

Development Assessment Panel Agenda & Reports

15 August 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.*

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

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City of
Norwood
Payneham
& St Peters

10 August 2016

To all Members of the Development Assessment Panel:

- Mr Terry Mosel (Presiding Member)
- Mr Don Donaldson
- Mr Phil Smith
- Mr Kevin Duke
- Ms Evonne Moore
- Ms Jenny Newman
- Ms Fleur Bowden
- Mr Carlo Dottore
- Mr John Minney

NOTICE OF MEETING

I wish to advise that pursuant to Section 56A of the *Development Act 1993*, the next Ordinary Meeting of the Norwood Payneham & St Peters Development Assessment Panel, will be held in the Mayor's Parlour, Norwood Town Hall, 175 The Parade, Norwood, on:

Monday 15 August 2016, commencing at 7.00pm.

Please advise Jo Kovacev on 8366 4530 or email jkovacev@npsp.sa.gov.au if you are unable to attend this meeting or will be late.

Yours faithfully

Mario Barone
CHIEF EXECUTIVE OFFICER

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City of
**Norwood
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& St Peters**

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VENUE Mayors Parlour, Norwood Town Hall

HOUR

PRESENT

Panel Members

Staff

APOLOGIES

ABSENT

1. **CONFIRMATION OF THE MINUTES OF THE MEETING OF THE DEVELOPMENT ASSESSMENT PANEL HELD ON 18 JULY 2016**

2. **STAFF REPORTS**
 - Items to be starred (.....)
 - All unstarred items to be adopted (.....)

2. STAFF REPORTS

2.1 DEVELOPMENT APPLICATION 155/0253/2016 – AUSTRALIAN MEDICAL PLACEMENTS PTY LTD & JODAZ PTY LTD T/AS AUSTRALIAN MEDICAL PLACEMENTS – 313 PAYNEHAM ROAD, ROYSTON PARK

DEVELOPMENT APPLICATION:	155/0253/2016
APPLICANT:	Australian Medical Placements Pty Ltd & Jodaz Pty Ltd t/as Australian Medical Placements
SUBJECT SITE:	313 Payneham Road, Royston Park (Certificate of Title - Volume: 5334, Folio: 615)
DESCRIPTION OF DEVELOPMENT:	Variation to the approval for Development Application Number 155/011/2013, to remove restrictions on operating hours
ZONE:	Residential Zone Norwood, Payneham and St Peters (City) Development Plan (dated 2 July 2015)
PUBLIC NOTIFICATION CATEGORY:	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 to vary a previously granted Development Approval, to remove restrictions relating to the operating hours of an office.

Staff do not have delegated authority to determine the Application, as the Application has been processed as 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.

Background

A Development Application (Development Application No. 155/011/2013) was lodged on 11 January 2013 for the construction of a two-storey office building, an underground rainwater tank and an associated car park with landscaping. The proposal also included the removal of a Significant Tree (a Willow Myrtle).

The Panel considered the Application at its meeting held on 15 April 2013 and determined to grant Development Plan Consent subject to the following conditions:

- 1. The vehicular entry 'tilta door' on the Payneham Road elevation of the building and the automated sliding gate to the rear of the car park shall be kept open at all times that the offices are open, so as to ensure that car parking spaces within the car parking area are available to visitors.*
- 2. The operating hours of the office shall be limited to 7:30am to 7:00pm, unless the further consent of the relevant authority is obtained.*

3. *The net lettable office area exclusive of foyers, lifts, stairs, toilets, services and tearooms shall not be greater than 600m².*
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 the Payneham Road underground pipe drainage system.*
5. *All stormwater discharged from the land shall remain at pre-development levels with 1 in 5 year ARI events detained on-site and returned to Payneham Road.*
6. *The finished ground level at the boundary of the subject land with Payneham Road, shall be a minimum of 100mm above the adjacent top of kerb level, to minimise the entry of flood waters into the land.*
7. *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.*
8. *Three trees, with a minimum planting height of 2 metres shall be planted in each of the landscaping beds adjacent to the right of way.*
9. *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.*
10. *Wheel stopping devices (or kerbing with adequate clearance from the boundaries) constructed of concrete, metal or wood shall be placed at the end of all new parking bays so as to prevent damage to adjoining fences, buildings or landscaping to the reasonable satisfaction of the Council or its delegate.*
11. *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.*
12. *Clear directional signage shall be installed to advise drivers of the parking arrangements for visitors and the approved access and egress points to and from the subject land to the reasonable satisfaction of the Council or its delegate.*
13. *Any air conditioning units or other plant and equipment associated with the development, herein approved, shall be adequately screened from public view, and if located on the roof be located towards the centre of the building and away from building edges to minimise their visibility from the public realm. The equipment shall be treated such that noise levels do not exceed 45db(a) when measured at adjoining residential property boundaries.*
14. *Any glazing above 1.7m on the rear elevation of the building shall be of obscure glazing.*
15. *That the accessible car parking space be relocated immediately adjacent to the building herein approved.*
16. *The development shall provide for two way vehicular access and egress from Payneham Road and a 6 x 6 metre vehicular passing area shall be established adjacent to the Payneham Road frontage of the subject land.*

A copy of the relevant section of the Minutes of the Panel meeting held on 18 April 2016, including the approved plans, is contained in **Attachment A**.

A separate Development Application (Development Application No. 155/171/2015) for the change of use of the front portion of the ground floor of the building from office area to a takeaway food shop was approved by staff under delegated authority on 4 February 2016. The shop component is not subject to any restrictions on its hours of operation.

Proposal in Detail

The Applicant, Australian Medical Placements, is seeking approval to remove the restrictions on operating hours in order to allow greater flexibility in their operations. Australian Medical Placements are a specialised medical recruiting firm. The Applicant has provided information regarding the proposed use of the building after core business hours, with advice that the site will be predominantly utilised for training, interviews and occasional researching activities.

The Applicant has explained that additional flexibility in their hours of operation is required, given the nature of their clients being medical practitioners, who often work long hours and operate outside of core day time business hours (i.e. locums and emergency staff). In addition, training can take place on the site, with surgical procedures streamed to the board room from interstate hospitals, which can occur outside of core day time business hours. In the **Attachment B12** Mr Fantasia, a planning consultant engaged by the Applicant, states that small teams (5-6 people) may attend such courses.

A copy of the summary letter and supporting documentation prepared by the Applicant and their agents is contained in **Attachment B**. Mr Lou Fantasia has provided an expanded statement in **Attachment B12 – B14**.

Notification

The proposal has been identified and processed as a Category 3 form of development, pursuant to Part 39 (7)(c) the *Development Act 1993*.

Three (3) representations (One (1) opposed and two (2) in favour) were received in response to this notification, a copy of which are contained in **Attachment C**. The key issues raised by representors are, in summary:

- questioning the right for Australian Medical Placements to apply to vary a Development Authorisation given they are not the owners of the subject land, nor obtained the original development authorisation;
- light overspill from the upper level;
- potential negative amenity impacts associated with a twenty four (24) hour office operation at the interface of the Residential Historic (Conservation) Zone;
- the front 'tilta door' is not in the open position during operating hours in accordance with a requirement set out in the original development authorisation;
- commercial properties should be free of restrictions on operating hours;

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

- *Mr Arthur & Ms Julie Terrell*

Australian Medical Placements has responded to the representations, a copy of which is contained in **Attachment D**.

With respect to the operation of the 'tilta door', Council staff were made aware that the door was being left in the closed position just after completion of the building. A subsequent investigation revealed that whilst Australian Medical Placements were moving into the property, there was a defect with the door mechanism and it did not open as per the requirements set in condition 1 of the original Development Plan Consent granted in 2013. Australian Medical Placements advised Council staff that they were aware of the condition and that the builder was rectifying the issue. Assurances were made that the door would be operational prior to the business opening.

Council staff have periodically reviewed the site since occupation took place and have observed that the door has been left in the open position during operating hours. In any event, this matter is an enforcement issue for the Council's Administration and is not of relevance to the Panel's consideration of this Application.

State Agency Consultation

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

Discussion

Procedural Question

Mr Terrell, a representor who is opposed to the Application, has expressed a view that Australian Medical Placements does not have the authority to amend or request a variation to a previous Development Authorisation which was granted to a different party. In this respect, it is clear in Section 37(6) of the *Development Act 1993*, that any person may seek the variation of a development authorisation previously given, including by seeking the variation of a condition imposed with respect to the development authorisation.

Section 39(7)(c) and Section 39(7a) of the *Development Act 1993* are also relevant to Applications to vary previously issued development authorisations and respectively state:

"in a case where the development to which the development authorisation previously given was Category 3 development—must also be dealt with under section 38 as an application for Category 3 development if any representations were made under subsection (7) of that section, unless the relevant authority determines that no such representation related to any aspect of the development that is now under consideration on account of the application for variation and that, in the circumstances of the case, it is unnecessary to deal with the matter as Category 3 development"

and

*"In addition, the variation of a development authorisation on application under subsection (6)—
(a) cannot have effect so as to impose a new condition, or to vary an existing condition, with respect to a matter that does not fall within the ambit of the application for variation; and
(b) cannot affect the operation of a condition imposed with respect to the original authorisation unless the relevant authority has made specific provision for the variation of the condition in its decision on the application for variation."*

Accordingly, it is open for the Applicant to apply to vary the development authorisation and the Council has duly processed the Application as a Category 3 Application, providing third parties the opportunity to bring their concerns to the attention of the Panel.

The Panel must be mindful of its obligations set out in Section 39(7a)(a), not to impose any new condition which does not relate to the Application to vary (ie. change to operating hours).

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

The following discussion is based on the key consideration of the Application, being the potential amenity impacts of removing the restriction on hours of operation.

Amenity

Residential Zone Desired Character Statement	
Residential Zone Objectives:	1, 2 & 3.
Residential Zone PDC's:	1, 2 & 4.
City Wide Objectives:	1, 2, 3, 7, 12, 26 & 27.
City Wide PDC's:	1, 2, 3, 4, 12, 80, 82 & 84.

The key issue for consideration is the potential impacts on residential amenity that may arise as a result of the proposed deletion of the operating hours condition.

It is considered the following Development Plan Provisions are most relevant when considering the Application.

City Wide Objectives 26 & 27

*Development located and designed to minimise adverse impact and conflict between land uses.
 and*

Protect community health and amenity from the adverse impacts of development and support the continued operation of all desired land uses.

City Wide Principle of Development Control 82

Non-residential development in residential zones should:

- (a) not detrimentally impact on the amenity of nearby residents;*
- (b) provide adequate protection for residents of adjoining sites from air and noise pollution, traffic disturbance and other harmful effects on health or amenity; and*
- (c) not negatively impact on adjoining open space, mature trees or vegetation.*

The operating hours of commercial properties in the immediate locality are set out in Table 1 below:

TABLE 1: OPERATING HOURS OF NEARBY COMMERCIAL PROPERTIES

Address	Approved Use	Approved Hours of Operation
315 Payneham Road	Consulting Rooms	7am – 7pm Monday – Friday 8am – 6pm Saturday
319 Payneham Road	Hotel	8am- 2am following day Monday – Saturday 9am – Midnight Sunday
278 Payneham Road	Office	No restriction
292 Payneham Road	Office	No restriction
282 Payneham Road	Office	No restriction
294 Payneham Road	Office	No restriction
274 Payneham Road	Office & Shop	No restriction

Most existing offices within the locality of the subject land have unrestricted operating hours. That said, many of the nearby offices are significantly smaller in scale than the subject office (the office at 294 Payneham Road is the exception). As a result of their smaller scale it is likely that staffing levels are less than would typically be found in the larger sites such as the subject land and 294 Payneham Road.

Mr Terrell has raised concerns with the level of illumination and light spill to their property from the development. Council staff have visited the site in the evening and early morning (before daybreak) to ascertain the current level of light overspill. The lower level car parking area lighting is operated via a sensor monitor with a number of fluorescent lights lighting the undercover area when a vehicle approaches the gate. The light spill is mostly contained within the subject car parking area with a slight increase in illumination noticeable in the open air car parking area and to a lesser extent the right of way.

At the upper level, only emergency and low level lighting was evident at the times of investigation, with the main internal office lights switched off, so it was not possible to observe the extent of overspill from upper level windows to adjacent residential properties. It was noted however that the upper floor windows are framed by a deep reveal approximately 2.0m deep and that the amount of glazing on the rear elevation was calculated at approximately 12.5m². The windows are located approximately 40.0m from the representor's property with mature plantings on the adjoining residential properties providing some shielding from any potential light overspill.

The rear portion of the building is utilised as a board room with associated audio visual equipment. 'Blockout' blinds have been installed within the room, with a portion of glass unprotected outside the room in the hall way. The Applicant has advised that this is where training and development takes place, with medicos able to watch live surgery from around Australia.

The majority of administration work is carried out within the front portion of the building, with services (lifts and stair well) and private meeting rooms located along the southern side of the building. A large breakout space exists in the centre of the building.

Having observed the site and its surrounds and having regard to the internal layout of the office and the nature of its operations, it is considered that the proposed development is unlikely to have detrimental impact on the amenity of the adjoining residential properties as a result of the separation of the building from the rear boundary, the existence of the right of way, the outbuildings on adjoining land, the level of vegetation on adjoining land and the vegetation on the subject land (noting that they are relatively juvenile, but will continue to grow).

It is not considered necessary (and therefore not considered appropriate) to impose a condition requiring blinds to be located in the down position after dusk.

With respect to any potential noise, offices are typically low noise generating commercial operations. Having regard to the distance between the subject land and the nearest residences, there is a very low risk of noise disturbance resulting from the proposed extended operating hours. The greatest risk relates to vehicle movements and in this respect, if the Panel determines to grant consent to the Application, it is recommended that a condition be imposed, requiring signage within the car park, requesting that staff and visitors respect the neighbouring residential properties and leave in a quiet manner.

It is considered that the proposed expansion of the operating hours will not have unreasonable negative amenity impacts on the adjoining residential properties.

Summary

The Development Plan policies recognise that the interface between non-residential and residential land uses needs to be carefully managed and that any potential amenity impacts are minimised. It is considered that due to the location of the building and the other mitigating factors outlined in this report, combined with the relatively low usage likely of the building, the proposal to remove restrictions to operating hours is unlikely to have an unreasonable impact on nearby residential properties.

It should also be noted that the original condition was recommended to be imposed by the assessing planner merely as the hours reflected the hours of operation sought by the Applicant at that time. The assessing planner did not have any amenity concerns with the proposed office use that was originally approved by the Panel.

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 and Development Approval be **granted** to Development Application No 155/303/2016 by Australian Medical Placements Pty Ltd & Jodaz Pty Ltd t/as Australian Medical Placements for a Variation to the approval for Development Application Number 155/011/2013, to remove restrictions on operating hours on the land located at 313/ Payneham Road, Royston Park 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:

- All details forming Development Application 155/303/2016

Conditions

1. Except where varied by this approval, all other conditions, plans and details relating to Development Application Number 155/011/2013 continue to apply.
2. Signage shall be installed within the car parking area requesting that staff and clients leave the site in a quiet and orderly manner, respecting the adjoining residential occupiers.

2. STAFF REPORTS

**2.2 DEVELOPMENT APPLICATION 155/865/2015 – V-THREE HACKNEY PTY LTD –
87-95 HACKNEY ROAD & 2-4 BERTRAM STREET, HACKNEY**

DEVELOPMENT APPLICATION: 155/865/15

APPLICANT: V-Three Hackney Pty Ltd

SUBJECT SITE: 87-95 Hackney Road & 2-4 Bertram Street, Hackney
(Certificates of Title: Volume: 5504 Folio 619
Volume: 5206 Folio: 565
Volume: 6054 Folio 681
Volume: 5128 Folio 393
Volume 5107 Folio 323
Volume 5213 Folio 724
Volume 5107 Folio 151
Volume 5107 Folio 160
Volume 5106 Folio 845)

DESCRIPTION OF DEVELOPMENT: alterations and additions to an existing hotel and construction of six (6) residential buildings comprising a total of 42 dwellings and a 41 bedroom serviced apartment facility, together with car parking, landscaping and removal of a regulated tree

ZONE: Residential Character Zone - Hackney Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 2 July 2015)

PUBLIC NOTIFICATION CATEGORY: 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 for alterations and additions to an existing hotel and construction of six (6) residential buildings comprising a total of 42 dwellings and a 41 bedroom serviced apartment facility, together with car parking, landscaping and removal of a regulated tree.

Staff do not have delegated authority to determine the Application, as it is a Category 3 Application for public notification purposes. 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:	74 metres
Depth:	69 - 71 metres
Area:	5,210m ²
Topography:	essentially flat
Existing Structures:	Hotel
Existing Vegetation:	twelve mature trees, including 5 Regulated Trees

The north-western corner of the subject land is occupied by the Hackney Hotel, comprising the original Hotel building and multiple subsequent additions and alterations. The total floor area of the Hotel is approximately 2,500m², comprising 1700m² at ground floor level and 800m² at first floor level. The Hotel comprises multiple bar areas, a gaming room, function rooms, a restaurant and beer gardens.

The balance of the subject land is occupied by at-grade car parking to service the Hotel. Access to and egress from the car parking area is east of the Hotel, via Richmond Street. The perimeter of the car parking area is well vegetated, including twelve (12) mature trees, of which five (5) are Regulated Trees.

A small allotment with a frontage to Richmond Street of 3.05 metres and a depth of 18.29 metres, located within the car parking area behind the Hotel, is not owned by the Hotel. The allotment is in the ownership of Mr William Thomas Foster, who is deceased. The allotment is likely to have historically been a private laneway of sorts. The adjoining allotments which are owned by the Applicant have rights of way over the historic laneway.

There are a variety of mechanisms by which the Applicant may acquire the lawful right to build on the right of way land. For example, if the successors in title of William Foster can be located, they may be prepared to sell or dispose of the land. Alternatively, an application may be made for title by adverse possession. A third option would be for Council to acquiring the land and subsequently transfer it, using various powers available to it.

As there is a reasonable prospect that an Applicant will be able to implement a consent if granted, staff have been advised by Norman Waterhouse Lawyers that:

1. The CDAP may proceed to determine the application on its merits;
2. If Development Plan Consent is granted, the Council should advise the Applicant that the right of way land appears to be in the legal ownership of Mr William Thomas Foster (deceased), and that they ought to investigate further before proceeding with any building work on the right of way land.

Locality Attributes

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

North of the subject land is open space in the form of a Council reserve (Old Mill Reserve) and the River Torrens Linear Park.

East of the subject land, fronting Richmond Road, is a three storey residential development owned and operated by the South Australian Housing Trust. Vehicular access to car parking at the rear of this development is via Hatswell Street. Also east of the subject land, but fronting Bertram Street, is a row of single-storey interwar period bungalows.

South of the subject land, on the southern side of Bertram Street, is a mix of single and two storey dwellings ranging in age, but with relatively consistent traditional design elements. Where dwellings are two storey, the upper level is mostly concealed within the roof space or set towards the rear of the dwelling. The dwelling on the corner of Bertram Street and Hackney Road is a Local Heritage Place.

West of the subject land is Hackney Road and beyond that, the Adelaide Parklands. The following works are to take place on Hackney Road adjacent to the subject land, as part of and/or in conjunction with the O-Bahn City Access Project:

- addition of two dedicated bus lanes on Hackney Road;
- remove right turn option from Richmond Road onto Hackney Road;
- remove left turn slip lane from Hackney Road to Richmond Street and expand the verge;
- replace the paved protuberance adjacent the Hotel with trees and under-planting to improve presentation. Provide a protected bicycle lane between the protuberance and the footpath.
- expand the width of the median between the Service Road and Hackney Road to establish an attractive planted median and visual buffer, with maximised tree canopy cover and under-planting. The Service Road to accommodate local vehicles and on-road cyclist, but no parking.

- paved threshold at the start of Bertram Street, to improve pedestrian connections, presentation and address local drainage issues.

A plan of the subject land and its surrounds is contained in **Attachment A**. A copy of the Hackney Service Road Streetscape Concept is contained in **Attachment A2**.

Proposal in Detail

The Applicant seeks consent to undertake alterations and additions to an existing hotel and construct six (6) residential buildings comprising a total of 42 dwellings and a 41 bedroom serviced apartment facility, together with car parking, landscaping and removal of a regulated tree. More particularly, the proposal is described as follows.

Demolition/Removal

All non-original additions to the Hackney Hotel building are proposed to be demolished to make way for the proposal.

Three (3) trees are proposed to be removed, including a non-regulated Aleppo Pine adjacent Bertram Street, a Regulated Canary Island Palm Tree adjacent Hackney Road and a non-regulated eucalypt tree adjacent Hackney Road.

Hotel Additions/Alterations

The original Hackney Hotel building on the corner of Hackney Road and Richmond Street, is proposed to be retained and used as a front bar (65m²) and walk-in bottle shop and cellar (100m²). Above this, at first floor level the original building is proposed to be used as a licensed cafe (185m²), with outdoor dining located to the south, also at first floor level.

To the south of the original building, a gaming area (153m²) and function rooms (320m²) are proposed at ground floor level. The Applicant has proposed a 60 person capacity for the function rooms (refer to letter dated 4 February from Ruan Consulting at **Attachment B182**). When the Application was initially lodged, the area which is now proposed as function rooms was proposed as a local convenience shop, however upon being advised by Council staff that the Application was non-complying (a shop is non-complying in the Residential Character Zone), the Applicant amended the Application.

Serviced Apartments

A serviced apartment facility is proposed, with a 41 bedroom capacity, fronting Hackney Road.

Twenty (20) of the bedrooms are contained within a building to be located on the corner of Bertram Street and Hackney Road. Six (6) car parking spaces are located in front of this building, to be accessed from a new internal driveway referred to in the application as "Flour Mill Lane".

The other twenty one (21) bedrooms are contained to the north of Flour Mill Lane, above the function centre and gaming area of the Hotel. The lobby for the serviced apartments is accessed at ground level from Flour Mill Lane, behind the function centre.

Townhouses/Terraces

A total of thirteen (13) two storey townhouses/Terraces are proposed, comprising seven (7) townhouses facing Bertram Street in a stand-alone two storey building and six (6) terraces facing Richmond Street, within a larger multi-level building which also contains apartments.

The townhouses facing Bertram Street each have double garages accessed from Flour Mill Lane. The terraces facing Richmond Street have access to the central shared two-level car parking area located behind and below.

Apartments

A total of twenty nine (29) apartments are proposed, comprising:

- eight (8) one-bedroom apartments at the third level (second floor) located above the Richmond Street terraces and carpark access ramp; and
- twenty one (21) two-bedroom apartments at second, third and fourth level (first, second and third floor), located above the central car shared car parking area.

A communal terrace open space area is provided between the Richmond Street terraces and the centrally located apartments. The terrace is proposed to be landscaped, including with potted trees.

Development Timeframe

Pursuant to Regulation 48 of the *Development Regulations 2008*, a Development Plan Consent will lapse within one (1) year, unless Development Approval is obtained within that timeframe. The Development Approval will lapse three (3) years after the date of the Development Approval, unless the development is substantially completed within that timeframe.

Given that a development is able to be substantially commenced up to 12 months after the Development Approval is issued, this can leave as little as two (2) years for a development to be completed, from the commencement date.

The Applicant has sought, as part of the application for Development Plan Consent:

- *“an extended period for substantial commencement to be within 2 years from the grant of Development Plan Consent; and*
- *An extended completion period to be within 5 years from the grant of Development Plan Consent.”*

Regulation 48(2) allows the timeframes for development authorisations to be extended by the Council, either when the relevant consent or approval is given or at such later time as may be appropriate. Council's Planning staff are delegated with authority to extend development authorisation timeframes and as such, if the Panel determined to grant consent to the Application, Council staff would process the application for extended timeframe separately. That said, in light of the scale of the proposal, the timeframes requested by the Applicant appear reasonable and it is likely that staff would extend the timeframes accordingly.

Plans and details of the proposed development are attached (**Attachment B**).

Notification

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

Twelve (12) representations were received (1 in favour, 11 opposed) in response to this notification, copies of which are attached (**Attachment C**). The key issues raised by representors are, in summary:

- the development is too high and at odds with the Development Plan height policy;
- the development is too dense
- inadequate green space has been provided
- the proposal detracts from the heritage significance of the original Hotel;
- the two storey dwellings facing Bertram Street are incompatible with existing houses in the street and the Development Plan policy;
- the architectural response is dated and low quality
- the commercial viability of the reduced Hotel size is questioned;
- insufficient car parking is provided;
- concern that taxis have not been catered for in the design;
- concern with the extended staged construction timeframe;
- Council should restrict parking on one side of Bertram Street
- The traffic generation and parking assessment assumes the existing Hotel operates at capacity at all times, which it doesn't;

- The proposed building heights and density are even greater than what is anticipated in the nearby Medium Density Policy Area of the Residential Zone. The subject land is located in the Residential Character Zone.
- Richmond Road is already over capacity in peak periods. Both the O-Bahn works and this development will exacerbate the problem and other local streets will suffer as a result;
- Overflow parking from the proposal will put pressure on public parking, including at Old Mill Reserve;
- Restoration of the Local Heritage Place should be undertaken in earlier stages of the development;
- The proposal does not respect the Local Heritage Place listed Hotel, as it is sited in front of it and is too high
- The Richmond Street driveway exit does not provide adequate sight lines for cars, cyclists or pedestrians. The ramp is steep with no details provided of transition gradients.
- Including the undercroft, the central building is 5 levels, whereas the Development Plan policy is for 2 levels;
- Vertical gardens are not sustainable and not a substitute for in-ground landscaping;
- The Bertram Street townhouses will be overshadowed by the central building
- The development is too close to several trees which support wildlife;
- Overlooking of property at 85 Hackney Road;

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

- *Ms Jennifer Shaw and Mr Adam Harris*
- *Ms Elena and Mr Paul De Lisio*
- *Ms Christine Evans*
- *Mr Nyibol Diing*
- *Mr Ross and Ms Gen Sawers*
- *Mr Ralph Bleechmore*
- *Mr David Cree on behalf of the St Peters Residents Association*
- *Ms Serena Coulls on behalf of the Hackney Residents Association*

The Applicant has responded to the representations received and a copy of their response is attached (**Attachment D**).

State Agency Consultation

The Application was referred to the Commissioner of Highways, as the Application seeks to alter an existing access in relation to an existing Arterial Road. The following is a summary of the key points made by the Commissioner for Highways:

- no objections in-principle are raised to the two proposed access points, as they are not expected to create operational issues at the adjacent Hackney Road/Richmond Street junction or Hackney Road /hackney Road Service Road junction;
- Council should ensure appropriate left-in, left-out signage is installed to reinforce the one-way nature of the Service Road;
- any boom gate at the Richmond Street entrance to the car park should be set back 6 metres from Richmond Street to ensure vehicles can store clear of the road;
- Council should ensure that pedestrian sight lines at the access points accord with AS/NZS 2890.1:2004 – Figure 3.2;
- DPTI is satisfied that the proposed development will not generate traffic volumes in excess of the existing land use and traffic volumes can be readily accommodated within the surrounding road network;
- The proposed loading/unloading area on the Hackney Road Service Road may conflict with vehicles entering the Service Road from Hackney Road and/or bicycles;
- DPTI recommends that any on-street loading/unloading occurs outside of peak traffic/cycling movements along the service road;
- DPTI recommends that all refuse collection occurs within the site of the development, to minimise conflict with traffic and cycle movements from Hackney Road.

A copy of the advice received from the Commissioner for Highways is Contained in **Attachment E**.

Discussion

The subject land is located within the Residential Character 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:

Hackney Policy Area Objectives: 1
Hackney Policy Area Desired Character Statement
Hackney Policy Area Principles of Development Control: 2, 3

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

City Wide Objectives: 1, 2, 3, 5, 7, 26, 55, 56, 57, 60, 61
City Wide Principles of Development Control: 1, 3, 81, 82, 83, 84, 85

The existing Hotel is proposed to be substantially reduced in size. Given that the subject land is located within the Residential Character Zone, the reduced scale and intensity of this commercial land use is a positive aspect of the Application, consistent with City Wide Principles of Development Control 83, 84 and 85, which relate to non-residential development located within a residential zone. In particular, the significant reduction in the scale of the Hotel, is likely to lessen the occurrence of impacts on nearby residential properties resulting from activities at the Hotel, particularly on occasions when the Hotel is operating at or close to its capacity and late at night.

With respect to the proposed dwellings, Objective 2 of the Residential Character Zone encourages 'infill development' provided that it is designed to reflect the traditional character elements of the area, particularly as presented to the streetscape.

The proposed townhouses, terraces and apartments, are all, by definition, dwellings contained within residential flat buildings. Principle of Development Control 2 of the Hackney Policy Area states that there is no minimum site area per dwelling for these types of dwellings. Principle of Development Control 3 of the Hackney Policy Area states that one bedroom dwellings within residential flat buildings should have a minimum floor area of 50m² and two bedroom dwellings should have a minimum floor area of 70m². The proposed dwellings all achieve these minimum floor area provisions, with one bedroom dwellings having floor areas ranging from 50 to 54m² and two bedroom dwellings ranging from 75 to 150m².

Therefore, broadly speaking the Residential Character Zone and Hackney Policy Area policies do support residential flat buildings and do not stipulate a maximum density (ie. minimum site area per dwelling or maximum number of dwellings per hectare), other than requiring that each dwelling achieves a minimum floor area. The proposal is consistent with these policy considerations.

The Desired Character Statement for the Residential Character Zone states:

"The zone will continue to accommodate primarily low-scale and low density residential development which generally reflects the existing patterns of development found in the different localities throughout the zone. Variations between these localities in terms of envisaged dwelling types, allotment sizes and building setbacks will be expressed at the Policy Area level."

The Desired Character Statement for the Hackney Policy Area states:

“Residential intensification involving land division will be limited to sites fronting Hackney Road. In other locations, opportunities for residential intensification will be limited to the redevelopment of existing multi-unit sites, dwelling additions or in certain circumstances, the conversion of an existing dwelling into two (or more) dwellings, or the development of a dependent living unit.”

Accordingly, the Hackney Road frontage of the subject land provides the opportunity for residential intensification involving land division. However, the overarching objective for the Residential Character Zone of ‘low-scale and low density residential development’ remains applicable. The proposal is clearly inconsistent with that objective, with the density proposed being more appropriately described as medium to high density.

Another land use consideration for the proposal, is the commercial aspect of the short-term serviced apartments. Serviced apartments are considered to have both residential and commercial aspects and have been assessed as such throughout this report. In this respect, the Desired Character Statement for the Residential Character Zone states:

“Non-residential development within this zone will be limited in size and nature and will generally only occur in locations along arterial road frontages or where there is a historical basis for such a use (such as corner shops). Because the existing built form is a key reference point for new development, buildings proposed for non-residential use will generally be domestic in scale and nature and will mostly involve the re-use of existing dwellings. Development in association with existing non-residential uses will be limited, to ensure that the size and intensity of such development does not unreasonably affect nearby residences.”

The proposed serviced apartments are located across the Hackney Road frontage of the property, consistent with the policy objective of non-residential uses occurring along arterial road frontages. The above extract advises that existing built form will be a key reference point for new development and although giving the example of localities where existing buildings are domestic in scale and nature, that is not always the case. In the case of the subject land, the Hotel, together with other buildings fronting Hackney Road in the locality, provides a reference point for the scale and nature of new non-residential uses.

Putting to one side visual character considerations (as they are dealt with in the proceeding section), the scale and nature of the existing Hotel is considered to provide suitable justification for the scale and nature of the proposed serviced accommodation facility. Impacts associated with short-term accommodation (in comparison to long-term dwellings) are limited and in some respects are less, due to less vehicle movements.

Accordingly, the commercial aspects of the proposal (ie. the scaled-back Hotel and the serviced apartments) are considered to be consistent with the relevant Development Plan considerations for assessing the suitability of land use. However, with respect to the residential aspect of the proposal, despite being an appropriate dwelling type for the zone and policy area, they do not achieve the objective of low scale and low density.

streetscape/bulk/scale/height/character

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

Hackney Policy Area Objectives: 1

Hackney Policy Area Principles of Development Control: 1, 4

Residential Character Zone Objectives: 1, 2, 3

Residential Character Zone Desired Character Statement

Residential Character Zone Principles of Development Control: 5, 6, 7, 8, 9, 10, 11, 12

City Wide Objectives: 18, 19, 20, 21

City Wide Principles of Development Control: 28, 29, 30, 32, 33, 34, 36, 37, 38, 39, 40, 42, 47, 181, 182, 260, 261, 262

The Desired Character Statement for the Residential Character Zone states:

“Development will be designed to have a single-storey appearance from the primary street frontage, however, in localities where the streetscape character has already been influenced to a large degree by two-storey development, consideration may be given to carefully designed ‘outwardly’ two-storey development. Additionally, outwardly two-storey development is appropriate within the Hackney Policy Area, along the Hackney Road frontage.”

This policy position is reinforced in Principle of Development Control 4 of the Hackney Policy Area, which allows for two storey dwellings fronting Hackney Road, whilst stating that dwellings fronting a public road in other localities may be up to two storeys, provided that they present to the street in a mostly single storey form.

The proposed development is therefore inconsistent with the height policies for the Residential Character Zone and Hackney Policy Area. Whereas the policy provides for buildings presenting to Hackney Road in a two storey form, the proposal presents to Hackney Road in a four storey form (albeit with a slightly recessed fourth storey). Similarly, whereas the policy provides for buildings presenting to Richmond Street and Bertram Street in an ostensibly single storey form, the proposal presents buildings to those streets in three storey and two storey forms respectively.

The proposal is consistent with the last paragraph of the Desired Character Statement and Principle of Development Control 8 of the Residential Character Zone and City Wide Principle of Development Control 181, insofar as the number of vehicle crossovers and garages facing the street has been limited and traditional height front fences have been incorporated across the frontage of the townhouses and terraces facing Bertram Street.

The proposal is also considered to be consistent with City Wide Objectives 19, 20 and Principle of Development Control 30, insofar as the proposed buildings are of a high architectural standard and appearance that responds to and reinforces positive aspects of the local environment and built form and display architectural excellence consistent with sound design principles. In particular, the following is noted:

- the Bertram Street townhouses use materials (red brick and timber) consistent with traditional bungalows in the street and have gable-ended roof forms with timber strapping, also reflective of bungalows;
- the Richmond Street buildings are more outwardly contemporary, with strong rectilinear design and bold materials and colours. This approach is considered appropriate to the context of this part of the site, between the Hotel and existing three storey townhouses and capitalising on views over Old Mill Reserve and the River Torrens linear park.
- the buildings fronting Hackney Road are also outwardly contemporary in design. The three storey ‘street wall’ height of these buildings approximately corresponds with the height of the original Hotel, with the fourth storey in a recessive dark colour, slightly set back in order to emphasise the street-wall height compatibility. There is good separation between the buildings and each building comprises a palate of high quality materials.

Accordingly, it is considered that the proposed development has been well designed in a contextual manner, to make a positive contribution to the character and visual amenity of the locality.

That said, it remains the case that the buildings are significantly higher than what is anticipated for the Residential Zone and Hackney Policy Area.

Heritage

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

City Wide Objectives: 107, 108, 110, 111, 112

City Wide Principles of Development Control: 332, 333, 334, 338, 342, 343, 344, 345, 347

Each of the policies above are listed under the heading of ‘Heritage’ in the City Wide section of the Development Plan. Whilst all slightly different in their expression, the policies all seek to ensure that heritage listed properties (ie. Local heritage Places and State Heritage Places) are conserved and that any

development on land containing or adjacent a heritage listed property, is undertaken in a manner that does not detract from the heritage value of the property.

The Council's Heritage Advisor, David Brown has reviewed the Application. A summary of the advice received from Mr Brown is provided below:

- the building is a sandstone fronted two storey Victorian hotel building, originally with a cantilevered front balcony;
- the original portion of the hotel is being retained and evidently restored;
- the proposed development is quite large in scale compared to the hotel, but generally is sufficiently separate that there really is minimal impact;
- the connection between the new and old is handled reasonably well.
- at the rear of the hotel there is physical separation, which is very positive.
- on the south side there is a two level connection to the new four level building which visually gives sufficient separation. In an ideal world it would be set further back, but it does follow the line of the current buildings on the site;
- the restoration of the hotel's two main facades is not particularly well covered in the documents, which is understandable at this early stage. These matters are possibly best left as conditions;
- there are opportunities with the restoration to do a more faithful job by reconstructing the original balcony, and possibly even the old signage seen in the early photos;
- overall, the project will allow for the restoration of a much neglected building and will not significantly impact the heritage value of the Local Heritage Place.

The rationale provided by Mr Brown for accepting that the building is located closer to Hackney Road than the heritage listed Hotel, is considered sound. Specifically, it is noted that the existing extension to the south of the Hotel is located closer to Hackney Road than the original Hotel. The proposal would therefore not result in a reduced line of sight to the Hotel when approaching from the south, compared to the existing situation.

The concept that a larger building can be located adjacent to a smaller heritage listed building, without adversely affecting the heritage value of the heritage listed building, has been accepted by the Environment Resources and Development Court. In the case of *Bond v City of Norwood Payneham & St Peters* [2007] SAERDC 56, which was an appeal against a refusal by the Council of an application for a very tall two-storey building directly adjacent to a single storey Local Heritage Place cottage, the Commissioner stated:

"Will the greater height of the subject proposal impair the heritage value of the Local Heritage Place? 36-38 King Street, described in the Council's Heritage survey, undertaken in 1994, as a building which "contributes significantly to the older character and streetscape of King Street" is now isolated, such that its heritage value, consistent with the evidence Mr Harry, is confined to the building's design, materials, and close relationship with the street frontage. The proposal's additional height is, in my view, acceptable in a locality characterized by a mix of one and two-storey buildings, and will, in any event, not have any adverse effect on the remaining heritage value of the adjoining Local Heritage Place.....Were the latter to form part of a "run" of Local Heritage Places, such that they made a collective contribution to the character of King Street, my conclusion might well have been different, but in all the circumstances, I am satisfied that the subject proposal would be compatible with, and complementary to, the Local Heritage Place at 36-38 King Street, and that those provisions of the Development Plan relevant to assessment of development adjoining a Local Heritage Place, including Council Wide Objective 83 and Principle 168 are satisfied."

Having regard to Mr Brown's advice, the proposal is considered acceptable from a heritage conservation perspective.

Setbacks and Site Coverage

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

Hackney Policy Area Principles of Development Control: 4

City Wide Principles of Development Control: 50, 52, 204, 205, 206, 208

With respect to the setbacks of the townhouses and terraces facing Bertram Street and Richmond Street, City Wide Principle of Development Control 205 states:

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

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

In the case of Bertram Street, the existing bungalows on the northern side of the street are consistently set back approximately 3-4 metres from the street. The proposed townhouses are set back 4.0m, consistent with City Wide Principle of Development Control 205(c).

In the case of Richmond Street, the existing Hotel building is located on the Richmond Road boundary and the adjacent three storey townhouses to the east have a staggered set back of approximately 4-6 metres. The proposed terraces are set back 3.7m, consistent with City Wide Principle of Development Control 205(b).

It is considered appropriate to regard the eastern boundary of the subject land as a side boundary for the purposes of assessing setbacks, as it is the side boundary of the adjacent residential properties on Bertram Street and Richmond Street and the side boundary of the proposed townhouse and terrace dwellings proposed on the subject land. Principle of Development Control 4 of the Hackney Policy Area, states that the minimum setback from one side boundary for dwellings facing a public road, where the vertical wall height exceeds 3 metres, is 1 metre plus one-third of the increase in vertical wall height above 3 metres.

The wall height of the Bertram Street townhouses is 6.5 metres, resulting in a setback requirement of 2.2 metres. The setback of the proposed townhouses to the eastern boundary ranges from 1.0m at the front to 2.2 metres at the rear. The closer setback at the front is inconsistent with Principle of Development Control 4. The implications of this are considered to be minimal, as the driveway and carport of the adjacent property at 6 Bertram Street is located adjacent to the boundary.

The wall height of the Richmond Street terraces is 10.5 metres and the four-storey building further back on the site has a wall height of 13.5 metres. These heights result in a side boundary setback requirement of 5.5 metres and 6.5 metres respectively. The building is proposed to be set back 7.4 metres, consistent with Principle of Development Control 4.

With respect to the setback of the Hotel extension and serviced apartment buildings from Hackney Road, City Wide Principle of Development Control 50 states:

“The setback of buildings should:

- (a) be similar to, or compatible with, the setbacks of buildings on adjoining land and the predominant setback of buildings in the locality, unless otherwise specified in the relevant Zone and/or Policy Area;*
- (b) contribute positively to the existing or desired streetscape character of the locality; and*
- (c) not result in or contribute to a detrimental impact upon the function, appearance or character of the locality.”*

The original portion of the hotel is set back approximately 2.5 metres from Hackney Road, with the balcony/verandah extending out to the road boundary. The later additions extend to the road, with a canopy over the footpath. There are no buildings within the locality to the north of the subject land to take reference from. To the south of the subject land (south of Bertram Street), the Local Heritage Place at 85 Hackney Road is set well back from the Hackney Road Service Road (approximately 23 metres), with a generous landscaped front garden. Beyond that, at 82 Hackney Road, a pair of two storey semi-detached dwellings are set back approximately 3.0 metres.

The proposed setbacks from Hackney Road range from a nil setback for the function rooms, to a 4 metre setback at the southern end of the southern serviced apartment building. Whilst the plans show greater setbacks (up to 6.6m) these relate to setbacks to the internal living areas of the serviced apartments and do not take into account the 3.0m deep balconies. Taking into account the wide range of setbacks in the locality, the proposed setbacks from Hackney Road are considered to be consistent with City Wide Principle of Development Control 50.

With respect to site coverage, Principle of Development Control 4 of the Hackney Policy Area states that the maximum site coverage (inclusive of ancillary structures), should be 70 per cent. The proposed site coverage (proportion of site covered by buildings) has been calculated to be 71%.

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

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. The diagrams show that no adjacent properties would be affected by overshadowing until some time between 12:00 noon and 3:00pm and most likely, approximately 1:30pm. In the case of the adjacent dwelling at 6 Bertram Street, the diagrams show that it would continue to receive direct sunlight to most of its rear yard between 9:00am and approximately 1:30pm (ie. more than 2 hours). In the case of the property at 85 Hackney Road, its primary private open space area is on the southern side of the dwelling and unaffected by the proposal.

A copy of the shadow diagrams is contained in **Attachment E**.

In terms of privacy, in responding to representations the Applicant advised:

- apartments facing the Bertram Street/Hackney Road corner will have balconies and windows aligned in a manner that is offset from adjacent properties windows to ensure any views possible are oblique angled views only;
- all apartments facing towards Bertram Street at the Bertram Street/Hackney Road corner have extended privacy blades/walls included that extend beyond the proposed dwelling balcony edges to obstruct and restrict view angles; and
- upper level apartments within the development all have 1.8m high sill bedroom windows facing Bertram Street so as to prevent overlooking but still allow sunlight into the apartments. .

The proposed overlooking mitigation measures are considered appropriate.

Private open space

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

City Wide Principles of Development Control: 222, 223, 224, 225, 226, 227, 229, 230, 233

City Wide Principle of Development 226 states that residential development in the form of apartments within a multi storey building should have associated private open space in accordance with the following requirements:

- (a) studio (no separate bedroom) or one bedroom, a minimum area of 10 square metres of private open space;
- (b) two bedrooms, a minimum area of 12 square metres of private open space; or
- (c) three bedrooms or greater; a minimum area of 15 square metres of private open space.

Each of the proposed apartments, including the serviced apartments, are provided with private open space in accordance with the above rates.

City Wide Principle of Development Control 225 states that dwellings (other than residential development in the form of apartments within a multi storey building) should have associated private open space in accordance with the following:

- (a) 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.

Each of the proposed townhouses facing Bertram Street, have balconies facing the street and front yard open space areas. As the front fencing is low, open style fencing, it cannot be counted as private open space, pursuant to City Wide Principle of Development Control 222. The balconies can be counted and are 16m² in area.

The terrace homes facing Richmond Street each have 24m² private open spaces at ground level behind 1.8m high front fences and 10m² balconies, totalling 34m² private open space each, which is only marginally short of the 35m² sought in Principle of Development Control 225.

City Wide Principle of Development Control 227 states that a lesser amount of private open space may be considered in circumstances where:

- (a) the equivalent amount of private open space is provided in the form of communal open space, which is accessible to all occupants of the development; or
- (b) the development is directly adjacent to large areas of useable public open space, such as Felixstow Reserve, the Parklands and the River Torrens Linear Park, which can be easily accessed by all occupants of the development.

As the subject land is located directly adjacent to Old Mill Reserve and the River Torrens Linear Park, the shortfall in private open space for the Bertram Street townhouses. Occupants of those townhouses would be able to easily access these public open space areas, via Flour Mill Lane and the walkway adjacent the eastern boundary of the site.

Carparking/access/manoeuvring

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

City Wide Objectives: 32, 34,

City Wide Principles of Development Control: 89, 92, 97, 234, 235, 237, 238, 239, 244, 245, 246, 252

With respect to the proposed amount of car parking, Tables NPSP/8 and NPSP/9 provide the following car parking rates for the various aspects of the proposal:

Component	Car Parking Rate	Car Parking Required
1 bed dwellings (8)	1 space per apartment	8 spaces
2 or 3 bed dwellings (34)	2 spaces per apartment	68 spaces
Residential visitor parking	0.5 spaces per dwelling up to 10 dwellings, then 0.25 spaces per dwelling thereafter	13 spaces
Serviced apartments (41 bedrooms)	1 space per 4 bedrooms	11 spaces

Hotel (front par, bottle shop, gaming & café)	5 spaces per 100m ²	26 spaces
Function Rooms	1 space per 3 seats	20 spaces
Total		146 spaces

The following table summarises the car parking supply and requirement equation for secure resident parking and unsecure shared spaces for the Hotel (including function rooms), serviced apartments and residential visitors.

Car Parking Type	Requirement (spaces)	Proposed (spaces)	Discount Sought (spaces)	Discount Sought (%)
Residential Occupant secure spaces	76	58	18	24
Unsecure shared spaces	70	47	23	33
Total (average discount)	146	105	41	28%

Having regard to the relevant factors in City Wide Principle of Development Control 125, which may justify the discounting of car parking rates, the proposal is for a mixed-use development including residential and non-residential land uses, where the respective peak demands for parking may occur at different times. City Wide Principle of Development Control 133 reinforces this, stating:

“In mixed use buildings, the provision of vehicle parking may be reduced in number and shared where the operating hours of commercial activities complement the residential use of the site.”

Accordingly, some discounting is appropriate.

Advice was sought from Tonkin Consulting, on the level of discounting that would be appropriate for the proposed development. The advice received is summarised below:

- a discounted rate of 4 per 100m² is appropriate for the Hotel and a 15% reduction is appropriate for the function rooms, as a result of the location of the subject land in the context of public transport and off-road cycling infrastructure
- the residential car parking rates applicable to the Urban Corridor Zone are appropriate to apply to the proposal, despite being located outside of the Urban Corridor Zone, as the subject land is in a location that is on the fringe of the CBD, where transition in terms of a higher density is being envisaged.

The following table outlines the car parking requirements, applying the discounted rates suggested by Tonkin.

Component	Car Parking Rate	Car Parking Required
1 bed dwellings (8)	1 space per apartment	8 spaces
2 or 3 bed dwellings (34)	1.5 spaces per apartment	51 spaces
Residential visitor parking	0.25 spaces per dwelling	11* spaces

Serviced apartments (41 bedrooms)	1 space per 4 bedrooms	11 spaces
Hotel (front par, bottle shop, gaming & café)	4 spaces per 100m ²	21 spaces
Function Rooms	1 space per 3 seats	17 spaces
Total		119 spaces*

* this figure is 2 spaces less than stated in the Tonkin Report, due to a calculation error in that report.

As the proposed development includes the provision of 105 on-site parking spaces, it has a shortfall of 14 car parking spaces, when applying the discounted parking rates above.

Tonkin have advised that they consider a 16 space shortfall (the shortfall is actually 14 spaces) to be 'marginal', noting that:

- there has/will be a considerable loss of on-street parking on the west side of Hackney Road, directly opposite the site, due to the extension of the O-Bahn;
- there is minimal existing on-street car parking close to the site; and
- whilst the Development Plan includes a rate of 1 per 4 bedrooms for serviced apartments, Quest and the like typically prefer to have a higher rate outside the CBD.

Tonkin are not accepting of the Applicants claims that parking demand for the residential component will be reduced by 50% as a result of a shared use car scheme operating from the site. These schemes are relatively new to South Australia and it is unreasonable to assume parking demand will reduce to this level.

Having regard to the advice from Tonkin, the proposed amount of car parking is considered to be marginally acceptable. The discounted residential rates (as per the rates for the Urban Corridor Zone) are considered appropriate to apply to the type of accommodation proposed and as such, the provision of 58 secure parking spaces is considered appropriate.

The provision of another 47 spaces to cater for residential visitor demand, Hotel demand and serviced apartment demand, is considered likely to be adequate most of the time. At peak times, according to the analysis by Tonkin, the supply is likely to be inadequate, in the order of 14 spaces, resulting in additional demand on on-street parking at those times.

Tonkin have also considered the traffic generation associated with the proposed development. Whilst adopting a different method of calculating the existing and proposed traffic generation associated with the site than was adopted by the Applicant, Tonkin have concluded that there will be a reduction in the traffic volumes with the proposed development, compared to the existing site. This is consistent with the advice from the Commissioner of Highways, that the proposed development will not generate traffic volumes in excess of the existing land use and traffic volumes can be readily accommodated within the surrounding road network.

Some concern was expressed by the Commissioner of Highways and a representor, regarding the safety of the access ramp to the secure undercroft residential parking area, on Richmond Street. In particular, there was concern that the location of the access gate/door to the secure parking area would not enable a car to 'store' on site whilst waiting for the gate/door to open. The Applicant has responded to this, advising that the Richmond Street access has a setback roller door for secure parking, which is intended to be located at the basement level end of the ramp.

There was also concern that there would be insufficient pedestrian sight lines for vehicles exiting the secure parking area and sufficient transitions in ramp gradient at either end. At the time of writing, the Applicant had not responded to this concern. As such, if the Panel determines to grant approval, it is recommended that a condition be imposed, requiring that details of the ramp transition and driver sight lines be provided to the reasonable satisfaction of the Council, prior to the granting prior of Development Approval, demonstrating compliance with AS/NZS 2890.1:2004 – Figure 3.2.

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, 117, 118, 119
City Wide PDC's:	76, 220, 221, 395, 396, 397, 398, 399, 400, 401

Three (3) trees are proposed to be removed, including a non-regulated Aleppo Pine adjacent Bertram Street, a Regulated Canary Island Palm Tree adjacent Hackney Road and a non-regulated eucalypt tree adjacent Hackney Road. Conversely, the proposal includes the retention of:

- three trees adjacent the Hackney Road frontage (near Bertram Street), comprising two Significant Trees - a Significant *Casuarina glauca* (Swamp Oak) and a *Corymbia maculate* (Spotted Gum) and a Regulated Tree – a *Eucalyptus camaldulensis* (River Red Gum);
- two trees adjacent the Bertram Street frontage (near the eastern boundary), comprising two *Corymbia maculate* (Spotted Gums), one of which is a Regulated Tree; and
- a stand of non-regulated trees adjacent the eastern boundary, including three *Corymbia maculate* (Spotted Gums)

City Wide Objective 18 states:

“Development in balance with preserving regulated trees that demonstrate one or more of the following attributes:

- (a) significantly contributes to the character or visual amenity of the locality;*
- (b) indigenous to the locality;*
- (c) a rare or endangered species;*
- (d) an important habitat for native fauna.”*

The proposal, including the removal of the Regulated Canary Island Palm Tree, is considered to be consistent with Objective 18. In the context of all of the trees that are to be retained, the loss of the Canary Island Palm Tree is considered reasonable and would have a minimal impact on the landscape of the local area.

Based on the advice and recommendations of the Applicant's Arborist, Aborman:

- there are no proposed building/footing encroachments to the Structural Root Zones of regulated trees;
- there are encroachments proposed to the Structural Root Zones made by landscape features being that of the property front timber post and rail fencing. These are however to be constructed with only a small auger dug post footing (approx 300 DIA 600 DEEP) and permeable paving.
- there are encroachments into regulated tree Tree Protection Zones and these range between 10% and 22% and accordingly are classed as a 'major encroachment' under AS4970-2009 and it is therefore necessary, as part of detailed design work, for a professional arborist to conduct more detailed tree assessments and prepare tree protection plans when all works are fully defined to demonstrate that the all works in the TPZ of each tree(s) can be carried out in a manner that would ensure the tree would remain viable.

If the Panel determines to approve the Application, it is recommended that a more detailed tree protection plan shall be prepared in relation to all on-site and Council street trees to be retained, in accordance with AS4970 2009 Protection of trees on development sites, by a professional arborist, before issue of building rules consent and final development authorisation for the development, to the reasonable satisfaction of the Council and that the tree protection plan be incorporated into the site handbook and induction process prior to any demolition or construction works commencing at the site and/or near to these trees.

A detailed landscaping plan has been prepared, as set out in the Development Assessment Planning Report at pages 30-36. The plan includes thirty five (35) medium and large trees planted in the ground along Flour Mill Lane and in front of the townhouses and terraces facing Bertram Street and Richmond Street, as well as trees contained in raised planters within the communal open space area behind the terraces facing Richmond Street.

The landscape plan also includes a range of low-level plantings, green walls and hard surface treatments. Overall the landscape plan is considered to be appropriate to provide a good level of amenity for occupants and enhance the appearance of the development generally.

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

With respect to rainwater capture and re-use, City Wide Principle of Development Control 159 states:

“all new dwellings and additions to existing dwellings (including dependent accommodation units) greater than 50 square metres (where the addition incorporates a water closet, water heater or a laundry cold water outlet) with direct access to the ground level, should be provided with a 2000 litre rainwater tank/s connected to the roof water outlets and plumbed to at least a water closet, a water heater and/or all laundry cold water outlets.”

The proposed development is consistent with this, with a rainwater tank with a capacity of 2000 litres proposed for each of the dwellings with direct access to ground floor level (ie. the townhouses and terraces). In addition, a 140,000 litre common user underground tank is proposed, to capture and store rainwater for reuse on the proposed garden areas, including roof decks.

Most of the dwellings are well orientated to achieve direct access to northern sunlight. The serviced apartments are the main exception to this, however this is considered less important, given the short-term duration of their occupation and the benefit of orientating those apartments to the west, to take advantage of views over the Adelaide Parklands.

Waste Disposal and Deliveries

City Wide Principle of Development Control 273 states that development should provide a dedicated area for the on-site storage, collection and sorting of recyclable materials and waste that is consistent with the following:

- (a) easily and safely accessible to the collection point;
- (b) easily and safely accessible to residents and collection service providers;
- (c) well screened to prevent vandalism and theft; and
- (d) designed to reduce odour and discourage vermin.

The proposal includes a dedicated area for the on-site storage and collection of waste and recyclable materials, adjacent to Flour Mill Lane, in accordance with City Wide Principle of Development Control 273. It is proposed that a private waste collection contractor would be engaged to undertake this waste management.

The townhouses and terraces facing Bertram Street and Richmond Street each have their own on-site bin storage areas. The Richmond Street terraces have storage areas in screened alcoves behind front fences, while the Bertram Street townhouses have provision for bin storage in their garages. These bins are to be collected from Bertram Street and Richmond Street by Council waste management contractors.

City Wide Principle of Development Control 131 states:

“Loading areas and designated parking spaces for service vehicles should:

- (a) be provided within the boundary of the site; and*
- (b) not be located in areas where there is parking provided for any other purpose.”*

The Application plans show two loading/unloading areas; one on-site adjacent to the waste and recyclable storage areas and another on the Hackney Road Service Road. The latter is an existing loading/unloading area, comprising a crossing point in the kerb which enables vehicles to park on the footpath. This appears to be a remnant of an old obsolete driveway. The Applicant has advised that it is their preference to

continue to use this existing loading/unloading area, however if the Council determines to remove the crossing point upon the future streetscape upgrades for the Service Road, they would use the on-site space shown on the plans adjacent Flour Mill Lane.

Having regard to Principle 131 and the undesirable nature of loading and unloading occurring on the footpath, it is considered appropriate that all loading and unloading occur on the subject land in the location shown on the plans.

Stormwater Management

The Applicant has outlined the general stormwater management scheme for the proposal, which is to include on site detention and retention tanks, with overflow being discharged directly to Council's existing underground pipe and side entry pit network, with flow rates to be the same for the site pre-development and post-development.

The scheme is generally consistent with the Council's usual requirements. If the Panel determines to consent to the Application, it is recommended that a condition be imposed, requiring the final stormwater disposal plans be to the reasonable satisfaction of the Council, prior to the issuing of Development Approval.

Summary

The proposal is generally consistent with the Development Plan policies with respect to the following considerations:

- dwelling types;
- commercial uses (Hotel and serviced apartments) fronting Hackney Road;
- setbacks generally;
- private open space (noting appropriate levels of reliance on adjacent public open space);
- contextual architectural detailing; and
- traffic generation

The following variances with clearly expressed Development Plan policies have been identified:

- the proposal is for medium to high density residential development, whereas residential development within the Residential Character Zone should be low-scale and low density;
- the proposal presents to Hackney Road in four storey form, whereas they should present in two storey form and the proposal presents to Bertram Street and Richmond Street in three and two storey form, whereas they should present in single storey form; and
- the proposal includes provision for substantially less on-site parking spaces than the Development Plan specifies for sites located outside of the Urban Corridor Zone.

The following comments from the Supreme Court case of *Town of Gawler v Impact Investment Corporation* (2007) SASR 115, set out the relevant considerations that the relevant authority should have regard to, when considering a proposal that is at variance with a clearly expressed policy:

"In order to determine whether a relevant Planning Authority or the ERD Court is justified in departing from a clearly expressed policy, I consider that each of the following matters is relevant:

1. *The language of the principle or principles concerned – whether it is direct or contemplates some flexibility in approach;*
2. *Whether the relevant principle is in conflict with some other applicable planning principle. That is likely to happen only rarely, in which case the more specific principle may displace the more generally expressed principle;*
3. *The evident purpose and objective of the policy expressed in the principle or principles concerned;*
4. *The significance of the policy to this particular Development. The clearer the policy in its application to a particular development, the more compelling the reasons for departing from the policy will need to be;*
5. *Where the policy contemplates possible degrees of compliance, the extent of the Development's compliance with the policy;*
6. *Consistency of the Development with other objectives and purposes of the Zone;*
7. *Whether there is something unusual about the Development or the land on which it is to take place which makes the policy inapplicable or inappropriate;*

8. *Whether other events have happened since the Development Plan was adopted which make the policy redundant, either generally or in respect of this particular development;*
9. *The probable effect of non-compliance with the policy on the planning objectives of the Zone; and*
10. *Whether non-compliance with the policy in this case is likely to encourage other non-complying developments in the Zone.”*

Each of the identified variances are considered against the ten (10) matters in the table below:

Relevant Matter	Dwelling Density	Building Height	Car Parking
1	The language used in the policies regarding density does contemplate some flexibility, stating that the zone will continue to accommodate <u>primarily</u> low-scale and low density residential development	The language used in the policies regarding height does not contemplate flexibility, stating development <u>will</u> be designed to have a single-storey appearance from the primary street and clearly setting out exceptions where two storey may be appropriate.	The language used in City Wide PDC 120 does contemplate flexibility, stating that development <u>should</u> provide off-street vehicle parking in accordance with rates contained in Tables NPSP/8 and 9. City Wide PDC 122 and 133 provide for discounting of the rates.
2	It could be argued that the Residential Character Zone density and height policies are in conflict with policies contained at the City Wide level, encouraging infill development to make efficient use of infrastructure and services. However, as there are specific Residential Zones that allow for this, the zone policies are considered to generally prevail.		City Wide PDC 92 encourages development that supports the efficient provision of sustainable transport networks and encourages their use.
3	The purpose of the density, height and parking policies are evident and have sound planning purposes		
4	The density and height policies for the Residential Character Zone can be directly applied to the proposal. It is clear from the policy that residential and appropriately located commercial development should be primarily low scale and low density.		The parking policies are directly applicable to the development.
5	There are no degrees of compliance contemplated for density and height.		There are degrees of compliance contemplated for parking by virtue of City Wide PDC's 122 and 133. The extent of compliance is considered 'marginal' by the Council's Traffic consultants.
6	The development is otherwise consistent with the objectives and purposes of the Residential Character Zone.		
7	The subject land represents a unique opportunity for a coordinated and consolidated mixed use development at the height and density proposed, without significantly impacting on the attainment of the objectives of the Residential Character Zone. Due to the large size of the land and being bounded by roads on three sides, tall elements are able to be centrally located so as not to detract from the character of the side streets, while tall elements presenting to Hackney Road do not detract from the character of this section of the arterial road, due to the relatively isolated nature of the site, the range of building heights along the wider locality of Hackney Road and the extent of softening that will be provided by the retention of existing mature trees and future trees to be planted in proposed streetscape upgrades to the service Road associated with the O-Bahn works.		The subject land is located at the edge of the CBD, with good walking and cycling access and a range of public transport options.

8	No events have happened since the Development Plan was adopted which make the policy redundant.	
9	As set out in 7, the probable effects of non-compliance with the policy on the planning objectives of the Zone are likely to be minimal, due to the unique circumstances of the site.	The probable effects of the non-compliance with the car parking rates is some reliance on on-street and other public parking at peak times, which is detrimental to the objectives of the Residential Character Zone.
10	Non-compliance with the policy in this instance is not likely to lead to further non-compliances within the zone, as there are very few, if any, other sites within the Residential Character Zone, with the characteristics of the subject land, such as the size, multiple street frontages and containing an existing commercial land use.	

Having considered all of the relevant matters, it is the opinion of the Council's Planning staff that the assessment is closely balanced, however that the development 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 155/865/15 by V-Three Hackney Pty Ltd to undertake alterations and additions to an existing hotel and construct six (6) residential buildings comprising a total of 42 dwellings and a 41 bedroom serviced apartment facility, together with car parking, landscaping and removal of a regulated tree on the land located at 87-95 Hackney Road & 2-4 Bertram Street, Hackney 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:

- Plans by Tectvs, Project Number 25050, Drawing Numbers P01 to P10, Revision 1.2 dated July 2016.
- Development Assessment Planning Report by Ruan Consulting, Version 1C, dated November 2015, including attachments.

Conditions

1. A detailed tree protection plan shall be prepared in relation to all on-site and Council street trees to be retained, in accordance with AS4970 2009 Protection of trees on development sites, by a professional arborist, before issue of building rules consent, and final development authorisation for the development, to the reasonable satisfaction of the Council and the tree protection plan be incorporated into the site handbook and induction process prior to any demolition or construction works commencing at the site and/or near to these trees.
2. Comprehensive documentation of the restoration of the original Hotel building shall be prepared before the issuing of Development Approval, to the reasonable satisfaction of the Council, detailing the restoration of the hotel's two main facades, which shall include reconstructing the original balcony, and possibly even the old signage seen in the early photos
3. details of the ramp transition and driver sight lines at the Richmond Street vehicle entrance, shall be provided to the reasonable satisfaction of the Council, prior to the granting prior of Development Approval, demonstrating compliance with AS/NZS 2890.1:2004 – Figure 3.2.
4. Left turn in and Left turn out signage shall be installed at the entrance to 'Flour Mill Lane'.

5. The access door to the secure parking area off Richmond Street shall be set back a minimum of 6 metres from the Richmond Street boundary.
6. All trees and other plants which are either existing and shown to be retained and/or proposed to be planted within the 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.
7. All loading and unloading of vehicles shall be carried out entirely upon the subject land.
8. 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.
9. All of the on car parking spaces shown on the ground floor plan, Drawing Number P04, other than those within the garages of dwellings fronting Bertram Street, shall be freely available at all times for use by staff, clientele of the Hotel and serviced apartments and visitors to dwellings within the development.

Notes to Applicant

1. The Applicant is advised that a portion of the subject land appears to be in the legal ownership of Mr William Thomas Foster (deceased). The Applicant should investigate further before proceeding with any building work on that portion of the land.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.

2. STAFF REPORTS

2.3 DEVELOPMENT APPLICATION 155/C050/2016 – MR S HUANG – 3 LUHRS ROAD, PAYNEHAM SOUTH

DEVELOPMENT APPLICATION:	155/C050/16
APPLICANT:	Mr S Huang
SUBJECT SITE:	3 Luhrs Road, Payneham South (Certificate of Title Volume 5172 Folios 536 & 540)
DESCRIPTION OF DEVELOPMENT:	Community Title Land Division (creating five (5) allotments and a common driveway area)
ZONE:	Residential Zone - Norwood, Payneham and St Peters (City) Development Plan (dated 28 April 2016)
PUBLIC NOTIFICATION CATEGORY:	Category 1

Purpose of Report

The purpose of this report is to provide information to the Panel to enable the Panel to determine a Development Application for a Community Title Land Division creating five (5) allotments and a common driveway area. Staff do not have delegated authority to determine the Application, as it comprises the creation of more than one (1) additional allotment.

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.

Background

A Development Application (Development Application No.155/555/15) was lodged in September 2015 for the construction of three (3) single storey and four (4) two storey group dwellings with associated landscaping, fencing and retaining walls, on the subject land.

The Panel considered Development Application No.155/555/15 at its meeting held on Monday 18 April 2016 and determined to refuse the Application 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.*

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 Monday 6 June 2016, at which the Appellant advised that they intended to amend the proposal, in an attempt to resolve the issues of contention and to gain the Panel's support of the proposal.

The Appellant subsequently lodged two Development Applications with the Council; Development Application No. 155/D049/16 and Development Application No. 155/C050/16. Development Application Number 155/D049/16 was an Application to realign the boundary between the two existing Torrens Title allotments which comprise the subject land. In particular, it sought to realign the boundary in a manner that creates:

1. an allotment with a 10.0 meters frontage to Luhrs Road, a depth of 45.0 metres and an area of 450m², suitable for constructing a detached dwelling; and
2. an allotment which comprises the balance of the subject land, intended to be further sub-divided in a community title arrangement through separate Application (ie. Development Application No. 155/C050/16, that is the subject of this report).

Council staff had delegated authority to determine Development Application No. 155/D049/16, as it did not involve the creation of any additional allotments. It was granted approval, as the land division was consistent with the relevant provisions of the Development Plan. In particular, the allotment with a 10.0 metre frontage facing Luhrs Road, was consistent with the site area and frontage requirements for detached dwellings in the Residential Zone. A copy of the approved land division plan for Development Application No. 155/D049/16 is contained in **Attachment B**.

Development Application No. 155/C050/16 is for a Community Title land division within the larger of the two (2) allotments created in Application 155/D049/16 (shown as Lot 10 in **Attachment B**). As the Application comprises the creation of additional allotments, staff do not have delegation to determine this application. Plans showing how the land would be developed have been provided in support of the Application.

If the Panel determines to approve Development Application No. 155/C050/16, one or more subsequent Development Applications will be lodged for the construction of dwellings on the land. Whether those Applications are determined by Council staff or the Panel, will depend on whether any objections are received in the case of a Category 2 Development Application.

The Applicant has advised that the Appeal in relation to Development Application No. 155/555/15 would likely be withdrawn in the event that the Panel approves Development Application No. 155/C050/16.

Subject Land Attributes

Shape:	regular
Frontage width:	20.48m
Depth:	84.48m
Area:	2,125m ²
Topography:	gently sloping from southeast to northeast
Existing Structures:	single-storey dwelling and several outbuildings
Existing Vegetation:	small trees and shrubs

The subject land contains a single-storey bungalow along with several ancillary outbuildings located towards the rear of the dwelling. One (1) mature street tree is located adjacent to the front property boundary of the subject land. A single-width crossover provides vehicular access to the subject land. There are no regulated trees located on the subject land.

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. A two storey nursing home (Trowbridge House) operated by Eldercare is located to the east of the subject land, 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. All properties adjoining the subject land to the west 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 buildings of a modest scale, 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 is seeking consent to create five (5) Community Lots with an associated common driveway area. The Applicant has provided indicative floor plans in order to demonstrate that group dwellings and/or residential flat buildings can be constructed on each of the five (5) Community Lots and a detached dwelling can be constructed on the Torrens Title allotment.

The relevant details of the proposal in terms of allotment areas and dimensions are set out in Table 1 below.

TABLE 1: DEVELOPMENT DATA:

Consideration	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6	Development Plan Merit Assessment Quantitative Guideline
Site Area	260m ²	308m ²	374m ²	352m ²	352m ²	325m ² average (exclusive of common areas) – group dwelling 250m ² average (exclusive of common area) – residential flat buildings
Site Area Average	258m ²		359m ²			
Allotment Width	7.2m	7.2m	9.5m	10.5m	10.5m	N/A
Total Development site Frontage	20.48m			18m		
Allotment Depth	41.0	47.5m	39.5m	33.5m	33.5m	N/A

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

Notification

Pursuant to Schedule 9 Part 1(2)(f) of the *Development Regulations 2008*, the proposal has been identified and processed as a Category 1 form of development pursuant to Schedule 9 Part 1(2)(f). 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 Desired Character Statement	
Residential Zone Objectives:	1, 2 & 3.
Residential Zone PDC's:	1, 2, 3 & 7.
City Wide Objectives:	1, 2, 7, 10, 15, 16, 17 & 55-57
City Wide PDC's:	20, 21, 22 & 185 -189.

City Wide Objective 15 sets out that land divisions should create allotments appropriate for the intended use of the land. The proposed land division is intended to cater for a residential flat building containing two dwellings on Lots 2 and 3 (fronting Luhrs Road) and three group dwellings at the rear of the land, on Lots 4, 5 and 6. Therefore, in order to determine whether the proposed allotments are suitable for their intended use, it is appropriate to consider:

1. whether the dwelling types which the land division caters for are envisaged in the Residential Zone; and
2. if the site areas and frontage widths proposed are in accordance with the relevant policies for the Residential Zone.

City Wide Principle of Development Control 188 states that residential allotments or sites in the form of a battleaxe, hammerhead or similar configuration should only be created if they are envisaged in the relevant part of the zone or policy area. In this respect, the Desired Character Statement for the Residential Zone states:

"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."

The subject development site is a large site, derived from the amalgamation of titles and is therefore considered to be an appropriate site for group dwellings and in turn, a hammerhead or battle-axe allotment.

Residential Zone Principle of Development Control 7 sets out the minimum quantitative criteria for new dwellings in the zone, including site area and frontage requirements for detached dwellings, group dwellings and residential flat buildings.

In relation to group dwellings and residential flat buildings, Principle 7 states that there should be an average site area of 325m² and 250m² per dwelling exclusive of common areas respectively and that the total development site should have a minimum frontage width of 18.0 metres.

In this instance, the subject land has a total frontage width of 20.5 metres. The three Lots accommodating group dwellings (ie. numbered 4, 5 and 6) total 1,078m² or an average site area of 359m². In terms of Lots 2 and 3, which are intended to accommodate two dwellings forming a residential flat building, the total site area is 514m², resulting in an average site area of 257m².

The proposed average site areas for Lots 2 – 6, satisfy the minimum quantitative requirements specified in Residential Zone Principle of Development Control 7.

Having regard to the quantitative provisions relating to allotment size and frontage widths the proposed density is considered to be acceptable within 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 insofar as they are relevant to the proposed land division:

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

Party wall rights are proposed between Lots 2 and 3, to cater for the future construction of a single building containing two dwellings facing Luhrs Road. The proposed land division would therefore lead to two (2) integrated dwellings facing Luhrs Road, together with a 6.0 metre wide shared driveway servicing dwellings at the rear of the land and the garaging of the dwellings on Lots 2 and 3.

Having regard to the indicative plans which have been provided in support of the Application, the proposed land division is considered to provide sufficient scope for a future development outcome that makes a positive contribution to the Luhrs Road streetscape. Importantly, future dwellings on Lots 2 and 3 will be able to have garaging at the rear, accessed from the common driveway and will be able to be designed in a cohesive manner, due to the party wall rights.

The land division therefore allows for a streetscape outcome where the space in front of the dwellings fronting the road is not dominated by driveways or garaging and the built form is cohesive and consistent with the proportions of existing dwellings in the locality. Specifically, the land division would allow for a single building of approximately 12.5m width (comprising 2 dwellings) fronting Luhrs Road, which is similar to the width of most detached dwellings fronting Luhrs Road in the locality.

The proposed land division is conducive to the construction of two-storey dwellings on Lots 2 and 3 and single storey dwellings on Lots 4, 5 and 6, as demonstrated in the indicative plans. Although the construction of a two storey building fronting Luhrs Road would be inconsistent with the prevailing pattern of development in the locality, the Residential Zone clearly anticipates two-storey dwellings fronting public roads, as set out in Residential Zone Principle of Development Control 8. This aspect of the land division is therefore considered appropriate.

Setbacks and Site Coverage

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

Residential Zone PDC:	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 6.0 metres. The indicative plans show that dwellings are able to be constructed on Lots 2 and 3 and achieve this setback policy.

City Wide Principle of Development Control 202 states:

“The distance between any portion of a single storey dwelling, on a battleaxe, hammerhead or similar configuration allotment, and a side or rear boundary of the allotment on which it is sited should be no less than 2.5 metres.”

The indicative plans show that dwellings are able to be constructed on Lots 4 and 5 whilst satisfying the side and rear setback criteria.

The indicative group dwelling on Lot 6 is set back 900mm from the eastern side boundary, inconsistent with City Wide Principle 202. That said, the size and shape of Lot 6 is sufficient for a dwelling to be designed with a 2.5m side setback, should that be considered necessary upon the future assessment of an application for a dwelling on the site.

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.

As previously stated, the land division is conducive to two storey dwellings being constructed on Lots 2 and 3. Any overshadowing from future dwellings on those allotments would fall over Luhrs Road and the adjacent commercial car parking area to the east. Overlooking will be able to be addressed through appropriate design of future dwellings.

Private open space

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

City Wide PDC's: 222, 223, 224 & 229.

Based on the indicative floor plans, the Applicant has indicated that 154m² (34%) of Lot 1, 69m² (23%) of Lot 2, 65m² (20%) of Lot 3, 105m² (30%) of Lot 4, 65m² (20%) of both Lot 5 and 6 can be allocated for private open space. This amount of private open space would satisfy the 20% private open space guideline referred to in Principle of Development Control 222(a), demonstrating that the proposed allotment sizes and dimensions are reasonable in terms of the siting of future dwellings that can achieve an appropriate level of private open space.

The private open space areas of each dwelling in the indicative plans are directly accessible from the main living areas of the respective dwellings. The private open space areas of all six (6) dwellings have good orientation for solar access, in terms of gaining access to northern sun.

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

The topography of the subject land falls from the front south-eastern corner to the rear north-western corner approximately 800mm. It is not located in a recognised flood plain. Any future dwellings developed on Lots 2 and 3 will be able to direct surface water to the Luhrs Road water table via a gravity fed stormwater disposal system.

Substantial filling of a battleaxe allotment has the potential to adversely impact on the level of residential amenity enjoyed by occupants of adjacent land, which in this instance are the residential occupiers directly to the west and north.

City Wide Principle of Development Control 58 states the following:

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

In the event that future dwellings on Lots 4, 5 and 6 are constructed at a height consistent with City Wide Principle of Development Control 58, this would mean that a drainage plan based on a sump and pump stormwater disposal system would be required. This is a negative aspect of the proposal, however there is no practical way of overcoming this, as the subject land does not have any legal rights over land to the west,

to dispose of stormwater via a gravity-fed system. That said, the provision of a sump and pump stormwater disposal system is not uncommon for allotments that sit below the level of the adjacent street water table.

Car parking/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, 189, 200 & 219
Table NPSP/8	

The indicative dwellings on Lots 2 and 3, have one (1) covered car parking spaces and one (1) designated visitor parking spaces. The indicative dwellings on Lots 4, 5 and 6 have two (2) covered parking spaces, while the dwellings on Lots 5 and 6 each have two (2) visitor car parking spaces. The overall number of car parking spaces shown in the indicative plan is fourteen (14) spaces, comprising eight (8) occupant spaces and six (6) visitor spaces.

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 and residential flat buildings, Table NPSP/8 states that two (2) on-site car parking spaces should be provided for each three (3) bedroom dwelling, of which at least one (1) should be covered. In addition, one (1) visitor space should be provided for every two (2) dwellings, resulting in a total demand of thirteen (13) spaces, comprising ten (10) occupant car parking spaces and three (3) visitor spaces.

Accordingly, the indicative plans demonstrate that the land division is able to cater for car parking that is generally in accordance with the requirements detailed in Table NPSP/8. The indicative plans show the number of dedicated occupant spaces being slightly below the stated rate and the number of dedicated visitor spaces being slightly higher than the stated rate.

City Wide Principle of Development Control 189 provides guidelines for the configuration of driveway and manoeuvring areas for group dwellings, so as to achieve safe and convenient access arrangements. In relation to developments involving more than two (2) dwellings utilising a common driveway, Principle 194 states that the driveway should have a 6.0 metre x 6.0 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. The indicative plans accord with this guideline.

Principle 189 also states that the common driveway paved carriageway width should be no less than 5.0 metres in width, with 500mm of landscaping on either side, resulting in a total combined width of paved carriageway and landscaping of 6.0 metres. The indicative plans also accord with this guideline.

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

Trees (regulated, mature & street) and landscaping

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

City Wide Objectives:	24
City Wide PDC's:	73, 74, 184, 189(e), 220 & 221

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

In term of possible landscaping to the proposed lots, the indicative Landscaping Plan demonstrates that there is reasonable opportunity for landscaping at the front of each of the lots facing Luhrs Road, to enhance the amenity of the adjacent driveway environment in accordance with City Wide Principle of Development Control 221(a), which requires that landscaping should enhance the residential amenity of development in residential zones. With respect to Lots 4, 5 and 6, they are considered to be of sufficient size to be able to

accommodate a reasonable degree of landscaping and also in accordance with City Wide Principles of Development Control 221.

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.

Having regard to both the orientation of the subject land and the indicative floor plans on the proposed lots, access to northern light in the winter months for both the internal living areas and the private open space areas can be maximised in accordance with City Wide Principle of Development Control 68, which states:

“Buildings should be sited and designed to ensure:

- (a) that the main living areas and the private open space associated with the main living areas, face north to maximise exposure to winter sun; and*
- (b) adequate natural light and winter sunlight is available to the main internal living areas and principal private open spaces of adjacent properties.”*

Summary

The proposed land division will result in the creation of new allotments that satisfy the quantitative requirements for site areas, and where specified, frontage widths in the Residential Zone. The proposed allotments and in particular, Lots 4, 5 and 6 can be created without unreasonably compromising the living amenity of directory neighbouring residential occupiers, provided that they are not substantially filled (this can be addressed in the assessment of subsequent Applications for dwellings).

The indicative plans provided suggest that the proposed allotments can be developed with dwellings that are consistent with the Development Plan's City Wide provisions, in terms of an acceptable future built form outcome within the locality and more specifically, will not have an unreasonable impact on neighbouring allotments.

Accordingly, it is considered that the Community Title Land Division 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 Number 155/C050/16 by Mr S Huang to undertake a Community Title Land Division in order to create four (4) additional allotments, on the land located at 3 Luhrs Road, Payneham South, subject to the imposition of the following 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:

- Community Title (Reference Number 16 07 21C) prepared by Carmelo Castelanelli Licensed Surveyor, received by the Council on 4 August 2016.

Notes to Applicant

1. The postal addresses of the newly created allotments are:
 - Lot 2 – 3A Luhrs Road, PAYNEHAM SOUTH SA 5070
 - Lot 3 – 3B Luhrs Road, PAYNEHAM SOUTH SA 5070
 - Lot 4 – 3C Luhrs Road, PAYNEHAM SOUTH SA 5070
 - Lot 5 – 3D Luhrs Road, PAYNEHAM SOUTH SA 5070
 - Lot 6 – 3E Luhrs Road, PAYNEHAM SOUTH SA 5070
2. This consent does not imply demolition approval and a separate Application seeking demolition approval must be lodged with the Council.
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. This Development Plan Consent will lapse within 12 months of the date of this notice unless Land Division Consent and Development Approval have been obtained.
5. 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.

3. **OTHER BUSINESS**
(Of an urgent nature only)
4. **CONFIDENTIAL REPORTS**
Nil
5. **CLOSURE**