is contrary to Residential Zone Desired Character Statement.*

*Seconded by Ms Bowden and carried.*

## 2. STAFF REPORTS

### 2.3 DEVELOPMENT APPLICATION 155/0872/2015 – MARIO MINUZZO BUILDERS PTY LTD – 4 NELSON STREET, PAYNEHAM

<b>DEVELOPMENT APPLICATION:</b>	<b>155/0872/15</b>
<b>APPLICANT:</b>	<b>Mario Minuzzo Builders Pty Ltd</b>
<b>SUBJECT SITE:</b>	<b>4 Nelson Street, Payneham (Certificate of Title - Volume: 6012, Folio: 402)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Construction of nine (9) dwellings within two (2) residential flat buildings (one containing two dwellings and the other containing seven dwellings) with associated retaining walls, fencing and landscaping</b>
<b>ZONE:</b>	<b>Residential Zone – Medium Density Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 2 July 2015)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for the construction of nine (9) dwellings within two (2) residential flat buildings (one containing two dwellings and the other containing seven dwellings) with associated retaining walls, fencing and landscaping.

Staff do not have delegated authority to determine the Application, as it comprises a development with more than two (2) dwellings. As such, the Application is referred to the Panel for determination.

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

#### **Subject Land Attributes**

Shape:	irregular
Frontage width:	15.24 metres
Depth:	71.92 metres
Area:	2349m <sup>2</sup>
Topography:	1 metre fall from east to west (front eastern corner to rear western corner)
Existing Structures:	storage shed and shipping containers
Existing Vegetation:	Nil

The subject land is a 'T' shaped allotment, with a frontage width to Nelson Street of 15.24 metres, widening out to 54.16 metres wide, 39.6 metres back from Nelson Street.

The subject land is currently vacant with the exception of a storage shed, a shipping container and piles of soil. In 2011, a dwelling fronting Nelson Street was demolished, as was a large storage structure at the rear of the site, which is understood to have been used for storing timber associated with a joinery workshop at 23 Portrush Road.

## Locality Attributes

Land uses: mix of residential and commercial  
Building heights (storeys): mix of two storey and single story

The locality is characterised by a range of land uses and built form. The following land uses adjoin the subject land:

- retirement living to the north-west at 6 Nelson Street, within two storey residential flat buildings;
- a two storey office to the west at 298-304 Payneham Road (owned and occupied by the Applicant);
- a group of 12 x two storey townhouses to the south-west at 5 Sewell Avenue;
- offices to the south-east at 23 Portrush Road. It is understood that the rear of the building, which abuts the subject land, is used for storage in association with Fitness First;
- an open-air car parking area to the east at 21 Portrush Road, associated with Fitness First; and
- consulting rooms and a vacant tenancy at 19 Portrush Road.

Adjacent to the subject land on the northern side of Nelson Street is Fitness First, a large-scale two storey health and fitness centre.

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

## Proposal in Detail

The Applicant proposes to construct two (2), two-storey residential flat buildings comprising a total of nine (9) dwellings, with associated car parking, fencing, retaining walls and landscaping.

The larger residential flat building occupies the rear portion of the allotment and contains seven (7) dwellings. It abuts the north-western allotment boundary, shared with the office at 298-304 Payneham Road. The smaller residential flat building occupies the front portion of the allotment and contains two (2) dwellings.

A 'T' shaped common access driveway is proposed to enter the subject land from Nelson Street, to the north-west of the smaller residential flat building.

All of the dwellings contain a double garage and open-plan living at ground floor level and three bedrooms at first floor level. Those within the larger rear building also have a small second living area at first floor level and a visitor car parking space each.

The proposed two-storey residential flat buildings are contemporary in their form, with skillion roof forms, dark coloured face brick external walls at ground level and a combination of light coloured texture coated cladding and 'scyon' cladding at first floor level.

The proposed development includes a landscaping scheme that proposes a total of seventeen (17) ornamental pear trees (*Pyrus chaticleer*) along the common driveway and adjacent Nelson Street, three (3) Manchurian Pear trees (*Pyrus ussuriensis*) adjacent the larger residential flat building and a range of low level ground covers and clumping plants.

A 1.8m high masonry front wall, incorporating mail boxes, is proposed to be constructed 1 metre inside the Nelson Street boundary, with landscaping in front. Retaining walls up to 400mm high are proposed along the boundaries. Colorbond fencing to a height of 1.8 metres is proposed for side and rear boundaries.

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

**TABLE 1: DEVELOPMENT DATA:**

Consideration	Dwellings 1&2	Dwellings 3-9	Development Plan Merit Assessment Quantitative Guideline
Site Area	171m <sup>2</sup>	180m <sup>2</sup> - 203m <sup>2</sup>	No minimum (Medium Density PA PDC 5)
Site Width	19m	7.5-8.5m	N/A
Site Depth	9m	25m	N/A
External Wall Height*	6.0-7.2m	6.0-7.2m	N/A
Maximum Overall Height (to roof apex)*	7.2m	7.2m	Two-storey (Medium Density PA PDC 7)
Floor Area (total)	239m <sup>2</sup>	211m <sup>2</sup> - 220m <sup>2</sup>	100m <sup>2</sup> minimum (Medium Density PA PDC 6)
Floor Area (footprint)	130m <sup>2</sup>	119m <sup>2</sup> - 124m <sup>2</sup>	N/A
Site Coverage (excluding common areas)	76%	61 -66%	70% (Medium Density PA PDC 7)
Private Open Space	34-35m <sup>2</sup>	42-48m <sup>2</sup>	35m <sup>2</sup> per dwelling (CW PDC's 225(b) & 229)
Street Set-back	5.0m	N/A	4.0m (Medium Density PA PDC 7)
Side Set-back (ground level)	6.5m and Nil	Nil and 0.9m	2.5m (CW PDC 202)
Side Set-back (upper level)	6.5m and 1.7m	Nil and 0.9m	4.5m (CW PDC 203)
Rear Set-back	N/A	5.5m – ground 10.1m first floor	2.5m – ground 4.5m - first floor (CW PDC's 202 & 203)
Car Parking Provision	2 secure occupant spaces per dwelling	2 secure occupant spaces & 1 visitor space per dwelling	2 spaces per dwelling plus 1 visitor space for every 2 dwellings (Table NPSP/8)

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

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

### Notification

The proposal has been identified and processed as a Category 2 form of development pursuant to Schedule 9, Part 2, 18(b) of the *Development Regulations 2008* as the proposal involves construction of two or more dwellings on the same site where at least one of those dwellings is two-storey.

One (1) representation was received in response to this notification, a copy of which is contained in **Attachment C**. The representor owns the adjoining commercial property to the east of the subject land at 17-19 Portrush Road and is seeking clarification of the fencing proposed on the common boundary between subject land and his property.

A portion of the boundary is proposed to be occupied by the ground level wall of Dwelling 1. The Applicant has advised that it is intended that 1.8m high colorbond fencing is to be installed along the balance of the shared boundary. That said, the usual procedures required pursuant to the Fences Act will need to be followed, which will provide the representor the appropriate forum to consult on the final fencing details.

### State Agency Consultation

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

### Discussion

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

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

#### Land Use and Density

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

##### Medium Density Policy Area (PA) Desired Character Statement

Medium Density PA Objectives: 1  
Medium Density PA PDC's: 5, 6

##### Residential Zone Desired Character Statement

Residential Zone Objectives: 1, 2  
Residential Zone PDC's: 1, 3

City Wide Objectives: 1, 2, 7, 8, 10, 55-57  
City Wide PDC's: 1-4

The Desired Character Statement for the Medium Density Policy Area states (in part):

*"Whilst detached and semi-detached dwellings will continue to be developed within the Medium Density Policy Area, more flexible development parameters for other forms of housing (including group dwellings, row dwellings and residential flat buildings) are included and will provide additional opportunities for increasing residential densities in these locations. While a minimum site area has not been allocated for dwellings within a residential flat building, a minimum floor area requirement for dwellings has been included and will, along with other policies relating to private open space, communal space, car parking and the design of the built form, ensure an acceptable level of amenity for occupants, as well residents in the locality."*

Residential Flat Buildings are an anticipated land use and built form within the Medium Density Policy Area of the Residential Zone.

Medium Density Policy Area Principle of Development Control 5 sets out the minimum site area and frontage requirements for new dwellings in the Policy Area. In relation to residential flat buildings, Principle 5 states that there is no minimum site area per dwelling, provided that the site has a minimum allotment frontage of eighteen (18) metres and that the proposal is consistent with the minimum floor area requirement for dwellings and the other policies referred to within the Desired Character Statement above.

The subject land has an allotment frontage width of 15.24 metres, which is inconsistent with Medium Density Policy Area Principle of Development Control 5. The land is unusually situated adjacent to commercial land uses, such that the potential negative consequences that can arise from establishing residential flat buildings on narrow allotments, do not occur in this instance. In particular, the narrow width of the front portion of the land results in the front residential flat building being located on the side boundary at ground level and 1.7m

off the side boundary at first floor level. Whereas these setbacks (or lack thereof) would typically be inappropriate adjacent to a residential property, they are reasonable adjacent to a commercial property.

Medium Density Policy Area Principle of Development Control 6 states that dwellings contained within a residential flat building with three (3) bedrooms should have a minimum floor area per dwelling of 100 square metres. The proposed floor areas range between 211m<sup>2</sup> and 239m<sup>2</sup>, which is consistent with Medium Density Policy Area PDC 6.

The other policies referred to in the Desired Character Statement (private open space, communal space, car parking and the design of the built form) are discussed in greater detail under their relative headings later in the report. However, provided that they are considered acceptable, the proposed land use and resulting dwelling density is considered to be consistent with the intent of the Medium Density Policy Area.

#### Streetscape/bulk/scale/height/character

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

##### Medium Density PA Desired Character Statement

Medium Density PA Objectives: 2, 4  
Medium Density PA PDC's: 1, 3, 7

##### Residential Zone Desired Character Statement

Residential Zone Objectives: 3  
Residential Zone PDC's: 6, 8

City Wide Objectives: 18, 19 & 20  
City Wide PDC's: 28-32, 37, 39, 197

The Desired Character Statement for the Medium Density Policy Area states (in part):

*“Building heights within this part of the Policy Area will be up to two (2) storeys, however, along arterial road frontages and within the Lutheran Homes Incorporated and Australian Retirement Homes sites, development of up to three (3) storeys will be considered where an appropriate built form transition can be provided to adjacent residential land outside of the Policy Area and in the case of arterial roads, where it comprises a mix of residential and non-residential land uses.”*

Medium Density Policy Area Principle of Development Control 7 reiterates that two-storey development is envisaged within the Policy Area. The proposed building heights are therefore considered to be acceptable, consistent with the Desired Character Statement and Medium Density Policy Area PDC 7.

The proposed dwellings are compatible in scale with adjacent development within the locality, including the retirement living units to the north-west, the Fitness First building and the two storey townhouses to the rear.

The current Medium Density Policy Area provisions were introduced on 2 July 2015 to provide opportunities for a higher density of development, which is often facilitated by two-storey development on compact allotments, such as those proposed. In this context, the proposed development is considered to be consistent with the policy intent for the Zone.

The proposed residential flat buildings are contemporary in form, whilst using a mix of traditional building materials (eg. face brick and render) and contemporary materials such as scyon cladding. This design approach is considered to result in a development which will complement both existing residential and existing commercial buildings within the locality. The proposed range of materials, finishes and articulation, provides visual interest, consistent with City Wide Principle of Development Control 30.

#### Setbacks and Site Coverage

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



Medium Density PA PDC's:	7
City Wide PDC's:	202, 203, 208

Medium Density Policy Area Principle of Development Control 7 states that dwellings fronting a public road within the Medium Density Policy Area should be designed with a minimum setback from the primary road frontage of four (4) metres. The proposal accords with this Principle.

In terms of side and rear setbacks, City Wide Principle of Development Control 202 states that the single storey component of a two-storey dwelling on a battleaxe, hammerhead or similar configuration allotment or site and a side or rear boundary of the parent development site, should be no less than 2.5 metres. City Wide Principle of Development Control 203 states that the two-storey component of a two-storey dwelling on a battleaxe, hammerhead or similar configuration allotment or site and a side or rear boundary of the parent development site, should be no less than 4.5 metres.

The proposed development accords with City Wide Principles of Development Control 202 and 203 in relation to the rear boundary. In relation to the side boundaries, Dwellings 1, 2, 3 and 9 are all substantially closer to the side boundaries than the distances stated in Principles 202 and 203. In the case of Dwellings 1 and 2, they are situated on the boundary at ground level and 1.7m away from the boundary at first floor level. In the case of Dwelling 9, it is located on the boundary at ground and first floor levels. In the case of Dwelling 3, it is located 0.9m away from the boundary at ground and first floor levels.

In all instances where the side setback distances in Principles 202 and 203 are not achieved, the impacts are considered to be acceptable, as the affected properties are commercial in nature. With the exception of Dwelling 3, all other setback encroachments are adjacent to car parking areas on adjacent commercial properties. Dwelling 3 is located adjacent to a blank storage building wall. Therefore, no unreasonable impacts are anticipated from the proposed setbacks.

In terms of site coverage, Medium Density Policy Area Principle of Development Control 7 states that the site coverage for residential flat buildings (and ancillary structures) within the Policy Area should not exceed 70%. The proposed development results in an overall site coverage of 47%, including common areas, which is significantly less than the maximum stated for the Policy Area. This is considered to be a positive aspect of the proposed development.

#### Overshadowing/Overlooking

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

City Wide PDC's:	11, 31, 71, 72, 195, 196, 235 & 236
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City Wide Principle of Development Control 196 states:

*“Unless otherwise specified in the relevant Zone and/or Policy Area, development should ensure that at least half of the ground level private open space of existing dwelling(s) receive direct sunlight for a minimum of two hours between 9.00am and 3.00pm on 21 June. Development should not increase the overshadowed area in cases where overshadowing already exceeds these requirements.”*

The Applicant has provided shadowing diagrams, to demonstrate the extent of overshadowing that would result from the proposed development during the winter solstice. In relation to the adjoining residential properties at the rear of the subject land, the diagrams show that from midday onwards, the residential properties are unaffected by overshadowing from the proposal. Therefore, the proposal accords with Principle 196.

The extent of overshadowing is not likely to significantly detract from the amenity of the occupiers of adjacent properties and accords with City Wide Principle of Development Control 196.

In terms of privacy, the plans show all upper level windows to be obscure glazed to 1.8m above finished floor level. The proposed first floor window treatment is inconsistent with City Wide Principle of Development Control 235, which seeks privacy treatment to a height of 1700mm.

The majority of the first floor windows are bedrooms or bathrooms and, as such, the lack of clear glazing in the lower portions of the windows will not result in any unreasonable loss of outlook or amenity for occupants of the dwellings.

Private open space

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

City Wide PDC's: 222-225, 227, 229 & 230

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

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

- (b) a dwelling with a site area of less than 250 square metres, a minimum of 35 square metres should be private open space, of which one portion should have an area of 16 square metres and a minimum dimension of 4 metres;"*

All of the proposed dwellings have site areas of less than 250m<sup>2</sup> and, as such, should have a minimum area of private open space of 35 square metres. The proposed private open space areas range between 34m<sup>2</sup> and 48m<sup>2</sup>, with only Dwelling 1 having the marginal shortfall.

The private open space areas of each dwelling are directly accessible from the main living areas of the respective dwellings. The private open space areas of all dwellings have direct access to northern sunlight.

City Wide Principle of Development Control 229 states that fifty percent (50%) of the total private open space requirement provided at ground level should be open to the sky and developed in a manner to provide outdoor amenity, opportunities for landscaping and a reduction in stormwater runoff through the use of permeable surface treatments. The proposal accords with this.

Carparking/access/manoeuvring

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

City Wide Objectives: 38  
City Wide PDC's: 98, 101, 104, 118, 120, 122, 181, 198, 200 & 219

Table NPSP/8

City Wide Principle of Development Control 120 states that development should include on-site car parking in accordance with the rates prescribed in Table NPSP/8. In relation to residential flat buildings, Table NPSP/8 states that 2 on-site car parking spaces should be provided for each three (3) bedroom dwelling, of which at least 1 should be covered. In addition, one (1) visitor space should be provided for every two (2) dwellings.

Each of the proposed dwellings is provided with two (2) exclusive car parking spaces, in the form of an enclosed garage. In addition, Dwellings 3-9 each have an additional visitor car parking space. This results in an average provision of 1 visitor space for every 1.3 dwellings.

Whilst the rate of visitor spaces is consistent with Principle 120, the visitor spaces are not located in common areas and as such, visitors to Dwellings 1 and 2 would not be able to park on site. This is able to be accommodated, as on-street parking is available on the south-western side of Nelson Street, north of the subject land.



City Wide Objectives: 24  
City Wide PDC's: 76, 220, 221

There are no regulated trees located on the subject land or adjacent land.

The proposed development includes a landscaping scheme that proposes a range of trees and ground covers. The proposed landscaping will assist in softening the development when viewed from adjacent land and will provide for a reasonable level of amenity for future occupants.

There are no street trees located adjacent to the subject land.

### Environmental Sustainability

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

City Wide Objectives: 23 & 42  
City Wide PDC's: 67-72, 147, 148, 151 & 159

The private open space areas of each dwelling are reasonably well oriented for solar access. With the exception of Dwelling 1, the primary living areas of the dwellings do not have direct access to northern sunlight. Whilst this is a shortcoming of the proposal, the compact size of the living areas and the extent of glazing proposed, means that the living areas are expected to be reasonably bright and liveable environments, albeit with less than ideal solar efficiency, particularly in winter, when northern sun can provide passive heating benefits.

If the Panel determines to approve the application, it is recommended that a condition be imposed, requiring that each dwelling be provided with a 2000 litre rainwater retention tank, which is to be plumbed back to each dwelling in accordance with City Wide Principle of Development Control 161.

### **Summary**

The Medium Density Policy Area is intended to accommodate a greater range of dwelling types, at a higher density than the general Residential Zone.

The proposed dwelling density is consistent with the relevant policy for the Medium Density Policy Area, in that there is no minimum site area per dwelling for residential flat buildings. The proposed two-storey built form is consistent with PDC 7 for the Medium Density Policy Area.

The allotment frontage is less than the stated minimum for sites accommodating residential flat buildings and the side boundary setbacks are also substantially below the stated minimum. Both of these shortfalls are considered to be acceptable, taking into account the context of the subject land and the resultant impacts on adjoining properties.

The car parking and access arrangements are consistent with the Development Plan, aside from a minor departure from the driveway entrance width.

A positive aspect of the proposal is the stepped floor levels to work with the contours of the land and the attempt to respect characteristics of other buildings in the locality.

On balance, it is considered that the proposal is not seriously at variance with the Development Plan and the development sufficiently accords with the Development Plan to merit consent.

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/0872/15 by Mario Minuzzo Builders Pty Ltd to construct nine (9) dwellings within two (2) residential flat buildings (one containing two dwellings and the other containing seven dwellings) with associated retaining walls, fencing and landscaping, at 4 Nelson Street, Payneham, subject to the following conditions:

### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:

- the site plan, floor plans, elevations and details prepared by Daring Digital, received by the Council on 23 March 2016; and
- the Civil & Drainage plan, prepared by TMK Engineers, received by the Council on 1 December 2015; and
- the Landscape Plan prepared by Daring Digital, dated 29 March 2016.

### Conditions

1. The portion of all upper floor windows less than 1.7 metres above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)
2. 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.
3. A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.
4. A rainwater tank with a storage capacity not less than 2 kilolitre (2000 litres), shall be installed for each of the dwellings, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.
5. All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, herein approved, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.

### Notes to Applicant

1. The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.

2. 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 on 8204 2004.
3. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.  
  
The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
4. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
5. 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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.  
  
All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
6. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
7. 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.

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*Mr Dottore declared a conflict of interest in this matter as he has previously provided architectural services to the Applicant. Mr Dottore left the meeting at 8:03pm.*

*Mr Duke moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/0872/15 by Mario Minuzzo Builders Pty Ltd to construct nine (9) dwellings within two (2) residential flat buildings (one containing two dwellings and the other containing seven dwellings) with associated retaining walls, fencing and landscaping, at 4 Nelson Street, Payneham, subject to the following conditions:*

*Relevant Plans*

*Pursuant to Section 44 (2) and (3) of the Development Act 1993 and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:*

- *the site plan, floor plans, elevations and details prepared by Daring Digital, received by the Council on 23 March 2016; and*
- *the Civil & Drainage plan, prepared by TMK Engineers, received by the Council on 1 December 2015; and*
- *the Landscape Plan prepared by Daring Digital, dated 29 March 2016.*

Conditions

1. *The portion of all upper floor windows less than 1.7 metres above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)*
2. *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.*
3. *A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.*
4. *A rainwater tank with a storage capacity not less than 2 kilolitre (2000 litres), shall be installed for each of the dwellings, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.*
5. *All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, herein approved, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.*
6. *Details of measures to protect the trees in the common driveway to be provided to the reasonable satisfaction of the Council or its delegate.*

Notes to Applicant

1. *The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.*
2. *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 on 8204 2004.*
3. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.*  
  
*The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*
4. *The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which*

*noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.*

5. *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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.*

*All works on Council owned land required as part of this development are likely to be at the Applicant's cost.*

6. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*
7. *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 Minney and carried.*



## 2. STAFF REPORTS

### 2.4 DEVELOPMENT APPLICATION 155/56/2016 – MR G GRIDA – 29 MARIAN ROAD, PAYNEHAM SOUTH

<b>DEVELOPMENT APPLICATION:</b>	<b>155/56/2016</b>
<b>APPLICANT:</b>	<b>Mr G Grida</b>
<b>SUBJECT SITE:</b>	<b>29 Marian Road, Payneham South (Certificate of Title - Volume: 5172, Folio: 556)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Demolition of a detached dwelling and associated outbuildings; and the construction of two (2), two-storey semi-detached dwellings with associated fencing and landscaping</b>
<b>ZONE:</b>	<b>Residential Zone – Norwood Payneham and St Peters (City) Development Plan (dated 2 June 2015)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 1</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for the demolition of a detached dwelling and associated outbuildings; and the construction of two (2), two-storey semi-detached dwellings with associated fencing and landscaping.

Staff do not have delegated authority to determine the Application, as it comprises the construction of two dwellings on one allotment, which do not meet the delegation criteria. In particular, the proposed site areas are less than what is specified for semi-detached dwellings in the Residential Zone. As such, the Application is referred to the Panel for determination.

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

#### **Subject Land Attributes**

Shape:	regular
Frontage width:	12.72 metres
Depth:	39.39 metres
Area:	501.04m <sup>2</sup>
Topography:	essentially flat
Existing Structures:	dwelling, outbuildings
Existing Vegetation:	minor to medium vegetation

The subject land currently contains a symmetrical cottage and outbuildings and some minor to medium vegetation. The subject land has a small slope in the order of 370mm from the south-eastern corner to the north-western corner.

#### **Locality Attributes**

Land uses:	residential and Payneham Cemetery
Building heights (storeys):	predominantly single storey
Streetscape amenity	moderate due to the mixture of building stock

The locality contains a range of dwelling types including detached dwellings, residential flat buildings, group dwellings and row dwellings at varying densities. Although dwellings in the immediate locality are primarily single storey, two-storey dwellings are located at 1-8/20 Marian Road and 1-2/13 Marian Road.

The Payneham Cemetery is located adjacent the subject land at the south-eastern corner of Marian Road and Arthur Street.

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

### Proposal in Detail

The Applicant seeks consent to demolish the existing dwelling and outbuildings and construct a pair of semi-detached dwellings. Dwelling 1 faces Marian Road and Dwelling 2 faces Arthur Street.

The dwellings have an outwardly two-storey appearance and include Colorbond roofing and rendered walls which are considered to complement the variety of materials used within the locality.

Each dwelling contains three (3) bedrooms (the master contains an ensuite and walk-in-robe), a combined kitchen/dining/living area, two separate bathrooms, laundry, single garage and moveable shade blinds in the rear yard.

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

**TABLE 1: DEVELOPMENT DATA:**

Consideration	Dwelling 1	Dwelling 2	Development Plan Merit Assessment Quantitative Guideline
Site Area	284.26m <sup>2</sup> **	216.03m <sup>2</sup>	300m <sup>2</sup> (semi-detached dwelling with a single garage) Residential Zone PDC 7
Allotment Width	12.73m	17.3m	8.0m (semi-detached dwelling with a single garage) Residential Zone PDC 7
Allotment Depth	22.0m	12.73m	N/A
External Wall Height*	Up to 7.3m (incl. gable)	Up to 7.3m (incl. gable)	N/A
Maximum Overall Height (to roof apex)*	7.6m	7.6m	N/A
Floor Area (total)	230.29m <sup>2</sup> (excluding shade sails)	227.72 m <sup>2</sup> (excluding shade sails)	N/A
Floor Area (footprint)	127.41m <sup>2</sup> (including verandahs but excluding shade sails) (107.73m <sup>2</sup> excluding verandah)	125.43m <sup>2</sup> (including verandahs but excluding shade sails) (105.87 m <sup>2</sup> excluding verandah)	N/A
Site Coverage	44.8%	58%	60% Residential Zone PDC 8
Private Open Space	40m <sup>2</sup> 14% of site area	40m <sup>2</sup> 18.5% of site area	Dwelling 1: 20% site area City Wide PDC 225(a) Dwelling 2: 35m <sup>2</sup> City Wide PDC 225(b)

**TABLE 1: DEVELOPMENT DATA *continued...***

Consideration	Dwelling 1	Dwelling 2	Development Plan Merit Assessment Quantitative Guideline
<b>Street Set-back</b>	4.8m to porch and bathroom 6m to facade	1.8m to verandah 3m to main facade	6 metres Residential Zone PDC 8
<b>Side Set-back</b>	1.0m - 1.8m lower level (excluding shade sails) 1.0m – 4.0m upper level	Nil lower level Nil -3.5m upper level	0.9 metres lower level 1.9 metres upper level Residential Zone PDC 8
<b>Rear Set-back</b>	Nil Lower level 3.5 upper level	0.9 – 3.5m lower level (excluding shade sails)	4 metres lower level 6 metres upper level Residential Zone PDC 8
<b>Car Parking Provision</b>	1 undercover & 1 visitor	1 undercover & 1 visitor	2 parking spaces at least one of which is covered Table NPSP/8

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

*\*\* It is likely that the Council would acquire a 3m x 3m corner cut-off for road widening in the event of a future land division, which would reduce the site area by 4.5m<sup>2</sup>.*

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

### Notification

The proposal has been identified and processed as a Category 1 form of development. As such, no public notification was undertaken.

### State Agency Consultation

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

### Discussion

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

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

#### Land Use and Density

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

- Residential Zone Objectives: 1, 2 & 3
- Residential Zone Desired Character Statement
- Residential Zone Principles of Development Control: 1 & 7

City Wide Objectives: 1, 2, 7, 15, 16, 17, 55, 56, 57  
City Wide Principles of Development Control: 1, 2, 3, 4, 6, 20, 21, 23, 24, 174, 175, 176 & 186

Residential Zone Objective 2 seeks increased dwelling densities in close proximity to centres, public transport routes and public open spaces. The subject land is close to Marden Shopping Centre, public transport on Payneham and Portrush Road, open space at Payneham Oval and is in close proximity to Trinity Gardens and St Joseph's Primary Schools.

The Residential Zone is intended to primarily accommodate a variety of dwelling types including semi-detached dwellings. Given the variety of dwelling types within the locality and that semi-detached dwellings are a desired land use within the zone, the proposed dwellings are considered to be appropriate from a land use perspective.

City Wide Principle of Development Control 186 states:

*"Residential allotments and sites should have the appropriate orientation, area, configuration and dimensions to accommodate:*

- (a) the siting and construction of a dwelling and associated ancillary outbuildings;*
- (b) the provision of landscaping and useable private open space;*
- (c) convenient and safe vehicle access and off street parking;*
- (d) passive energy design; and*
- (e) the placement of a rainwater tank."*

The proposed dwellings have been designed to accommodate appropriate building siting, on-site car parking, clothes drying areas, rainwater tanks, soft landscaping and reasonable access to internal light. As such, the dwelling site areas are generally considered to be consistent with the above provision.

Residential Zone Principle of Development Control 7 prescribes minimum allotment sizes and frontage widths for the variety of dwellings anticipated within the zone. In particular, semi-detached dwellings with single garages should be provided with a minimum site area of 300m<sup>2</sup> and a site frontage of 8.0 metres. The proposed dwellings have frontage widths of 12.73 metres and 17.3 metres which is consistent with the above policy. However the proposed site areas of 284.26m<sup>2</sup> and 216.03m<sup>2</sup> are substantially below the minimum site area anticipated.

In *Town of Gawler v Impact Investment Corporation PTY LTD* [2007] SASC 356 (3 October 2007) the Supreme Court outlined 10 reasons why the Planning Authority may be justified in departing from a clearly expressed policy, two of which are considered particularly relevant in this circumstance; firstly, consideration of the purpose and objective of the policy and secondly whether there is something unusual about the development or the land (or in this case the locality) that makes the policy inapplicable or inappropriate.

Specifying minimum allotment sizes primarily seeks to: maintain a level of consistency in allotment patterns and subsequently the character of an area; ensure that new allotments are of functional dimensions and areas; and in some cases the policy seeks to intentionally prevent subdivision (which is not the case within the Residential Zone). If the subject land is in a locality where the existing allotment pattern is substantially or unusually different to that anticipated for the broader Zone or Policy Area, this may be a circumstance where a smaller allotment size may be appropriate.

Dwelling site areas range substantially throughout the locality however there are a number of allotment sizes similar to that proposed and less than the minimum allotment sizes anticipated within the Zone. Residential flat buildings in the locality have units with exclusive site areas of 80m<sup>2</sup> and 156m<sup>2</sup> and average site areas of 215m<sup>2</sup> and 220m<sup>2</sup> including the common areas. Some detached dwellings in the locality on Douglas Place and Arthur Street have site areas ranging between 220m<sup>2</sup>-300m<sup>2</sup>. The character and allotment pattern of the locality are also somewhat compromised by the location of the Payneham Cemetery. Additionally, as the proposed frontage widths are equal to or wider than surrounding allotments, there will be a minimal streetscape impact resulting from the proposed smaller allotment sizes.

Given the proposed dwelling site areas are considered to be functional and are not considered to compromise the character or allotment pattern of the area, the departure from the prescribed minimum allotment sizes is considered appropriate.

streetscape/bulk/scale/height/character

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

Residential Zone Objectives: 3  
Residential Zone Desired Character Statement  
Residential Zone Principles of Development Control: 6, 10

City Wide Objectives: 1, 7, 18, 19, 20, 22  
City Wide Principles of Development Control: 2, 4, 28, 29, 30, 32, 33, 35, 37, 39, 40, 41, 47

The proposed two-storey development is consistent with Residential Zone Principle of Development Control 8, which anticipates development fronting a public road being up to two-storeys in height. Although the proposed dwellings are of a larger scale than the adjacent dwellings, the development is considered to result in an acceptable streetscape outcome due to the mixture of building styles and sizes throughout the locality.

Residential Zone Principle of Development Control 10 states:

*“Semi-detached dwellings should be designed to present as a single dwelling when viewed from the primary street frontage”.*

The proposed dwellings are inconsistent with the above provision as the dwellings have separate roof forms and do not present as a single dwelling. However, this policy is ordinarily applied to a pair of semi-detached dwellings which face the same street and often are constructed on allotments which are narrower than surrounding detached dwellings. The proposed development results in dwellings presenting to different streets and with frontages widths equal to or greater than surrounding dwellings. In this context, the departure from Principle of Development Control 10 is not considered to be a negative aspect of the proposal.

City Wide Principle of Development Control 192 states:

*“Dwellings on corner sites should address both the primary and secondary street frontages and should be designed and sited so that the dwelling facade on the secondary street frontage includes visible articulation and detail, which complements the secondary streetscape (Refer to Figure 6).”*

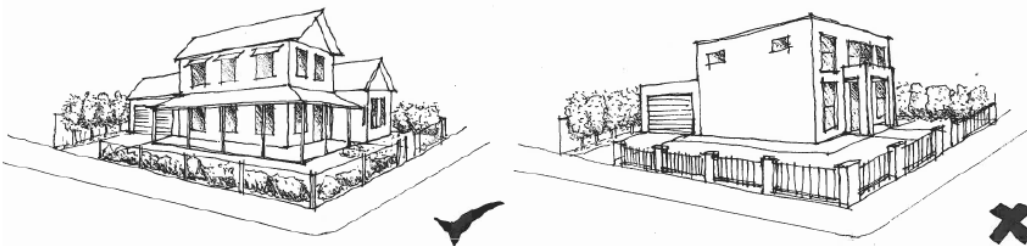


Figure 6

The proposed wrap around verandah and balcony and the solid to void ratio on both the northern and eastern elevations of Dwelling 1 are considered to adequately address the above policy.

The proposed dwellings incorporate rendered walls and Colorbond roofing. The roof form is considered appropriate given the variety of dwelling styles within the locality. The fencing facing Marian Road and Arthur Street and the dividing fence between the dwellings is proposed to be 1.5 metre high powder coated steel pickets which will provide some privacy to the future occupants without compromising the streetscape.

Setbacks and Site Coverage

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

Residential Zone Principle of Development Control: 8

City Wide Principles of Development Control: 207, 208

Residential Zone Principle of Development Control 8 states that dwellings should have a front setback of 6 metres and a setback from a secondary street frontage of 0.9 metre for the lower level and 2 metres for the upper level.

Dwelling 1 is proposed to be set back from Marian Road 4.8 metres to the verandah/balcony, and front room (a relatively narrow portion of the building) and 6 metres to the front door and staircase. The front setback of Dwelling 1 is therefore inconsistent with the anticipated front setback within the zone, However it is considered that the front setback will not compromise the streetscape given the location of the dwelling on a corner adjacent to the cemetery and the variation in front setback on the building façade. Dwelling 1 is set back from Arthur Street 1.8 metres to the verandah and balcony and 3 metres to the main dwelling which is consistent with PDC 8.

Dwelling 2 is set back 1.8 metres to the verandah and 3 metres to the main façade. Although Dwelling 2 is also inconsistent with PDC 8, the proposed front setback for Dwelling 2 is considered to provide a reasonable transition between the secondary setback of Dwelling 1 and the front setback of 76 Arthur Street which is approximately 3.5 metres.

The side and rear setbacks of both dwellings have some inconsistencies with the setbacks anticipated by Residential Zone Principle of Development Control 8 including Dwelling 2 being constructed to both side boundaries. The articulation and variations in setbacks are considered to result in an appropriate streetscape outcome for both Marian Road and Arthur Street despite the shortfalls in side setbacks. The rear yard of Dwelling 2 can be accessed via the garage.

The garage boundary wall of Dwelling 2 is proposed adjacent to the garage of the adjacent dwelling at 76 Arthur Street so will have a minimal impact on the neighbouring dwelling occupants. The setbacks from the western boundary are also considered to provide adequate visual separation for the occupants of the adjacent units particularly as the western yards of the adjacent units are primarily service areas.

On balance, the setbacks are considered to result in the appropriate siting of the dwellings and are not considered to result in an unreasonable visual impact for neighbouring property occupants or the streetscape.

Dwelling 1 is proposed with a site coverage of 44.8% and Dwelling 2 is proposed with a site coverage of 58% which is consistent with Residential Zone Principle of Development Control 8 which anticipates a maximum site coverage of 60%.

#### Overshadowing/overlooking

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

City Wide Principles of Development Control: 11, 12, 35, 71, 195, 196, 235

The Applicant has provided shadow diagrams demonstrating the extent of overshadowing that is likely to occur as a result of the development. The shadow diagrams are contained in **Attachment B**. The diagrams illustrate that on the winter solstice, the proposed development would result in overshadowing of the adjacent units at 27 Marian Road in the morning only however portions of the dwelling at 76 Marian Road would be affected throughout the day. The northern section of the dwelling at 76 Arthur Street incorporates a garage and carport on the boundary so no north facing windows will be affected. The private open space of this adjacent dwelling is in the front yard which will not be affected in the morning and only portions of the yard will be affected from midday onwards. As such, the proposed development is consistent with City Wide Principles of Development Control 195 and 196.

The development will result in overshadowing of the northern portion of the adjacent dwelling roof throughout the day which is inconsistent with City Wide Principle of Development Control 71 with respect to opportunities for future solar panels however there will be opportunities for solar panels on the eastern and western facing roof areas.

The dwellings are proposed to incorporate high level or obscured windows on the southern and western sides however some opportunity for overlooking into neighbouring properties exists from the stairwell windows and from the front balcony of Dwelling 2 into the private front yard of 76 Arthur Street. As such, if the Panel determine to approve the Application, it is recommended that a condition be imposed requiring appropriate privacy treatments.

#### Private open space

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

City Wide Principles of Development Control: 222-225, 229

City Wide Principle of Development Control 225 states that dwellings with a site area of greater than 250m<sup>2</sup> should be provided with 20% of the site area as private open space and dwellings with a site area less than 250m<sup>2</sup> should be provided with 35m<sup>2</sup> private open space. Each dwelling is proposed with 40m<sup>2</sup> private open space located on the western side of the dwellings. As Dwelling 2 has a site area of 216m<sup>2</sup>, the proposed 40m<sup>2</sup> of private open space is consistent with the above policy. However as Dwelling 1 has a site area of 284m<sup>2</sup>, the dwelling should be provided with 56m<sup>2</sup> of private open space. The lack of private open space is considered a negative aspect of the proposal however the shortfall is considered relatively minor given the size of the site and the proximity of public recreation space at Payneham Oval.

The private open space areas will have good access to afternoon light (the proposed retractable shade blinds will provide some sun protection during summer), are of good dimensions and have good links to internal living areas. Rainwater tanks are proposed behind the garages removing the need for these to be located in the main private open space areas however the clothes line and bin storage will need to be accommodated in the yard which is a minor negative aspect of the proposal.

#### Carparking/access/manoeuvring

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

City Wide Objectives: 34.  
City Wide PDC's: 101, 113, 118, 212, 218

Table NPSP/8 prescribes that the proposed dwellings should each be provided with two (2) on-site car parking spaces, of which at least one should be covered and set back 5.5 metres from the primary street. The proposed dwellings will each accommodate one (1) undercover car parking space in the garage and one (1) space in the driveway consistent with this provision.

The proposed garages have internal dimensions of 3.2 metres by 5.8 metres which is marginally inconsistent with City Wide Principle of Development Control 212, which states that garages should have an internal length of 6 metres, but will accommodate most vehicles.

Vehicle access for Dwelling 1 is proposed via Arthur Street and is sufficiently separated from the adjacent street tree. Vehicle access for Dwelling 2 is proposed via the existing crossover on Arthur Street which will be reduced in width with the unused portion being returned to kerb and gutter to provide space for two on-street parking spaces between the crossovers.

#### Finished floor levels/flooding/retaining

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

City Wide Principles of Development Control: 10, 58, 164

The property is not within a recognised flood plain.

The subject land has a minimal fall of approximately 370mm from the south eastern corner to the north western corner. The proposed finished floor levels of each dwelling range from 100 – 300mm above natural ground level. The finished floor level for Dwelling 1 will be between 500-700mm above the Marian Road Top of Kerb which is relatively high but not considered to compromise the streetscape. The finished floor level for Dwelling 2 will be between 170-270mm above the Arthur Street Top of Kerb.

The proposed levels will accommodate a gravity fed stormwater system and will not require any substantial retaining, cut or fill.

Trees (significant, mature & street) and landscaping

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

City Wide Objectives: 24, 98  
City Wide PDC's: 73, 74, 75, 220, 221

The subject land does not contain any significant trees.

The Applicant has provided a landscaping plan contained in **Attachment B** which includes small to medium trees and small to medium shrubs in the front and rear yards. The proposed landscaping is considered to complement the development and the locality and is considered to be consistent with City Wide Objective 24 which anticipates development enhanced with appropriate landscaping.

Environmental Sustainability

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

City Wide Objectives: 23, 42  
City Wide Principles of Development Control: 70, 71, 72, 149, 150, 159, 161

Due to the orientation of the allotment, the dwellings will have limited internal access to northern light however the main living areas will have access to natural light in the morning and the afternoon via the east and west facing windows of the main living area.

The proposed verandahs, eaves and the moveable shade sails will help to protect the windows from excessive heat loading in summer.

The dwellings are each proposed with 2000 litre rainwater tanks consistent with Principle of Development Control 159.

**Summary**

The proposed semi-detached dwellings are a dwelling type anticipated within the zone and are in an area which is considered suitable for increased dwelling densities. Although the site areas of each dwelling are inconsistent with the Development Plan, the areas are consistent with surrounding allotments and are not considered to compromise the mixed character of the streetscape. The dwellings have an outwardly two-storey form however the general form and materials are also considered to provide a reasonable streetscape outcome.

Although the private open space area for Dwelling 1 is less than that anticipated in the Development Plan it is considered to be generally adequate to meet the needs of future occupants particularly given the close proximity of the site to the Payneham Oval recreation area. Dwelling 2 is provided with slightly more private open space than anticipated in the Development Plan and both dwellings will have reasonable internal



access to natural light given the extent of east and west facing windows. The verandahs, balconies and retractable shade blinds will provide some sun protection to these windows.

Each dwelling is provided with sufficient car parking to accommodate the likely future needs of the occupants.

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

## **RECOMMENDATION**

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/56/2016 by Mr G Grida to construct a pair of two-storey semi-detached dwellings with associated fencing and landscaping on the land located at 29 Marian Road Payneham South subject to the following requirements, conditions and notes:

### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:

- Drawing No 15/16/s1 Prepared by Carlo Dottore and Partners Architects, dated January 2016 received by the Council 17 February 2016.

### Conditions

1. The portion of the west and south facing upper floor windows less than 1.7 m above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 m above the internal floor level or a window sill height of 1.7 above the internal floor level.)
2. The southern side of the balcony of Dwelling 2 shall be screened up to a height of 1.7 meters above the floor level of the balcony prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval (suggested treatments include, but are not restricted to, wing walls, or solid or translucent panels).
3. No fencing shall be installed on the Marian Road and Arthur Street frontages within 3 metres of the north-eastern corner of the subject land.
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 kerb & water table or a Council underground pipe drainage system.
5. A rainwater tank with a storage capacity not less than 2 kilolitres (2000 litres) shall be installed and plumbed into a toilet, water heater and/or laundry cold water outlet of each dwelling by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.
6. 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 prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate.

### Notes to Applicant

1. The paving in the rear lane does not form part of this Application. The Applicant is reminded of the need to obtain any consent from land owners or users of the lane, which may be necessary to undertake work in the laneway.
2. 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 on 8204 2004.
3. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.  
  
The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
4. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
5. 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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.  
  
All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
6. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.

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*Mr Dottore declared a conflict of interest in this matter as is the architect for the development. Mr Dottore left the meeting at 8:03pm.*

*Mr Donaldson moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/56/2016 by Mr G Grida to construct a pair of two-storey semi-detached dwellings with associated fencing and landscaping on the land located at 29 Marian Road Payneham South subject to the following requirements, conditions and notes:*

### Relevant Plans

*Pursuant to Section 44 (2) and (3) of the Development Act 1993 and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:*

- *Drawing No 15/16/s1 Prepared by Carlo Dottore and Partners Architects, dated January 2016 received by the Council 17 February 2016.*

Conditions

1. *The portion of the west and south facing upper floor windows less than 1.7 m above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 m above the internal floor level or a window sill height of 1.7 above the internal floor level.)*
2. *The southern side of the balcony of Dwelling 2 shall be screened up to a height of 1.7 meters above the floor level of the balcony prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval (suggested treatments include, but are not restricted to, wing walls, or solid or translucent panels).*
3. *No fencing shall be installed on the Marian Road and Arthur Street frontages within 3 metres of the north-eastern corner of the subject land.*
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 kerb & water table or a Council underground pipe drainage system.*
5. *A rainwater tank with a storage capacity not less than 2 kilolitres (2000 litres) shall be installed and plumbed into a toilet, water heater and/or laundry cold water outlet of each dwelling by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.*
6. *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 prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate.*

Notes to Applicant

1. *The paving in the rear lane does not form part of this Application. The Applicant is reminded of the need to obtain any consent from land owners or users of the lane, which may be necessary to undertake work in the laneway.*
2. *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 on 8204 2004.*
3. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.*  
  
*The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*
4. *The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.*

5. *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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.*

*All works on Council owned land required as part of this development are likely to be at the Applicant's cost.*

6. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*

*Seconded by Ms Newman and the motion was lost.*

*Mr Duke moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **refused** to Development Application No 155/56/2016 by Mr G Grida to construct a pair of two-storey semi-detached dwellings with associated fencing and landscaping on the land located at 29 Marian Road Payneham South for the following reasons:*

- 1. The proposal is an overdevelopment of the site as the site areas are inconsistent with the minimum site areas anticipated within the Residential Zone.*
- 2. The setbacks from Arthur Street are insufficient.*
- 3. Dwelling 1 is provided with insufficient private open space.*
- 4. The imposing nature of the extent of balcony on Arthur Street.*
- 5. The development is inconsistent with the Residential Zone desired character statement with respect to space between buildings.*

*Seconded by Mr Minney and carried.*

*Mr Dottore returned to the meeting at 8:42pm.*

## 2. STAFF REPORTS

### 2.5 DEVELOPMENT APPLICATION 155/635/2015 – JMC STAR ENTERPRISES PTY LTD – 79 & 79A BEULAH ROAD, NORWOOD

<b>DEVELOPMENT APPLICATION:</b>	155/635/15
<b>APPLICANT:</b>	JMC Star Enterprises Pty Ltd
<b>SUBJECT SITE:</b>	79 and 79A Beulah Road, Norwood (Certificates of Title Volume: 5094 Folio: 922, Volume 5094 Folio 921 and Volume 5956 Folio 534)
<b>DESCRIPTION OF DEVELOPMENT:</b>	To use a church hall, located at the rear of the main church hall, for tuition and rehearsals in association with a children's dance, singing and drama teaching facility (Theatre Bugs) with ancillary storage, including within a shipping container placed adjacent to (behind) the hall.
<b>ZONE:</b>	Residential Historic (Conservation) Zone, Norwood 3 Policy Area, Norwood, Payneham and St Peters (City) Development Plan (dated 2 July 2015)
<b>PUBLIC NOTIFICATION CATEGORY:</b>	Category 3

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application previously considered and deferred by the Panel, at its meeting held on 15 February 2016. The Applicant has submitted further information in relation to the Application and it is necessary for the Panel to determine whether or not the proposal sufficiently accords with the Development Plan to warrant consent.

#### **Background**

The Applicant is seeking consent to use a church hall, located at the rear of the main church hall, for tuition and rehearsals in association with a children's dance, singing and drama teaching facility (Theatre Bugs) with ancillary storage, including within a shipping container placed adjacent to (behind) the hall; at 79 and 79A Beulah Road, Norwood.

At its meeting held on 15 February 2016, the Panel determined that the Development Application:

*"is deemed to insufficiently accord with the Development Plan such that it does not warrant consent in its current form and as such, consideration of the Application is deferred, to enable the Applicant to consider amending their proposal to overcome the following concerns:*

1. *The mitigation of amenity issues arising from movements of vehicles in the car park.*
2. *The feasibility of conducting all of the activities proposed in the rear hall on hot days without the provision of air conditioning.*
3. *Confirming the hours of operation in accordance with information provided by the Applicant and clarity in respect to the proposed hours and days for rehearsals during school holidays and whether Sunday operations can be minimised or eliminated.*
4. *The provision of alternative storage arrangements in lieu of the shipping container that is more in keeping with the Historic Conservation Zone.*
5. *How the Applicant will ensure that free and unfettered car parking will remain available for the proposed land use for the life of the consent."*

A copy of the relevant section of the Minutes of the Panel meeting held on 20 July 2015, including attachments, is contained in **Attachment A**.

The Applicant has submitted further information in response to the Panel's concerns. A copy of a letter from the Applicant setting out the further information is contained in **Attachment B**.

### **Discussion**

The following discussion is based on the Panel's reasons for deferral:

#### Noise from the movements of vehicles in the car park

The Panel asked the Applicant to consider amending the Application to address concerns that additional vehicle movements within the car parking area, associated with the proposed use of the rear hall, would result in a loss of amenity to the occupiers of adjacent residential land.

The applicant has given consideration to amending the Application, through:

1. replacing the gravel car park surface with asphalt/bitumen; and
2. installing acoustic fencing adjacent to the common boundary with 32 Sheldon Street;

Due to the cost associated with both of the above options, the Applicant has requested that the Panel give consideration to approving the Application as originally proposed. In doing so, the Applicant has asked that the Panel consider that:

- usage of the car park has fluctuated over the past 100 years,
- Theatre Bugs propose to conduct classes in the rear hall for 22.5 hours per week, with large portions of each day having no classes being run.
- The report by Sonus addresses issues related to car park noise. It takes into account activity such as people talking, opening and closing of car doors, vehicles starting, idling, moving and accelerating, as well as general vehicle movements on a gravel surface. The conclusion reached was that noise levels were predicted to achieve the Policy goal level of 47 db(A) at all residences in the vicinity of the car park.

In the event that the Panel forms the opinion that the proposal will result in unacceptable noise impacts on the adjacent residential property at 32 Sheldon Street, the Applicant has advised that he would be accepting of a condition, requiring that a 2.1m high Slimwall acoustic wall be installed alongside the existing fence on the boundary between the subject land and the dwelling at 32 Sheldon Street. In addition, the Applicant would be accepting of a condition requiring that the 2 car parking spaces located closest to 32 Sheldon Street, be designated as staff parking only, in order to reduce the turn-over of cars and thus activity/noise nearest the adjacent residence.

It remains the assessment of staff, that the original Application sufficiently accords with the Development Plan to merit consent. Based on expert acoustic advice, the additional noise associated with the proposed increased use of the rear hall, will be in accordance with the Environment Protection (Noise) Policy, which is reflected in the Development Plan.

#### Use of the rear hall on hot days

The Panel asked the Applicant to consider amending the Application to address concerns regarding the feasibility of conducting all of the activities proposed in the rear hall on hot days, without the provision of air conditioning.

The Applicant has given consideration to amending the Application, through the installation of air conditioning within the rear hall. Due to the cost associated with the installation of air conditioning and the Applicant's belief that the use of the rear hall on hot days will likely be feasible without air conditioning, this aspect of the Application has not been amended.

In particular, the Applicant believes that the combination of solid construction, high ceilings, lack of east and west facing windows and ceiling and roof vents, will result in effective heat dissipation on hot days. The Applicant has also advised that:

- Theatre Bugs staff will be instructed to keep the windows closed at all times;
- The height of the opening mechanisms require a ladder to operate, such that they will not be able to be easily opened by members of the staff or by members of the public.
- automatic closer mechanisms will be installed to the doors to ensure they are not left open; and
- a large industrial fan will be installed to help with air movement and any temperature extremes.

The Applicant has also explained that another venue occupied by Theatre Bugs in Unley, operates effectively without air conditioning.

It is the opinion of staff that the use of the rear hall without air conditioning and with all doors and windows closed is likely to be feasible, for the reasons given by the Applicant. Whilst there may possibly be times during extreme heat periods, where the temperature within the hall is excessive, despite the use of a fan, affected classes would be able to be cancelled. In the event that the hall was operated contrary to approval, with doors and/or windows opened (thus allowing noise to escape), this would be an enforceable breach of the Development Act.

#### Confirmation of the hours of operation

The Panel requested that the Applicant confirm the proposed hours of operation. In particular, clarity was sought in respect to the proposed hours and days for rehearsals during school holidays and whether Sunday operations can be minimised or eliminated.

The Applicant has provided the following clarification with respect to the proposed hours of operation:

- Theatre Bugs will use the rear hall for up to 6 days per year in lieu of the Church for special activity rehearsals. This is simply a “swap” rather than an addition to existing activity
- In school holidays, there will be 7.25 hours per week for 10 weeks per year. In particular, the following times are proposed:
  - on Thursdays from 8:45pm for 7 hours, 15 minutes
- during school term, class activity is proposed for 22.5 hours per week for 39 weeks per year. In particular, the following times are proposed:
  - Mondays from 3:45pm for 3 hours, 45 minutes;
  - Tuesdays from 4:00pm for 3 hours, 30 minutes;
  - Wednesdays from 4:00pm for 4 hours;
  - Thursdays from 3:45pm for 2 hours, 30 minutes;
  - Fridays from 9:15am for 3 hours, 30 minutes and
  - Saturdays from 8:45am for 5 hours and 15 minutes

The Applicant has advised that class times typically vary over time due to changing client demands and has requested that an allowance of at least 26 hours per week be given, if time limitations are to be imposed by the Panel.

In the event that the Panel determines to grant consent to the Application, it is recommended that conditions be imposed, limiting the total usage of the rear hall to 26 hours per week, with class times to be confined to between 8:30am and 8:00pm Monday to Friday and 8:30am to 1:00pm Saturday and Sunday. A further condition limiting the use of the rear hall by Theatre Bugs on Sundays to six (6) days per year, is recommended.

#### Alternative storage arrangements

The Panel has asked the Applicant to consider the provision of alternative storage arrangements in lieu of the shipping container, which are more in keeping with the Historic Conservation Zone.

The Applicant has given consideration to constructing a shed in lieu of installing a shipping container. Due to the cost of constructing a shed and the Applicant’s belief that a shed and a shipping container would result in a similar visual impact in the proposed location, this aspect of the Application has not been amended.

The Applicant has provided photographs with a painted shipping container superimposed, to demonstrate the visual impact of the proposed shipping container. It remains the opinion of staff, that the shipping container is acceptable, as it would not be visible from Beulah Road and would not detract from the heritage value or aesthetic contribution of the church and associated historic buildings.

#### Free and unfettered car parking

The Panel asked the Applicant to consider how he will ensure that free and unfettered car parking will remain available for the proposed land use for the life of the consent.

The use of the car parking adjacent to the church on the separate allotment at 79 Beulah Road, forms part of the Development Application. Pursuant to Section 44 (2) and (3) of the *Development Act 1993*, it is required that a development be undertaken, used, maintained and operated in accordance with the Application made. Therefore, in the event that the allotment containing the additional car parking at 79 Beulah Road was sold and the future owners did not permit Theatre Bugs access to the car parking, the operation of Theatre Bugs without use of the additional car parking would be an enforceable breach of the Development Act. This scenario is not uncommon. Many approved developments occupy sites comprising more than one allotment.

In any event the Applicant has advised that the allowance for use of the Church car parking spaces is explicitly included as an item in the lease documents between St Bartholomew's Church and Theatre Bugs.

#### **Summary**

The Applicant has given consideration to each of the areas of concern which were raised by the Panel at the meeting held on 15 February. No amendments are proposed to the Application. Instead, the Applicant has requested that the Panel consider the Application in its original form, having regard to additional information which has been provided. That being said, the Applicant has advised that he would be accepting of a condition requiring an acoustic wall to be constructed adjacent to the boundary between the subject land and the residential property at 32 Sheldon Street and another condition, restricting use of car parking spaces located closest to 32 Sheldon Street, to staff only.

It remains the opinion of staff that the Application in its original form sufficiently accords with the Development Plan to merit consent, subject to the conditions originally recommended. In light of the clarification provided in relation to hours of operation, an additional condition is also recommended, restricting the total hours of operation per week to 26 hours.

#### **RECOMMENDATION**

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/635/15 by JMC Star Enterprises Pty Ltd to use a church hall, located at the rear of the main church hall, for tuition and rehearsals in association with a children's dance, singing and drama teaching facility (Theatre Bugs) with ancillary storage, including within a shipping container placed adjacent to (behind) the hall on the land located at 79 and 79A Beulah Road, Norwood, subject to the following requirements, conditions and notes:

#### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:

- Site plan prepared by Warwick Smith, received by the Council on 4 February 2016
- Email from Warwick Smith to Mark Thomson, dated 21 December 2015, 12:15am
- Email from Warwick Smith to Mark Thomson, dated 13 January 2016, 10:18am



Conditions

1. Classes shall only be held in the rear hall during the following times:
  - Monday to Friday 8:30am to 8:00pm
  - Saturday and Sunday 8:30am to 1:00pm
2. The rear hall shall be used for classes on Sunday on a maximum of six (6) occasions per year.
3. The music noise level within the rear shall not exceed 77dB(A) measured within the hall.
4. Once the audio system is in place, the music level is to be confirmed by an Acoustic Engineer and the operating settings (volume control and other settings on the system) are to be photographed. A summary report is to be sent to Council.
5. The door to the rear shall have a self-closing mechanism installed and the door and all windows shall be closed at all times whilst lessons are held within the hall or music is played within the hall for any other reason.
6. Concrete wheel stops shall be installed to delineate the angled car parking spaces located adjacent to the rectory.
7. Signs shall be installed to displaying 'entry only' and 'exit only', to indicate the revised flow of traffic. Details of the signs shall be provided to the reasonable satisfaction of the Council prior to their installation.
8. Use of the rear hall by Theatre Bugs shall not exceed a total duration of 26 hours per week.

Notes to Applicant

1. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.
2. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.

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*Mr Duke moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **refused** to Development Application No 155/635/15 by JMC Star Enterprises Pty Ltd to use a church hall, located at the rear of the main church hall, for tuition and rehearsals in association with a children's dance, singing and drama teaching facility (Theatre Bugs) with ancillary storage for the following reasons:*

1. *Amenity issues arising from movements of vehicles in the car park.*
2. *Conducting all of the activities proposed in the rear hall on hot days without the provision of air conditioning is not feasible resulting in the likely escape of noise through open doors and/or windows.*
3. *The proposed shipping container results in an unreasonable impact on the amenity of adjacent property occupants and the amenity of the Residential Historic (Conservation) Zone.*

*Seconded by Mr Minney and the vote was tied. The Presiding Member used his casting vote and the Application was refused.*

## 2. STAFF REPORTS

### 2.6 DEVELOPMENT APPLICATION 155/0420/2015 – MR S PORROVECCHIO – 131 PORTRUSH ROAD, EVANDALE

DEVELOPMENT APPLICATION:	155/0420/15
APPLICANT:	Mr S Porrovecchio
SUBJECT SITE:	131 Portrush Road, Evandale (Certificate of Title - Volume: 5347 Folio: 146)
DESCRIPTION OF DEVELOPMENT:	Change of use to a cafe with associated building alterations and car parking (Appeal compromise proposal)
ZONE:	Local Commercial Zone <i>Norwood, Payneham and St Peters (City) Development Plan (dated 31 October 2013)</i>
PUBLIC NOTIFICATION CATEGORY:	Category 3

#### Purpose of Report

The purpose of this report is to provide details to the Panel on amended plans submitted in relation to an Application which was refused by the Panel at its meeting held on 21 December 2015, which is the subject of an Appeal to the Environment Resources and Development (ERD) Court. The Panel is required to consider the amended plans and advise the ERD Court as to whether or not they satisfactorily address the concerns identified with the Application, such that consent would now be warranted.

#### Background

A Development Application (155/0420/15) was lodged in June 2015 for a change of use to a cafe with associated building alterations and car parking at 131 Portrush Road, Evandale.

The Panel considered Development Application Number 155/0420/15 at its meeting held on Monday 21 December 2015 and determined to refuse the Application for the following reasons:

- 1. The proposed development does not provide sufficient on-site car parking to cater for the likely demands generated by the café use, as prescribed within Table NPSP/9 of the Development Plan. The proposed development is therefore at odds with City Wide Objective 34 and Principle of Development Control 120.*
- 2. The shortfall in on-site car parking to cater for the proposed development will increase traffic and the demand for on-street car parking within Edward Street, which is primarily residential in nature. As such, the proposal will result in a loss of residential amenity, which is contrary to Objective 1 and Principle of Development Control 1 of the Local Commercial Zone.*

A copy of the relevant section of the Minutes of the Panel meeting held on 21 December 2015, including the refused plans, is contained in **Attachment A**.

The Panel was also critical of the quality of plans and information associated with the original Development Application.

Following the refusal of the Application by the Panel, the Applicant lodged an Appeal with the ERD Court. A preliminary conference was held at the ERD Court on 8 February 2016, at which the Appellant advised that they intended to amend the proposal and to provide better plans and information, in an attempt to resolve the issues of contention and to gain the Panel's support for the proposal.

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

In summary, the proposed amendments include:

- a revised internal layout and improved plans illustrating 'back of house' facilities, circulation areas, pick-up areas, a children's play area and dining areas with a total of forty-six (46) seats (reduced from fifty-five (55) on the original proposal which was refused by the Panel);
- an amended site plan with a revised car parking and access arrangement, storage areas, bin storage areas and landscaping;
- the provision of improved supporting information including a planning report prepared by Mr Lou Fantasia of Lou Fantasia Planning and a car parking and traffic report prepared by Ms Jayne Lovell of MFY Traffic, Parking, Transport; and
- the provision of scaled elevations illustrating all of the completed building work including access ramps, screens, etc. (a similar Application was previously granted Development Plan Consent by the Council and the building work was undertaken without having obtained Building Rules Consent or Development Approval).

A copy of Mr Fantasia's planning report is contained in **Attachment C** and a copy of Ms Lovell's traffic and car parking report is contained in **Attachment D**.

If, after considering the amended plans and information, the Panel determines that the proposed development is sufficiently in accordance with the Development Plan to warrant consent, the ERD Court will be advised and consent orders will likely be prepared accordingly. Alternatively, if the Panel determines that the proposal remains at variance with the Development Plan to an extent that approval is not warranted, the matter may proceed to a hearing by a Commissioner of the ERD Court.

## Discussion

The following discussion is based on the reasons for refusal that were given by the Panel at its meeting held on 21 December 2015.

### *The proposed development does not provide sufficient on-site car parking to cater for the likely demands generated by the cafe use*

The Applicant has engaged a traffic and car parking consultant, Ms Jayne Lovell of MFY Pty Ltd, to undertake a review of the proposed car parking layout and the provision of on-site car parking. A summary of Ms Lovell's report is set out below:

- *the Applicant proposes to change the use of the land to a cafe with 46 seats, including 34 indoor seats and 12 outdoor seats;*
- *a car parking area is proposed to be constructed at the rear of the building that will accommodate ten (10) on-site car parking spaces, including one (1) accessible space;*
- *an additional staff car parking space is provided within a garage adjacent to the western boundary of the land, resulting in a total of eleven (11) on-site car parking spaces;*
- *the proposed car parking spaces and access arrangements meet the relevant Australian Standards;*
- *the existing driveway crossover on Edward Street will be relocated to provide improved access to the proposed car parking area;*
- *the reinstatement of the dis-used driveway crossover will result in the creation of an additional two (2) on-street car parking spaces directly adjacent to the site;*
- *consideration should be given to the provision of a bicycle parking rail or area on the subject land;*
- *Table NPSP/9 in the Council's Development Plan prescribes a car parking rate of one (1) space for every three (3) indoor seats. No additional parking is required for outdoor dining up to 25% of the indoor seating;*
- *the provision of 34 indoor seats generates a theoretical demand for eleven (11) car parking spaces, which are provided on the subject land;*
- *an additional eight (8) outdoor seats can be provided without any additional car parking requirement;*

- *therefore, given that the proposed development includes twelve (12) outdoor seats, there will be a theoretical shortfall of one (1.3 actually) on-site car parking space;*
- *the shortfall of one (1) on-site car parking space is off-set by the gain of two (2) on-street car parking spaces directly associated with the closure and reinstatement of one of the three existing driveway crossovers; and*
- *the previously approved land use, an office and store, would have generated a theoretical demand for nine (9) car parking space, whereas only four (4) were provided, resulting in a shortfall of five (5) on-site car parking spaces. The proposed development will significant improve the existing shortfall.*

A full copy of Ms Lovell's report is contained in **Attachment D**.

The amended proposal includes a reduction in dining seats from fifty-five (55) to forty-six (46), which of-itself reduces the theoretical car parking demand by three (3) spaces if the cafe rate of 1 space per 3 seats prescribed in Table NPSP/9 is used. Three (3) car parking spaces was the theoretical shortfall identified on page 24 of the previous report presented to the Panel on 21 December 2015 (**Attachment A5**), which was the primary basis for the original refusal.

This shortfall has now been overcome.

The amended floor plan illustrates the 'back of house' areas, a takeaway waiting area, a children's play area and dining areas with a total of forty-six (46) seats, including thirty-four (34) within the building and twelve (12) within the alfresco dining area. Circulation areas have been hatched to illustrate where tables and chairs are likely to be located, in an attempt to demonstrate that the building could not comfortably operate with a higher number of tables and chairs.

This concept was discussed by the Panel when the Application was previously considered, as it was the Panel's view that limiting seats numbers was not an appropriate planning condition for the purposes of reducing car parking demand, if there was clearly the capacity for a larger number of seats.

Whilst it appears that a small amount of additional seating could potentially be accommodated within the building in certain locations, the proposed layout appears to be reasonably feasible and the Application should therefore be assessed on face value.

The proposed amendments to the car parking layout and access arrangements are considered to be a significant improvement on the original design. The previously proposed dual-access arrangements resulted in vehicle movements that were inconvenient and did not comply with the relevant Australian Standards.

All vehicle movements now comply with the relevant Australian Standards and the accessible car parking space is located directly adjacent to the access ramp. Manoeuvring associated with car parking space No. 10 is tight and its reduced car bay length only meets the Australian Standard for a staff car parking space, as illustrated on the amended site plan. If the Panel determines to support the proposed development in its amended form, it is recommended that a condition be imposed to ensure that car parking space No. 10 is clearly sign-posted or labelled as a staff car parking space.

*The shortfall in on-site car parking to cater for the proposed development will increase traffic and the demand for on-street car parking within Edward Street*

The proposed development, as amended, will not result in any theoretical increase in demand for on-street car parking. The proposed shortfall of one (1) on-site car parking space is off-set by the provision of two (2) additional on-street car parking spaces that will be created by the closure and reinstatement of one (1) of the existing driveway crossovers.

It is also noted that the previously approved land use, an office and store, had a shortfall of five (5) on-site car parking spaces that would have needed to be accommodated on the street. The proposed development will improve this shortfall significantly.

### Other matters

The amended design includes dedicated and screened storage areas, a herb garden, a bin storage area and several landscaping areas. One of the representors on the original Application was concerned with the location of the bin storage area adjacent to their common boundary at the rear of the site. The amended layout includes a dedicated bin storage area adjacent to the existing building and behind a neighbouring garage, with ample separation from neighbouring private open space. This is considered to be a positive aspect of the amended design.

The storage area that is now proposed adjacent to the western rear boundary is not a covered area and is proposed to store empty cartons, crates and other recyclables. All perishable waste will be stored in the dedicated waste storage area adjacent to the grease arrester.

The existing garage at the rear of the subject land will be reduced in width to a single car width in order to accommodate the proposed car parking area. The remaining boundary fences at the rear and along the southern side boundary will be replaced with 2.1 metre high, 75mm thick hebel "Powerpanel" acoustic fencing, to reduce any visual and/or noise impacts on adjacent residential properties.

The internal fences, which are proposed to separate the car parking area from the herb garden, storage area and grease arrester, will be comprised of 1.8 metre high tubular fencing.

### **Summary**

The proposed cafe is considered to constitute a suitable use for the subject land. The cafe is of a relatively small scale and is located immediately adjacent to the Local Centre (St Peters) Zone, such that it forms a convenient and complementary extension to the existing shopping area to the north.

The amended design will reduce the theoretical demand for car parking associated with the development to an acceptable level. The car parking and building layouts have been improved markedly from the previously considered design. Access and egress arrangements are now considered to be safe and convenient.

The proposed development will not increase the demand for on-street car parking in Edward Street, in-fact the proposed development would represent a significant theoretical improvement on the shortfall associated with the previous approved use (5 spaces).

Subject to appropriate conditions, operational matters including hours of operation and delivery arrangements can be managed.

Accordingly, it is considered that the proposal, as amended, is not seriously at variance with the Development Plan and sufficiently accords with the relevant provisions of the Development Plan to warrant consent.

### **RECOMMENDATION**

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, the Environment Resources & Development Court be advised that Development Application No. 155/0420/15, for a change of use to a cafe, including alterations to an existing building, demolition of a carport, partial demolition of a garage and alterations to a car parking area, on the land located at 131 Portrush Road, Evandale, is acceptable subject to the following conditions, or similar conditions as deemed suitable by the Court:

#### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:

- the site and floor plans prepared by Anthony Donato Architects, Job No. 3844-16, received by the Council on 31 March 2016; and
- the elevations prepared by Anthony Donato Architects, Job No. 3844-16, received by the Council on 31 March 2016.

#### Conditions

1. The cafe, herein approved, shall operate with no more than forty-six (46) dining seats at any time, including thirty-four (34) dining seats within the building and twelve (12) al-fresco dining seats.
2. The hours of operation shall be limited to between 7:00am and 9:00pm all days except Saturday, which shall be limited to between 7:00am and midnight.
3. All deliveries to the premises with the exception of newspapers and bread, shall be made between the hours of 9:00am and 5:00pm.
4. 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 prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.
5. All landscaped areas shall be separated from adjacent driveways and parking areas by a suitable kerb or non-mountable device to prevent vehicle movement thereon (incorporating ramps or crossovers where appropriate to facilitate the movement of persons with disabilities).
6. Car parking space No. 10 shall be clearly identified as a staff car parking space with appropriate signage.
7. All of the car parking, driveways and vehicle manoeuvring areas shall be constructed of bitumen, concrete or paving bricks and shall be drained in accordance with recognised engineering practices prior to the occupation of the premises.
8. All of the 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.
9. All car parking spaces, driveways, and vehicle manoeuvring areas shall be maintained in a good condition to the reasonable satisfaction of the Council or its delegate.
10. 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.
11. All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Council or its delegate.
12. The existing crossover invert that is located along the south/west/north/east property boundary shall be reinstated to kerb and gutter prior to the occupation of the dwelling/dwellings/office/ buildings to the reasonable satisfaction of the Council or its delegate. All costs shall be borne by the owner/applicant.

#### Notes to Applicant

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 on 8204 2004.

2. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
  3. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
  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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513. All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
  5. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
  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.
- 

*Mr Dottore moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, the Environment Resources & Development Court be advised that Development Application No. 155/0420/15, for a change of use to a cafe, including alterations to an existing building, demolition of a carport, partial demolition of a garage and alterations to a car parking area, on the land located at 131 Portrush Road, Evandale, is acceptable subject to the following conditions, or similar conditions as deemed suitable by the Court:*

*Relevant Plans*

*Pursuant to Section 44 (2) and (3) of the Development Act 1993 and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:*

- *the site and floor plans prepared by Anthony Donato Architects, Job No. 3844-16, received by the Council on 31 March 2016; and*
- *the elevations prepared by Anthony Donato Architects, Job No. 3844-16, received by the Council on 31 March 2016.*

*Conditions*

1. *The cafe, herein approved, shall operate with no more than forty-six (46) dining seats at any time, including thirty-four (34) dining seats within the building and twelve (12) al-fresco dining seats.*
  2. *The hours of operation shall be limited to between 7:00am and 9:00pm all days except Saturday, which shall be limited to between 7:00am and midnight.*
  3. *All deliveries to the premises with the exception of newspapers and bread, shall be made between the hours of 9:00am and 5:00pm.*
  4. *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 prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.*
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5. *All landscaped areas shall be separated from adjacent driveways and parking areas by a suitable kerb or non-mountable device to prevent vehicle movement thereon (incorporating ramps or crossovers where appropriate to facilitate the movement of persons with disabilities).*
6. *Car parking space No. 10 shall be clearly identified as a staff car parking space with appropriate signage.*
7. *All of the car parking, driveways and vehicle manoeuvring areas shall be constructed of bitumen, concrete or paving bricks and shall be drained in accordance with recognised engineering practices prior to the occupation of the premises.*
8. *All of the 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.*
9. *All car parking spaces, driveways, and vehicle manoeuvring areas shall be maintained in a good condition to the reasonable satisfaction of the Council or its delegate.*
10. *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.*
11. *All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Council or its delegate.*
12. *The existing crossover invert that is located along the south/west/north/east property boundary shall be reinstated to kerb and gutter prior to the occupation of the dwelling/dwellings/office/ buildings to the reasonable satisfaction of the Council or its delegate. All costs shall be borne by the owner/applicant.*
13. *A child safety door shall be installed to the covered outdoor children's play area.*
14. *A bicycle parking station shall be provided in a suitable location.*

Notes to Applicant

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 on 8204 2004.*
2. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*
3. *The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.*
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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513. All works on Council owned land required as part of this development are likely to be at the Applicant's cost.*



5. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*
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.*

*Seconded by Mr Minney and carried.*

## 2. STAFF REPORTS

### 2.7 DEVELOPMENT APPLICATION 155/876/2015 – DANIEL JORDAN HOMES – 5A FIFTH AVENUE, ST PETERS

<b>DEVELOPMENT APPLICATION:</b>	<b>155/876/2015</b>
<b>APPLICANT:</b>	<b>Daniel Jordan Homes</b>
<b>SUBJECT SITE:</b>	<b>5A Fifth Avenue, St Peters (Certificate of Title Volume: 5794 Folio: 43)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Construction of a single storey detached dwelling with an associated cellar, carport, freestanding garage, front fence and landscaping</b>
<b>ZONE:</b>	<b>Residential Historic (Conservation) Zone Norwood, Payneham and St Peters (City) Development Plan (dated 2 July 2015)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 1</b>

#### **Purpose of Report**

The purpose of this report is to provide details to the Panel on a compromise proposal which has been submitted in relation to a Development Application which was refused by the Panel at its meeting held on 20 January 2016 and which is the subject of an Appeal to the Environment Resources and Development (ERD) Court. The Panel is required to consider the amended plans and advise the ERD Court as to whether or not the amended plans satisfactorily address the concerns identified with the Application, such that consent would now be warranted.

#### **Background**

A Development Application (155/876/16) was lodged in December 2015 for the construction of a single storey detached dwelling with an associated cellar, carport, freestanding garage, front fence and landscaping

The Panel considered Development Application Number 155/876/14 at its meeting held on 20 January 2016 and determined to refuse the Application for the following reasons:

1. *The proposal is at odds with the Desired Character Statements for The Avenues Policy Area and Residential Historic (Conservation) Zone, as the proposed dwelling attempts to replicate historic buildings in the zone.*

A copy of the relevant section of the Minutes of the Panel meeting held on 20 January 2016, including the refused plans, is contained in **Attachment A**.

Following the refusal of the Application by the Panel, the Applicant lodged an Appeal with the ERD Court. A preliminary conference is scheduled for 9 May 2016 at the ERD Court. The Applicant has prepared a compromise proposal, which is the subject of this report, in an attempt to gain the Panel's support of the proposal.

A copy of the amended plans is contained in **Attachment B**.

The proposed amendments comprise the removal of some of the ornate detailing, namely lacework trim to the verandah, two (2) finials and sculpted moulding above the front window.

## Discussion

The revised plans were referred to the Council's Heritage Advisor, David Brown. Mr Brown makes the following comment in his report

*Changes to the actual design of the house itself are needed, not just deleting the frills. There are many character and heritage listed old houses in the area that also no longer have any lace or finials, so the removal of these minor elements on the design still does not distinguish this house as a new dwelling built in 2016.*

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

Whilst the proposal satisfies many of the Development Plan provisions for new dwellings in Historic Conservation Zones (for example those relating to materials, form, scale, setback etc), the amended dwelling design still attempts to reproduce the finer architectural detail of historic dwellings, contrary to the following section of the Desired Character Statement for the Residential Historic (Conservation) Zone:

*New development will complement and reinforce the traditional colours and materials such as stone, brick and rendered masonry. It will be set in a sympathetic landscaped setting and will emulate the general scale and form of traditional building elements such as fences, verandahs and hipped and gabled roofs, instead of attempting to reproduce the finer architectural detail of the historic building stock.*

As set out in Mr Brown's advice, the amended dwelling design retains much of the finer architectural detail of historic dwellings in the area. Examples of retained replication finer architectural detailing are:

- circular gable vent;
- mouldings above windows;
- moulded brackets below fascias; and
- 'eyelash' verandah profile;

The policy intent is considered to be clear, insofar as the prominence and significance of historic buildings should be maintained, through ensuring that new dwellings are complementary in form, scale and composition, without competing for prominence or 'mimicking' older dwellings by replicating finer architectural detailing.

## Summary

The proposed changes are not considered sufficient to address the reason for refusal, as the dwelling still attempts to replicate historic buildings in the zone.

Accordingly, it is considered that the amended proposal does not sufficiently accord with the relevant provisions of the development plan to warrant development plan consent, for the same reason as was given by the Panel in the original determination.

## Comments

On 13 April 2016, the Council received a letter from Ms Helen Dyer, an Urban Planner acting on behalf of the Applicant. In the letter, Ms Dyer puts forward her opinion that the original Development Application warranted Development Plan Consent, as in her opinion "we question whether the Authority may have placed undue weight on one reference within the Development Plan, than may be warranted". A copy of the letter is contained in **Attachment D**.

It remains the view of Council staff, that the original Application (and the amended proposal) did not sufficiently accord with the Development Plan. Whilst it is agreed that significant weight was placed on one reference in the Desired Character Statement, the reference is clearly expressed and sets a clear direction for the design of new dwellings in the zone. The ERD Court has repeatedly emphasised the importance of Desired Character Statements in helping to make sense of other provisions (Objectives and Principles of Development Control) within the relevant zone or policy area. The ERD Court and Supreme Court have also stated on numerous occasions, that there needs to be good reason to depart from a clearly stated policy position. There does not appear to be any good reason to do so in this instance.

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, the Environment Resources & Development Court be advised that Development Application No. 155/876/15, for the construction of a single storey detached dwelling with an associated cellar, carport, freestanding garage, front fence and landscaping, is not accepted.

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*Mr Donaldson moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, the Environment Resources & Development Court be advised that Development Application No. 155/876/15, for the construction of a single storey detached dwelling with an associated cellar, carport, freestanding garage, front fence and landscaping, is not accepted.*

*Seconded by Ms Newman and the motion was tied. The Presiding Member used his casting vote and the motion was lost.*

*Mr Duke moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, the Environment Resources & Development Court be advised that Development Application No. 155/876/15, for the construction of a single storey detached dwelling with an associated cellar, carport, freestanding garage, front fence and landscaping, on the land located at 5A Fifth Avenue, St Peters, is acceptable subject to the following conditions, or similar conditions as deemed suitable by the Court:*

### Relevant Plans

*Pursuant to Section 44 (2) and (3) of the Development Act 1993 and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the following relevant plans, drawings, specifications and other documents:*

- *the site, floor, elevation and landscaping plans prepared by Progetto Design dated 29 March 2016 marked revision 7.*

### Conditions

1. *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.*
2. *A rainwater tank with a storage capacity not less than 2 kilolitre (2000 litres), shall be installed for each of the dwellings or alternatively, an 8 kilolitre communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.*

3. *All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, herein approved, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.*
4. *The front fence herein approved shall incorporate a pier and beam footing design within 3.5m of the base of the adjacent street tree. All excavation in this area shall be undertaken by hand tools only, in order to minimise any impacts on the health of the tree.*

Notes to Applicant

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 on 8204 2004.*
2. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*
3. *The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.*
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's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513. All works on Council owned land required as part of this development are likely to be at the Applicant's cost.*
5. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*
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.*

*Seconded by Ms Moore and the vote was tied. The Presiding Member used his casting vote and the motion was carried.*

**3. OTHER BUSINESS**

Nil

**4. CONFIDENTIAL REPORTS**

Nil

**5. CLOSURE**

The Acting Presiding Member declared the meeting closed at 9:40pm.

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**Phil Smith**  
**Presiding Member**