

# Development Assessment Panel Agenda & Reports

**17 July 2017**

## **Our Vision**

*A City which values its heritage, cultural diversity,  
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable  
and socially cohesive, with a strong community spirit.*

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City of  
Norwood  
Payneham  
& St Peters

12 July 2017

## 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 Frogley

### 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 17 July 2017, commencing at 7.00pm.**

Please advise Jo Kovacev on 8366 4530 or email [jkovacev@npsp.sa.gov.au](mailto: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  
Payneham  
& St Peters**

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**VENUE**                      Mayors Parlour, Norwood Town Hall

**HOUR**

**PRESENT**

**Panel Members**

**Staff**

**APOLOGIES**              Ms Jenny Newman

**ABSENT**

1.     **CONFIRMATION OF THE MINUTES OF THE MEETING OF THE DEVELOPMENT ASSESSMENT PANEL HELD ON 19 JUNE 2017**
2.     **STAFF REPORTS**
  - Items to be starred (.....)
  - All unstarred items to be adopted (.....)

**2. STAFF REPORTS**

**2.1 DEVELOPMENT APPLICATION 155/164/2017 – DR M D GHAN & N T GHAN –  
417 MAGILL ROAD, ST MORRIS**

<b>DEVELOPMENT APPLICATION:</b>	<b>155/164/2017</b>
<b>APPLICANT:</b>	<b>Dr M D Ghan &amp; N T Ghan</b>
<b>SUBJECT SITE:</b>	<b>417 Magill Road, St Morris (Certificate of Title Volume:6148 Folio:199)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Demolition of a dwelling, outbuildings and swimming pool and the construction of a two-storey building comprising consulting rooms and two (2) dwellings, with associated car parking area, landscaping and fencing</b>
<b>ZONE:</b>	<b>Local Shopping Zone Norwood, Payneham and St Peters (City) Development Plan (dated 28 April 2017)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

**Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for the demolition of a dwelling, outbuildings and swimming pool and the construction of a two-storey building comprising consulting rooms and two (2) dwellings, with associated car parking area, landscaping and fencing.

Staff do not have delegated authority to determine the Application, as it is a Category 2 form of development and objections to the Application were received through the public notification process. 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 warrant consent.

**Subject Land Attributes**

Shape:	regular (with corner cut-off)
Frontage width:	15.85 metres (excluding corner cut-off)
Depth:	58.83 metres
Area:	928m <sup>2</sup>
Topography:	slightly sloping
Existing Structures:	dwelling and outbuildings
Existing Vegetation:	some mature vegetation

The subject land is located on the corner of Magill Road and Thomas Avenue and currently contains a dwelling, outbuildings and a swimming pool. The site slopes approximately 800mm from the south-eastern to the north-western corner.

## Locality Attributes

Land uses:	mixed use
Building heights (storeys):	several two storey
Streetscape amenity	low on Magill Road, high on Thomas Avenue

The locality contains a mix of land uses and is divided into the Local Shopping Zone and the Residential Character Zone on the northern side of Magill Road and the Local Business Zone located within the City of Burnside on the southern side of Magill Road. Properties facing Magill Road include offices, shops (including café/restaurants), dwellings, consulting rooms and fitness centres. Properties within the locality along Thomas Avenue contain detached dwellings, other than the commercial property on the opposite corner at 419 Magill Road.

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

## Background

At its meeting held on 19 December 2016, the Development Assessment Panel granted approval to two land division Applications relating to this site; a Torrens Title Land Division (Development Application No. 155/D084/2016) and a Community Strata Land Division (Development Application No. 155/C091/2016). The approved Torrens Title Land Division created three allotments; the northern two allotments are intended to accommodate semi-detached dwellings facing Thomas Avenue and the southernmost allotment was approved with a further Community Strata Land Division through Development Application No.155/C091/2016. The Community Strata Land Division 155/C091/2016 created three allotments plus community land which are intended to accommodate a mixed use building and car parking area. A copy of the Approved land division plans is contained in **Attachment A**.

At its meeting held on 18 January 2017, the Panel determined to refuse Development Application No. 155/194/2016 for demolition of an existing dwelling and outbuildings and the construction of consulting rooms with two (2) apartments above and the construction of two (2) semi-detached dwellings facing Thomas Avenue with associated fencing and landscaping. This Application was a non-complying form of development as semi-detached dwellings are a non-complying form of development within the Local Shopping Zone.

The reasons for refusal were as follows:

- 1. Insufficient car parking is provided on the site of the proposal.*
- 2. The proposal constitutes an overdevelopment of the site with respect to bulk and scale.*

As the Application was processed as a non-complying form of development, the Applicant did not have the right to appeal the refusal. The Applicant has subsequently lodged two separate Development Applications for essentially the same development as previously proposed; Development Application No.155/164/2017, which is the subject of this report and Development Application No. 155/253/2017 for the construction of a pair of semi-detached dwellings facing Thomas Avenue, which is also before the Panel for consideration as part of this agenda.

The Applicant has lodged two separate Applications for procedural reasons and because previous concerns raised by the Panel primarily related to the mixed use component of the development, rather than the semi-detached dwellings. Development Application No. 155/164/2017 for the mixed use building is a merit form of development and Category 2 for the purposes of public notification, whereas Development Application No. 155/253/2017 for the semi-detached dwellings is a non-complying form of development, requiring Category 3 public notification and the Applicant does not have appeal rights.

The current proposal for the mixed use building and car parking is very similar to the previous Development Application considered by the Panel. The changes which have been made include the addition of enclosed bicycle parking for two bikes for the apartments (located under the stairs on the western side of the building) and some additional landscaping. The most notable difference in the assessment of the previous Application and the current Application is the applicable version of the Development Plan.

Whereas the previous Development Application was required to be assessed against the version of the Development Plan dated 2 July 2015, the current Development Application is required to be assessed against the version dated 28 April 2016. A key difference between the two versions of the Development Plan is the applicable car parking rate for non-residential uses, which was changed through the *Existing Activity Centres Policy Review Development Plan Amendment*. The objective of the Ministerial DPA was to lessen car parking requirements for new developments located in 'designated centres', which include Local Shopping Zones. Car parking is discussed in more detail below.

### Proposal in Detail

The Applicant seeks consent for demolition of a dwelling, outbuildings and swimming pool and the construction of a two-storey building comprising medical consulting rooms and two (2) dwellings, with associated car parking area, landscaping and fencing.

The consulting rooms are located on the ground floor of the building and contain three consulting rooms plus a treatment room and associated waiting/admin/staff areas. However the Applicant has indicated that they are able to operate the premises using only two of the three consulting rooms at any one time should this be required to overcome any concerns regarding the adequacy of on-site car parking spaces. The consulting rooms are proposed to operate Monday to Friday 9:00am – 7:00pm and Saturdays 9:00am to 5:00pm and are provided with 7 car parking spaces, inclusive of an accessible space, within a common car parking area.

The apartments contain a combined kitchen/dining/lounge, two bedrooms (the master bedroom contains an ensuite), laundry nook, balcony, and the northern apartment has a study. Each apartment is provided with two car parking spaces within the common car parking area, which will be covered by the upper level.

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

**TABLE 1: DEVELOPMENT DATA: Consulting Rooms and Apartments**

Consideration	Apartment 1 (Southern Apartment)	Apartment 2 (Northern Apartment)	Consulting Rooms	Development Plan Merit Assessment Quantitative Guideline
Site Area	102m <sup>2</sup> (plus subsidiaries)	113m <sup>2</sup> (plus subsidiaries)	148m <sup>2</sup> (plus subsidiaries)	N/A
Allotment Width	14.5m	15.85m	15.85m	N/A
Allotment Depth	11.5m	9.7m	14.0m	N/A
External Wall Height*	4.6m – 8.0m	4.6m – 8.0m	4.6m – 8.0m	N/A
Maximum Overall Height (to roof apex)*	9.2m	9.2m	9.2m	N/A
Floor Area (total)	95m <sup>2</sup> + balcony 25m <sup>2</sup>	104m <sup>2</sup> + balcony 25m <sup>2</sup>	148m <sup>2</sup>	N/A
Private Open Space	25m <sup>2</sup> (plus additional balcony area < 2m in width)	25m <sup>2</sup>	N/A	12m <sup>2</sup> (CW PDC 226(b))
Street Set-back	1.2m to balcony 3m to main building	N/A	1.2m at the closest point	N/A
Side Set-back	Nil – 1.5m	Nil	Nil – 1.5m	N/A

**TABLE 1: DEVELOPMENT DATA: Consulting Rooms and Apartments *continued....***

Consideration	Apartment 1 (Southern Apartment)	Apartment 2 (Northern Apartment)	Consulting Rooms	Development Plan Merit Assessment Quantitative Guideline
<b>Rear Set-back</b>	N/A	11.8m to northern car park boundary	20.2m northern car park boundary	N/A
<b>Car Parking Provision</b>	2 undercover	2 undercover	7 spaces	Apartments: 2 parks per dwelling and 1 visitor for every 2 dwellings (Table NPSP/8) Consulting room: 4.4 spaces (Table NPSP/9A)

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

Plans and details of the proposed development are contained in **Attachment B**, including a letter from URPS in support of the proposal and a car parking assessment from Cirqa.

### Notification

The proposal has been identified and processed as a Category 2 form of development.

Three (3) representations were received (all opposed) in response to this notification, copies of which are contained in **Attachment C**. The key issues raised by representors are, in summary:

- insufficient car parking provided on the site;
- The built form and density compromising the character of the area; and
- overdevelopment of the site.

The following representor desires to be heard personally by the Development Assessment Panel (DAP):

- *Sam Puopolo*

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

A summary of the response is provided below:

- the proposed development exceeds the minimum Development Plan car parking requirements;
- the Applicant is able to operate the premises with only two out of the three consulting rooms being occupied at any one time

### State Agency Consultation

The Application was referred to the Department of Planning Transport & Infrastructure, as the development involves a new crossover within 25 metres of Magill Road (a secondary arterial road). This response is contained in **Attachment E** and is discussed further in the [carparking/access/manoeuvring](#) section of this report.

### Discussion

The subject land is located within the Local Shopping 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:

Local Shopping Zone Objective: 1  
Local Shopping Zone Principles of Development Control: 1

City Wide Objectives: 1, 2, 3, 5, 7, 26, 27, 57  
City Wide Principles of Development Control:

The Local Shopping Zone allows for the development of primarily small groups of shops which cater for the day-to-day needs of nearby residents. The proposed land uses are medical consulting rooms and residential dwellings.

Although consulting rooms are not explicitly listed as a desired land use within the Local Shopping Zone, they are a 'merit' form of development within the Zone. A range of commercial uses are currently located along Magill Road including shops, offices consulting rooms and fitness centres. Given the small scale of the consulting rooms, it is considered to be a service directed to the local community, rather than servicing a broader catchment area and therefore it is considered compatible with local shops and acceptable within the Local Shopping Zone.

Several types of dwellings are listed as non-complying within the Local Shopping Zone including detached, semi-detached, multiple dwelling, and residential flat buildings. Interestingly, a 'shop and dwelling' is listed as a complying form of development within the zone. This reference relates to the traditional form of shop with an associated dwelling located at the rear or above. It is likely that most dwelling types are listed as non-complying development to preserve land within the zone primarily for shops and allied commercial uses to serve the needs of the local community and to maintain active frontages along main corridors such as Magill Road.

The proposal does incorporate a commercial land use at the front of the site, with residential use above. In this way, the mixed use outcome is similar to that which is created by the traditional 'shop and dwelling'. The size of the consulting rooms is considered appropriate for the zone. A larger consulting practice which occupied the whole site may result in a level of activity which is beyond that anticipated within the Local Shopping Zone and could have a detrimental impact on surrounding residential properties within the Residential Character Zone, by creating a level of intensity of use that is beyond what is anticipated for the Local Shopping Zone.

The proposed consulting rooms will be well separated from existing dwellings in Thomas Avenue by the approved allotments at the northern end of the subject land but will most likely abut new residential development on newly created allotments to the north.

With respect to providing active frontages to Magill Road, the location of consulting rooms on the lower floor in close proximity to Magill Road is considered to achieve that outcome.

The operation of the consulting rooms is likely to be relatively quiet and there is likely to be little to no activity at sensitive times such as weeknights (after 7:00pm), Saturday evening and on Sundays. As such, the proposed use is not considered to result in excessive noise impacts for the occupants of surrounding dwellings, nor the proposed apartments.

As the apartments are located adjacent to Magill Road, future occupants of these dwellings (particularly the southern apartment) are likely to be impacted by traffic noise from Magill Road. If the Panel determines to approve the application, it is recommended that a condition be imposed, requiring double glazing and acoustic seals on windows and doors for the apartments to minimise noise within the building.

On balance, the proposed mix of residential and commercial use is considered to be consistent with City Wide Objective 26, which seeks development sited to minimise adverse impact and conflict between land uses and City Wide Principle of Development Control 3, which states that development should take place on

land which is suitable for the intended use of that land, having regard to the location and condition of the land and the provisions of the zone.

The allotment sizes of the proposed consulting rooms and dwellings are consistent with land divisions 155/D084/2016 and 155/C091/2016, approved by the Panel on 19 December 2016. The subject land is considered suitable for a higher density development compared to surrounding development in the adjacent zones, given its location on a secondary arterial road, and its close proximity to public transport, public open spaces, shops and other services. The proposed dwelling density is therefore consistent with City Wide Objective 57, which anticipates increased dwelling densities in areas close to centres, public transport and significant public open spaces. .

Streetscape/bulk/scale/height/character

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

City Wide Objectives: 8, 18 - 20,  
City Wide Principles of Development Control: 28 - 30, 33 - 36, 39, 192

The Local Shopping Zone policies do not provide any guidance with respect to building height or built form. The following City Wide provisions are considered particularly relevant to this assessment:

City Wide Principle of Development Control 34:

*“Development on corner allotments should:*

- (a) reinforce the primary and secondary street frontages of the subject site with highly articulated building forms; and*
- (b) be sited to complement the siting of buildings on the adjacent corner sites*

City Wide Principle of Development Control 29:

*“Except where the zone or policy area objectives, principles of development control and/or desired character of a locality provide otherwise, new buildings:*

- (a) may be of a contemporary appearance and exhibit an innovative style;*
- (b) should complement the urban context of existing buildings on adjoining and nearby land in terms of:
  - (i) maintenance of existing vertical and horizontal building alignments*
  - (ii) architectural style, building shape and the use of common architectural elements and features;*
  - (iii) consistent colours, materials and finishes; and**
- (c) should not visually dominate the surrounding locality.”*

The Magill Road streetscape currently contains a mix of single storey and two-storey buildings in a variety of styles and materials.

The proposed two-storey mixed use building is located in close proximity to the Magill Road frontage and is located on the Thomas Avenue boundary resulting in a visually prominent corner building. A number of other commercial properties along Magill Road have been constructed on or near front and secondary street boundaries and as such, the proposed siting of the building is considered appropriate. In particular, the building on the adjacent corner at 419 Magill Road is set close to Magill Road and on the Thomas Avenue frontage. In this context, the proposed building is considered to complement the siting of buildings on the adjacent corner sites, consistent with City Wide Principle of Development Control 34.

The overall size of the proposed building is not dissimilar to other two-storey buildings within the locality. The Thomas Avenue elevation of the building is considered to be suitably articulated consistent with Principle of Development Control 34.

The mixed use building is proposed to have a contemporary form using feature cladding and concrete panels in contrasting colours, and incorporates 4.5 metre high lower level walls, however the building maintains a roof form and solid to void ratio consistent with most buildings on Magill Road. The proposed setback from Magill Road allows for a large established red ironbark street tree to be retained. The canopy

of this tree would obscure views of the upper level of the building to some extent, assisting to soften its impact on the established streetscape.

On balance, the streetscape presentation of the building is considered appropriate in the context of the locality.

#### Setbacks and Site Coverage

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

City Wide Principles of Development Control: 50, 52, 206

The Local Shopping Zone does not provide any qualitative or quantitative policies for building setbacks. As such, consideration has been given to the following City Wide provisions

Principle of Development Control 50

*"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."*

Principle of Development Control 52

*"Except where otherwise specified in the relevant Zone and/or Policy Area, the setback of development from a secondary street frontage should reflect the setbacks of the adjoining buildings and the predominant setback of other buildings in the locality."*

As discussed in the *streetscape/bulk/scale/height/character* section of this report, the proposed building is located in close proximity to the Magill Road Boundary (1.2 metres to the balcony and entrance and 3 metres to the main building line) and is proposed on the Thomas Avenue boundary. Building to front and side boundaries is a common feature for commercial buildings along Magill Road so these setbacks are considered appropriate and are not considered to have a detrimental impact on the streetscape. The upper level walls are considered to be sufficiently set back to provide space around the building; a portion of the upper level is located on the western boundary however this is adjacent to a commercial (office) property so will not affect residential amenity.

#### Overshadowing/overlooking

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

City Wide Principles of Development Control: 11, 71, 195, 196, 235, 236

Due to the orientation of the subject land, the proposed development will not overshadow adjacent residential properties.

Apartment 2 has two north facing windows and the north side of the balcony which face the residential property at 1 Thomas Avenue. Should the Panel determine to approve the development, it is recommended that a condition be imposed requiring these windows and the northern side of the balcony to be obscured to a height of 1.7 metres. Given the distance between the proposed building and the adjacent residential property, it is difficult to determine what level of screening may be required. It is considered appropriate to take a cautionary approach and require screening, however the condition can be reviewed later if it becomes evident during construction that overlooking will not be excessive.

### Private open space

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

City Wide Principles of Development Control: 222 – 224, 226, 230

City Wide Principle of Development Control 226 states (in part):

*“Residential development in the form of apartments within a multi storey building should have associated private open space of sufficient area and shape to be functional and capable of meeting the likely needs of the occupant(s) and should be in accordance with the following requirements:...*

*(b) two bedrooms, a minimum area of 12 square metres of private open space;..”*

The northern-most apartment is provided with a 25m<sup>2</sup> balcony and the balcony for the southern apartment has a 25m<sup>2</sup> area of useable dimensions plus an additional 25m<sup>2</sup> adjacent to Magill Road which has a depth of less than 2 metres. The balcony areas are consistent with Principle of Development Control 226, provide good links to the internal living areas and have good access to morning and midday light.

It is also noted that the subject land is located approximately 500m from public open space at St Morris Reserve.

### 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: 101, 113, 115, 118, 120, 122, 123, 124

The Applicant has provided a car parking assessment from a traffic consultant, Cirqa, outlining the provision of car parking as part of the development. A copy of the report is contained in **Attachment B**.

Table NPSP/8 states that dwellings with 2 or 3 bedrooms in a multi-storey building (other than detached and semi-detached dwellings) should be provided with two (2) car parking spaces plus one (1) visitor space for every two (2) dwellings. The apartments each have two undercover car parking spaces designated, however do not have a designated shared visitor space.

City Wide Principle of Development Control 122 parts (b) and (c) states that a lesser number of car parks can be provided where the site is in close proximity to public transport or where the proposal is a mixed use development, where residential and non-residential uses have differing peak times respectively. As the subject land is less than 200m from high frequency bus stops on Magill Road, the shortfall of one (1) designated visitor space from the standard rate is not considered unreasonable. The Applicant's Planning Consultant has confirmed that residents of the residential apartments can share the car parking for the consulting rooms. The peak times for residential visitors (evenings and weekends) are not likely to coincide with the peak times of the consulting room use, with the exception of Saturdays during the day, however it is considered that any conflict which may occurring during this limited time is unlikely to cause an unreasonable impact on the surrounding street network,

On 28 April 2016 a new version of the Development Plan was consolidated which introduced new commercial car parking rates for certain designated areas located near high frequency public transport routes. The subject land falls within a designated area.

The car parking rate for consulting rooms set out in Table NPSP/9A is a desired minimum number of 3 parks per 100m<sup>2</sup> of gross floor area and a maximum number of 6 parks per 100m<sup>2</sup>. It is interpreted that a maximum value is provided to prevent an overreliance on car parking and to encourage other modes of transport within designated areas. In other words, the use of a minimum and maximum in Table NPSP/9A is not interpreted as providing a range from within which the relevant assessing authority can choose the most appropriate to suit the situation. Rather, it is interpreted as providing a minimum rate which must be achieved and a maximum which may not be exceeded. In the case of the proposal, it achieves the minimum rate.

If the new parking rates are applied in the alternative way (ie. that the relevant assessing authority chooses the most appropriate car parking rate it sees fit to apply to its assessment from between 3 and 6 parks per 100m<sup>2</sup> of gross floor area, to suit the context of the development proposal), then the Ministerial DPA would have no work to do, insofar as the car parking requirements would be no less onerous than prior to the introduction of the DPA and the whole intent of the DPA was to relax car parking rates applicable to new developments within designated areas.

Table NPSP/9A also allows for some discount to car parking rates to be applied in circumstances such as:

- (a) the development is a mixed use development with integrated (shared) parking where the respective peak parking demands across the range of uses occurs at different times;
- (b) the development is sited in a locality where the respective peak demands for parking for the range of uses (existing and proposed) occurs at different times and suitable arrangements are in place for the sharing of adjoining or nearby parking areas;...
- (e) generous on-street parking and/or public parking areas are available and in convenient proximity, other than where such parking may become limited or removed by future loss of access, restrictions, road modifications or widening...

Applying the rate of 3 spaces per 100m<sup>2</sup>, the consulting rooms would generate a theoretical car parking demand for four (4) spaces. Seven (7) car parking spaces are proposed, to be shared between the consulting rooms and visitors to the dwellings. The resultant car parking rate therefore achieves the minimum car parking rate provided in Table NPSP/9A and does not rely on any additional 'discounts' to the minimum rate, which would be available given the circumstances previously described.

Given that the number of car parks designated for the consulting rooms and dwelling visitors exceeds the minimum amount required for the consulting rooms, and that the dwellings are not provided with a designated visitor parking space, residential visitors can use the remaining car parks.

As a comparison to the previous Development Application which was considered for the subject land, the previous version of the Development Plan required a car parking rate of 4 car parks per consulting room. Based on this rate, the theoretical demand for the consulting rooms when previously proposed was 12 car parks, resulting in a shortfall of 5 spaces.

Two of the representors raised a concern regarding the potential for visitors/staff of the proposed consulting rooms using the adjacent car park at 415 Magill Road St Morris, as they indicate this occurs with customers of the shop at 413 Magill Road. It is considered unlikely that users of the proposed car park will park in 415 Magill Road; if a driver does find that the proposed car parking area at 417 Magill Road is full, the driver is more likely to park in the surrounding street network, rather than turning right from Thomas Avenue onto Magill Road then turning right into 415 Magill Road, or alternatively driving around the block to Third Avenue and Green Street to come back to 415 Magill Road. It is also considered unlikely that drivers would pre-emptively park at 415 Magill Road before reaching the subject land.

The design and layout of the proposed car parking area is considered to be safe and convenient and meets Australian Standard 2890.1:2004. Car parks numbered 9, 10 and 11 are proposed to be designated as staff car parks due to the reduced width of the spaces (2.4 metres) which is compliant with 'all day' parking requirements of AS 2890.1:2004 rather than the wider car parks appropriate for higher turnover use. Additionally, the designation of car park 11 for staff use will limit access movements adjacent to the driveway access point. The aisle width provided is wider than required by AS 2890.1:2004 which will also assist in safe and convenient movements.

To protect the structural root zone of the adjacent street trees, the access driveway to the car park is slightly narrower than may otherwise be provided. Vehicles will, however, still be able to access and egress the site in a forward direction.

The Application was referred to the Department of Planning, Transport and Infrastructure (DPTI) as it proposes a new crossover within 25 metres of a secondary arterial road. A copy of the referral response is contained in **Attachment E**. DPTI are generally supportive of the proposal, subject to recommended conditions. The referral references the RMS Guide to Traffic Generating Developments (2002) from Road and Maritime Service in NSW and indicates that the proposed development does not meet the car parking requirements outlined in this document. However, it is considered appropriate to apply the relevant car parking requirements of the Development Plan, rather than the guide referenced by DPTI. The referral also

indicates that consent from DPTI is required for work within possible future Road Widening requirements however the current corner cut-off is considered sufficient at this time.

DPTI has recommended that parking restrictions be placed on the portion of kerb between Magill Road and the driveway to the car parking area. The Council's Regulatory Services staff have verbally advised that aside from the required 10 metre clearance from the intersection, there is no current intention to prohibit on street parking in this location, however should it become apparent that cars parking in this location is problematic, this can be reviewed as necessary.

The proposed crossovers will require the removal of one on-street car park. While this is considered a negative aspect of the proposal, the loss of one street park is not unreasonable given the scale of the development.

A bicycle rack is provided on the site in front of the commercial building on Magill Road for staff and visitors to the consulting rooms, and under the stairwell for the residents of the apartments. Table NPSP/10 does not provide a bicycle parking rate for consulting rooms however the proposal is consistent with the rate for the residential apartments.

#### 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 Objectives: 9, 51

City Wide Principles of Development Control: 7, 169, 170, 171

The majority of the subject land is within the 1 in 100 year floodplain and a small portion of the front of the property is within the 1 in 50 year floodplain. As part of the previous Development Application, the development was reviewed by Tonkin Consulting and the Council's Project Manager – Civil. The proposed finished ground floor level of the proposed building is marginally (0.05 metres) less than the finished floor level recommended by Tonkin Consulting. As such, should the Panel determine to approve the development, it is recommended that a condition be imposed requiring the recommended floor level.

The subject land falls approximately 860mm from the south-eastern corner to the north-western corner. The finished floor level of the consulting rooms will be between 110 mm and 480mm above ground level which will require minimal retaining so fencing heights will not exceed 2.4 metres, consistent with City Wide Principle of Development Control 58.

Due to the proposed levels, stormwater can be directed to the street via a gravity fed stormwater system.

#### 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

City Wide Principles of Development Control: 73, 74, 76, 395, 397

Several street trees are located adjacent to the subject land including a regulated Red Ironbark on Magill Road and five (5) non-regulated Jacarandas on Thomas Avenue.

The proposed building footprint has been designed to avoid the Tree Protection Zone of the regulated Red Ironbark street tree in the Magill Road verge. A portion of the balcony will be located within the Tree Protection Zone however the Council's Coordinator Horticultural and Arboricultural Services has advised that this is within tolerances and it is not expected that any unreasonable levels of pruning would be required to accommodate the building as proposed. If the Panel determines to approve the application, it is recommended that a condition be imposed, requiring there be no excavation within the Tree Protection Zone to avoid damage to the tree, other than work required to install the proposed bike rack. The proposed driveway location has been designed to avoid conflict with the Structural Root Zone of the adjacent street trees.

The subject land contains some established non-regulated vegetation proposed to be removed to accommodate the proposed development.

The Applicant has provided a landscaping plan illustrating areas of soft landscaping in front of the consulting rooms, shade tolerant plants at the rear of the building under the upper level, a small landscaping strip along a portion of the western boundary and three trees located along the northern edge of the car parking area. The proposed landscaping plan differs from the previous Development Application by the inclusion of the northern three trees and some additional planting at the front. Although the addition of the three new trees is positive, the change in the landscaping compared to the previous proposal is not significant. However, the retention of the adjacent street trees will help to 'soften' the appearance of the development and associated hard paved areas.

### Environmental Sustainability

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

City Wide Objectives: 23, 42

City Wide Principles of Development Control: 67 – 70, 148

The apartments are not illustrated as incorporating rainwater tanks. If the Panel determines to approve the application, it is recommended that a condition be imposed requiring 2000 litre rainwater tanks for each dwelling, or a combined 4000 litre rainwater tank, to be consistent with City Wide Principle of Development Control 159.

The proposed development will introduce additional hard paved area. If the Panel determines to approve the application, it is recommended that a condition be imposed requiring that the existing 1 in 5 year average return interval (ARI) rain event peak flow be maintained on the proposed commercial site, which can be achieved by underground storage or controlled pumping, or a combination of both, with details of the stormwater management system to be provided prior to full Development Approval.

Access to light for the internal living areas of the apartments will be limited to the morning. Each habitable room, other than the study for the northern apartment, will have access to natural light and ventilation. The bathrooms will require mechanical ventilation. Should the Panel determine to approve the development, it is recommended that a condition be imposed requiring a skylight to the foyer of the apartments and to the study of the northern apartment to provide some access to natural light. The apartments do not incorporate west facing windows.

Waste storage areas have been provided at the rear of the building, under the upper level.

On balance, the proposed development is considered to be consistent with City Wide Objective 23.

### **Summary**

The proposed development incorporates residential land use which is not specifically anticipated within the Local Shopping Zone. However, the proposed dwellings are not considered to compromise the continued use of commercial land, result in conflicts between commercial and residential use, and are not dissimilar in built form and intensity to the anticipated 'shop and dwelling' land use which is complying within the Local Shopping Zone. The scale of the consulting room use is considered to be consistent with the general intent of the Local Shopping Zone in providing services to the locality community.

The presentation of the building is considered to result in an appropriate streetscape outcome and the development is not considered to result in any unreasonable impacts on the amenity of adjacent residential occupants.

The development provides sufficient car parking to the consulting room use when assessed against the current Development Plan requirements. The residential apartments have sufficient resident parking, but residential visitors will need to use the consulting room parks or park on the surrounding street network. The development also provides sufficient onsite bicycle parking.

The dwellings are provided with sufficient private open space and the location of windows and internal living areas are positioned to provide good access to private open space and reasonable access to light given the orientation of the allotments.

The level of landscaping is considered a negative aspect of the proposal, however this is somewhat offset by the adjacent street trees.

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

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/164/2017 by Dr M D Ghan & N T Ghan to demolish a dwelling, outbuildings and swimming pool and the construction of a two-storey building comprising consulting rooms and two (2) dwellings, with associated car parking area, landscaping and fencing on the land located at 417 Magill Road St Morris, 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:

- Demolition plan, site plan, floor plans and elevations, prepared by Progetto Design, Drawing No's 1509-110-001AA - Drawing No's 1509-110-006AA and Drawing No's 1509-110-008AA, received by the Council 15 March 2017
- Landscaping plan prepared by LCS Landscapes, received by the Council 15 March 2017

### Conditions

1. The seven (7) car parking spaces indicated for consulting room use shall also be made available for use by visitors to the residential apartments.
2. The hours of operation of the consulting rooms, herein approved, shall be limited to the following times:  
  
Monday to Friday: 9:00am to 7:00pm  
Saturday: 9:00am to 5:00pm
3. The following acoustic treatments shall be applied to the windows and doors of the proposed first floor apartments, herein approved:
  - Acoustic seals shall be fitted to ensure that the glazing and doors are sealed as close as practical to airtight when closed; and
  - The windows shall incorporate 6.5mm "Hush" glass (or equivalent glazing).
4. The finished floor level of the consulting rooms shall be 80.55 mAHD.
5. The portion of the northern upper floor windows of Apartment 2 (the northern apartment), which is less than 1.7 m above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 m above the internal floor level or a window sill height of 1.7 above the internal floor level.)

6. The northern side of the upper floor balcony of Apartment 2 (the northern apartment) shall be screened to a height of 1.7m above finished floor level, prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval.
7. A Tree Protection Zone (TPZ) shall be provided to the adjacent Red Ironbark street tree located in the Magill Road verge. In this case a protection zone of 7.4 metres is required, measured outward from the trunk of the tree. The following shall be adhered to within the TPZ:
  - a) No excavation shall occur within the Tree Protection Zone other than for the proposed bike rack;
  - b) No impervious paving or other impervious material shall be installed within the Tree Protection Zone;
  - c) no storage or dumping of material, fuel, chemicals, equipment or temporary building shall take place within the TPZ.
  - d) nothing shall be attached to the tree;
  - e) supplementary watering shall be provided to the tree through any dry periods during and after the construction process;
  - f) structural roots, that is, roots with a diameter greater than 50 millimetres, located outside the TPZ should be retained during the construction. If such roots require removal they shall be severed by saw cutting, sharp axe or secateurs and not with a Backhoe or any machinery or blunt instrument. Wounds shall be dressed with a commercially available tree-wound healing compound; and
  - g) excavation for the bike rack shall be by a non-destructive method (e.g. Hydro Vac or Air Spade) and any structural roots, that is, roots with a diameter greater than 50 millimetres, encountered should be retained.
8. Each dwelling shall be installed with a rainwater tank with a storage capacity not less than 2 kilolitre (2000 litres), or alternatively, a 4 kilolitre communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent
9. Skylights shall be included to the upper level foyer of the apartments and to the study of the northern apartment.
10. 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 adjacent street water table.
11. All stormwater discharged from the site containing the consulting rooms and apartments shall remain at pre-development levels with 1 in 5 year ARI rain events detained on-site and pumped back to the street and water table. This may be achieved by underground storage and controlled pumping, or a combination of both.
12. All areas nominated as landscaping or garden areas on the approved plans shall be established and maintained 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.
13. Wheel stopping devices constructed of concrete, metal or wood shall be placed at the end of each parking bay so as to prevent damage to adjoining fences, buildings or landscaping to the reasonable satisfaction of the Council or its delegate.

14. 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.
15. All car parking spaces shall be line-marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.
16. All waste shall be stored in covered containers pending removal and shall be kept screened from public view to the reasonable satisfaction of the Council or its delegate.
17. All external lighting of the site, including car parking areas and buildings, shall be located, directed and shielded and of such limited intensity that no nuisance or loss of amenity is caused to any person beyond the site to the reasonable satisfaction of the Council or its delegate.

#### DPTI Conditions

1. All vehicular access to/from the site shall be gained via Thomas Avenue only. No direct vehicular access onto Magill Road shall be permitted.
2. Pedestrian sightlines at the mixed use development car park access shall be in accordance with Figure 3.3 of AS/NZS2890.1:2004.
3. All vehicles shall enter and exit the mixed use development car park in a forward direction.
4. Stormwater run-off shall be collected on-site and discharged without jeopardising the integrity and safety of Magill Road. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's cost.

#### Notes to Applicant

1. This site is partially affected by a possible requirement shown on the Metropolitan Adelaide Road Widening Plan (MARWP) for a 4.5 x 4.5 metre cut-off at the Magill Road / Thomas Avenue corner of this site for future road purposes. The consent of the Commissioner of Highways under the Metropolitan Adelaide Road Widening Plan Act is required to all building works on or within 6.0 metres of the possible requirement.

As part of the building is within the above requirement, the applicant should fill out the attached consent form and return it to DPTI with 3 copies of the approved plans.

2. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.

The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.

3. The Applicant 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.
4. The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.

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

5. Certain activities on construction sites are noisy. Although some noise may be unavoidable, it can often be controlled using improved work practices. The responsible person, who is the owner, occupier or contractor, must take all reasonable and practicable measures to minimise noise resulting from the activity and to reduce its impact.

Construction noise that causes an adverse impact on amenity is only permitted between 7am and 7pm, Monday to Saturday. If you have any further queries, please contact the Council on 8366 4555.

6. 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

### 2.2 DEVELOPMENT APPLICATION 155/253/2017 – DR M D GHAN & N T GHAN – 417 MAGILL ROAD, ST MORRIS

<b>DEVELOPMENT APPLICATION:</b>	<b>155/253/2017</b>
<b>APPLICANT:</b>	<b>Dr M D Ghan &amp; N T Ghan</b>
<b>SUBJECT SITE:</b>	<b>417 Magill Road, St Morris (Certificate of Title Volume:6148 Folio:199)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Construction of a pair of semi-detached dwellings facing Thomas Avenue with associated fencing and landscaping (non-complying)</b>
<b>ZONE:</b>	<b>Local Shopping Zone Norwood, Payneham and St Peters (City) Development Plan (dated 28 April 2017)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 3</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for the construction of a pair of semi-detached dwellings facing Thomas Avenue, with associated fencing and landscaping, which is a non-complying form of development.

Staff do not have delegated authority to determine the Application, as the application is a non-complying and Category 3 form of development. 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.

Being a non-complying form of development, if the Panel determines to grant consent, the Application will be referred to the Development Assessment Commission (DAC), which will subsequently determine whether or not to concur with the decision of the Panel. If the DAC does not concur with the decision of the Panel to grant consent to the Application, then the Application cannot proceed.

#### **Subject Land Attributes**

Shape:	regular (with corner cut-off)
Frontage width:	15.85 metres (excluding corner cut-off)
Depth:	58.83 metres
Area:	928m <sup>2</sup>
Topography:	slightly sloping
Existing Structures:	dwelling and outbuildings
Existing Vegetation:	some mature vegetation

The subject land is located on the corner of Magill Road and Thomas Avenue and currently contains a dwelling, outbuildings and a swimming pool. The site slopes approximately 800mm from the south-eastern to the north-western corner.

## Locality Attributes

Land uses:	mixed use
Building heights (storeys):	several two storey
Streetscape amenity	low on Magill Road, high on Thomas Avenue

The locality contains a mix of land uses and is divided into the Local Shopping Zone, the Residential Character Zone on the northern side of Magill Road and the Local Business Zone, located within the City of Burnside on the southern side of Magill Road. Properties facing Magill Road include offices, shops (including café/restaurants), dwellings, consulting rooms and fitness centres. Properties within the locality along Thomas Avenue contain detached dwellings, other than the commercial property on the opposite corner at 419 Magill Road.

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

## Background

At its meeting held on 19 December 2016, the Development Assessment Panel granted Approval to two land division Applications relating to this site including a Torrens Title Land Division (Development Application No. 155/D084/2016) and a Community Strata Land Division (Development Application No. 155/C091/2016). The approved Torrens Title Land Division created three allotments; the northern two allotments are intended to accommodate semi-detached dwellings facing Thomas Avenue and the southernmost allotment was approved with a further Community Strata Land Division through Development Application No. 155/C091/2016. The Community Strata Land Division Application 155/C091/2016 created three allotments plus community land which are intended to accommodate a mixed use building and car parking area.

A copy of the Approved land division plans are contained in **Attachment A**.

At its meeting held on 18 January 2017, the Panel determined to refuse Development Application No.155/194/2016 for the demolition of an existing dwelling and outbuildings and the construction of consulting rooms with two (2) apartments above and the construction of two (2) semi-detached dwellings facing Thomas Avenue with associated fencing and landscaping. That Application was a non-complying form of development, as semi-detached dwellings are a non-complying form of development within the Local Shopping Zone.

The reasons for refusal were as follows:

- 1. Insufficient car parking is provided on the site of the proposal.*
- 2. The proposal constitutes an over development of the site with respect to bulk and scale.*

As the Application was non-complying, the Applicant did not have the right to appeal the refusal.

The Applicant has subsequently lodged two separate Development Applications for essentially the same development as previously proposed. Development Application No. 155/164/2017, has been submitted for the construction of a mixed use building facing Magill Road. That Application is to be considered separately by the Panel as part of this agenda. Development Application No. 155/253/2017, for the semi-detached dwellings, is the subject of this report.

The Applicant has lodged two separate Applications for procedural reasons and because previous concerns raised by the Panel primarily related to the mixed use component of the development, rather than the semi-detached dwellings.

Development Application No. 155/164/2017 for the mixed use building is a merit form of development and has been processed as a Category 2 for the purposes of public notification, whereas Development Application No. 155/253/2017 for the semi-detached dwellings is a non-complying form of development, requiring Category 3 public notification and the Applicant does not have appeal rights beyond the Panel's determination.

The current proposal for the semi-detached dwellings is essentially the same as the development previously considered by the Panel, with changes limited to the landscaping plan which has been prepared by LCS Landscapes.

### Proposal in Detail

The Applicant seeks consent for the construction of a pair of two-storey semi-detached dwellings facing Thomas Avenue. The semi-detached dwellings each contain a combined kitchen/dining/lounge, three bedrooms (the master bedroom contains an ensuite), laundry, separate bathroom and a single garage. The development also incorporates some retaining walls and fencing to accommodate a raised finished floor level required for flood protection. The dwellings incorporate a mix of materials including render, timber panelling, red brickwork and colorbond roofing.

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

**TABLE 1: DEVELOPMENT DATA: Semi-Detached dwellings facing Thomas Avenue**

Consideration	Dwelling 1 (Northern Dwelling)	Dwelling 2 (Southern Dwelling)	Development Plan Merit Assessment Quantitative Guideline
Site Area	200m <sup>2</sup>	190m <sup>2</sup>	N/A
Allotment Width	12.6m	12.00m	N/A
Allotment Depth	15.85m	15.85m	N/A
External Wall Height*	3.3m – 5.9m	3.3m – 5.9m	N/A
Maximum Overall Height (to roof apex)*	7.8m	7.8m	N/A
Floor Area (total)	173.08m <sup>2</sup>	173.08m <sup>2</sup>	N/A
Floor Area (footprint)	97.1m <sup>2</sup>	97.1m <sup>2</sup>	N/A
Site Coverage	58.3%	61.4%	N/A
Private Open Space	35m <sup>2</sup> 17.5% of site area 46% uncovered	35m <sup>2</sup> 18.42% of site area 46% uncovered	35m <sup>2</sup> (CW PDC 225(b)) 50% uncovered (CW 229)
Street Set-back	3m	3m	N/A
Side Set-back	0.6m – 3.0m	Nil – 2.4m	N/A
Rear Set-back	1.2m – 5.0m	1.2m – 5.0m	N/A
Car Parking Provision	1 undercover & 1 visitor	1 undercover & 1 visitor	1 undercover 1 visitor (Table NPSP 8)

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

Plans and details of the proposed development are contained in **Attachment B**, including proposed plans, a Statement of Effect and a Statement in Support.

### Notification

The proposal has been processed as a Category 3, non-complying form of development.

Three (3) representations were received (all opposed) in response to this notification, copies of which are contained in **Attachment C**. The key issues raised by representors are, in summary:

- the development is an overdevelopment of the site; and
- insufficient car parking and reduction of on-street parking.

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

- *Chris and Liana Jurjevic*

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

A summary of the response is provided below:

- sufficient on-street parking will be retained and the car parking provided is consistent with Development Plan policies;
- the subject land is at the edge of two zones in a locality with mixed character; and
- the dwellings have been designed to incorporate features common to other dwellings.

### **State Agency Consultation**

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

### **Discussion**

The subject land is located within the Local Shopping Zone of the Norwood, Payneham and St Peters (City) Development Plan. The proposal is non-complying as it involves the construction of semi-detached dwellings which are listed as a non-complying form of development within the Local Shopping Zone.

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:

Local Shopping Zone Objective: 1

Local Shopping Zone Principles of Development Control: 1

City Wide Objectives: 1, 2, 3, 5, 7, 26, 27, 57

City Wide Principles of Development Control: 1, 2, 3, 4, 81, 85

The Local Shopping Zone anticipates primarily small groups of shops which cater for the day-to-day needs of nearby residents. Several types of dwellings are listed as non-complying within the Local Shopping Zone including detached, semi-detached, multiple dwelling, and residential flat buildings. Interestingly, a 'shop and dwelling' is listed as a complying form of development within the zone which relates to the traditional form of shop with an associated dwelling located at the rear or above. It is likely that most dwelling types are listed as non-complying development to preserve land within the zone primarily for shops and allied commercial uses to serve the needs of the local community and to maintain active commercial frontages along main corridors such as Magill Road.

With respect to preserving commercial land, the proposed development does not relate to the southern half of the subject land facing Magill Road which is suitable for commercial use. Although the proposed development would not result in the entire site being used for commercial purposes, it is likely that a commercial use which occupied the whole site may be of a scale which detrimentally affects the amenity of residential occupiers in the adjacent Residential Character Zone, and therefore a scale larger than anticipated within the Local Shopping Zone.

The location of the proposed semi-detached dwellings at the edge of the zone is considered to provide a reasonable 'buffer' between commercial development on Magill Road and the existing dwelling at 1 Thomas Avenue. The introduction of a sensitive (i.e. residential) use within a non-residential zone is not considered unreasonable in the circumstances, given the dwellings will abut a residential zone and given that existing non-residential uses within the locality are generally low impact and reasonably low intensity uses.

The proposed residential use is considered to be reasonably consistent with City Wide Objective 26, which seeks development sited to minimise adverse impact and conflict between land uses. Whilst the proposal is not a form of development envisaged within the Local Shopping Zone, consistent with City Wide Principle of Development Control 3, which states that development should take place on land which is suitable for the intended use of that land, having regard to the location and condition of the land and the provisions of the zone, the shortcoming is not considered fatal to the application, given the built form context surrounding the dwelling described above.

The allotment sizes of the proposed dwellings are consistent with land division application 155/D084/2016, approved by the Panel on 19 December 2016. The subject land is considered suitable for a more compact form of residential development compared to surrounding residential development in the adjacent zones, given its location adjacent to a secondary arterial road, and its close proximity to public transport, public open spaces, shops and other services. The proposed dwelling density is therefore consistent with City Wide Objective 57, which anticipates increased dwelling densities in areas close to centres, public transport and significant public open spaces.

streetscape/bulk/scale/height/character

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

City Wide Objectives: 8, 18 - 20,

City Wide Principles of Development Control: 28 - 30, 33 35, 39, 190, 191

The Local Shopping Zone policies do not provide any guidance with respect to building height or built form. The following City Wide provisions are considered particularly relevant to this assessment:

City Wide Principle of Development Control 29:

*“Except where the zone or policy area objectives, principles of development control and/or desired character of a locality provide otherwise, new buildings:*

- (a) may be of a contemporary appearance and exhibit an innovative style;*
- (b) should complement the urban context of existing buildings on adjoining and nearby land in terms of:
  - (i) maintenance of existing vertical and horizontal building alignments*
  - (ii) architectural style, building shape and the use of common architectural elements and features;*
  - (iii) consistent colours, materials and finishes; and**
- (c) should not visually dominate the surrounding locality.”*

The Magill Road streetscape currently contains a mix of single storey and two-storey buildings in a variety of styles and materials. The Thomas Avenue streetscape contains primarily single storey detached dwellings, however it is considered acceptable for some two-storey development to occur on the subject land facing Thomas Avenue, given that the site is not within the Residential Character Zone and in light of the varied heights of buildings within the locality generally, particularly the adjacent commercial building at 419 Magill Road. The two storey nature of the residential building proposed also provides a good downward transition of building scale and building mass between the more hard edge and urban commercial forms of development adjacent Magill Road and the lower scale and primarily single storey residential buildings to the north along Thomas Street.

The semi-detached dwellings have been designed with a variety of materials which are common with other dwellings within the Residential Character Zone including render, timber panelling and red brick with a pitched colorbond roof. The semi-detached dwellings have a common roof form consistent with City Wide Principle of Development Control 190.

On balance, the streetscape presentation of the buildings is considered appropriate in the context of the existing built form in the locality.

### Setbacks and Site Coverage

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

City Wide Principles of Development Control: 50, 206

The Local Shopping Zone does not provide any qualitative or quantitative policies for building setbacks. As such, consideration has been given to the following City Wide provisions:

Principle of Development Control 50

*“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 semi-detached dwellings have front setbacks to Thomas Avenue ranging between 3 and 5.8 metres at ground floor level. The proposed front setbacks are considered to provide an adequate transition between the potential future development of the southern portion of the site and the 10 metre front setback of the dwelling located at 1 Thomas Avenue. Consideration was also given to the siting of the large commercial building at 419 Magill Road which is located on the Thomas Avenue boundary.

The northern-most dwelling is set back between 600mm to 4 metres from the northern boundary at the lower level and between 3 to 4 metres at the upper level. The setbacks from the northern boundary, combined with the well-articulated and modest scale of the upper floor level are likely to result in a built form outcome that will not unreasonably compromise the visual outlook for of 1 Thomas Avenue. On this basis, it is concluded that the proposal is consistent with City Wide Principle of Development Control 206, with respect to managing impacts on neighbours.

The southern-most dwelling is proposed to be built to both side boundaries at ground floor level and comprises upper level setbacks ranging between 2.4 metres and 3.4 metres from the southern boundary. Boundary to boundary development is not common for residential properties in the locality, however the southern dwelling is likely to be adjacent to an open area of the southern approved allotment (the area is currently proposed for car parking as part of 155/164/2017) and both dwellings provide convenient access to the rear yard through the garages.

The rear setbacks of the proposed dwellings are sufficient to allow for the provision of private open spaces of adequate dimensions.. The dwellings cover 58% and 61% of their respective sites, which is considered appropriate for allotments of 200m<sup>2</sup> or less, particularly as covered outdoor area is included as part of this Application.

### Overshadowing/overlooking

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

City Wide Principles of Development Control: 11, 58, 71, 79, 195, 196, 235, 236

Due to the orientation of the subject land, the proposed development will not overshadow nor compromise access to natural light for adjacent residential properties.

The proposed semi-detached dwellings have high upper level windows on the northern and southern elevations however the rear windows are illustrated as full length windows. There may be an opportunity for views into the rear yard of 1 Thomas Avenue from the proposed rear windows, and as such, if the Panel determines to approve the application, it is recommended that a condition be imposed, requiring the rear windows to also be screened to a height of 1.7 metres above the finished floor level.

To provide adequate protection from flooding, the finished floor levels of the semi-detached dwellings are up to 570mm above natural ground level which has the potential to cause overlooking from the ground level. The Applicant has provided fence and retaining wall elevations contained in **Attachment B**. The elevations illustrate that the fence height will be 1.7 metres above the finished ground floor level and the total retaining wall and fence height does not exceed 2.4 metres, as anticipated by City Wide Principle of Development Control 58.

#### Private open space

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

City Wide Principles of Development Control: 222 – 226, 229, 230

The proposed semi-detached dwellings are provided with 35m<sup>2</sup> of private open space (excluding the service court which does not have the minimum required dimension of less than 2.5 metres) consistent with City Wide Principle of Development Control 225(b). The private open space is slightly inconsistent with City Wide Principle of Development Control 229 as 46% rather than 50% of the yards are uncovered however this is a minor departure. The private yard spaces have good links to the main living areas, are of useable dimensions, and separate areas are provided for services, clothes drying, rainwater tanks etc. The private open space areas will be overshadowed in the morning and midday with access to light limited to the afternoon which is a negative aspect of the proposal.

It is also noted that the subject land is located approximately 500m from public open space at St Morris Reserve.

#### Carparking/access/manoeuvring

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

City Wide Objectives: 34

City Wide Principles of Development Control: 101, 113, 118, 120, 122, 123, 124, 211, 212

Each of the proposed dwellings is provided with one (1) undercover and one (1) visitor space in the driveway consistent with Table NPSP/8. The internal dimensions of the garages are consistent with City Wide Principle of Development Control 212 and the garage occupies less than 50% of the frontage widths consistent with City Wide Principle of Development Control 211.

The development creates one new crossover however the space between the driveways of the proposed dwellings will retain at least two on-street parking spaces.

#### Finished floor levels/flooding/retaining

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

City Wide Objectives: 9, 51

City Wide Principles of Development Control: 7, 169, 170, 171

The majority of the subject land is within the 1 in 100 year floodplain and a small portion of the front of the property is within the 1 in 50 year floodplain. As part of the previous Development Application, the development was reviewed by Tonkin Consulting and the Council's Project Manager – Civil. The finished floor levels of the semi-detached dwellings are consistent with the advice provided.

The subject land falls approximately 860mm from the south-eastern corner to the north-western corner. The finished floor level of the consulting rooms will be between 110 mm and 480mm above ground level and the semi-detached dwellings will be between 230mm and 570mm above natural ground level. This will require some relatively minor retaining as illustrated in **Attachment B**. The combined retaining wall and fencing heights will not exceed 2.4 metres, consistent with City Wide Principle of Development Control 58.

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:

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

City Wide Principles of Development Control: 73, 74, 76

Several street trees are located adjacent to the subject land including a regulated Red Ironbark on Magill Road and five (5) non-regulated Jacarandas on Thomas Avenue. The proposed driveway for the southern-most dwelling has been located to provide adequate clearance to the street trees and the northern dwelling can make use of the existing crossover

The subject land contains some established non-regulated vegetation which is proposed to be removed. The Applicant has provided a landscaping plan which illustrates landscaping in garden beds along the rear (western) boundary, along the driveways and some landscaping to the front of the properties including planting two advanced trees. Although the extent of landscaping is not significant, it is considered adequate for the allotment size.

Environmental Sustainability

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

City Wide Objectives: 23, 42

City Wide Principles of Development Control: 67 – 70, 148, 148, 159

The proposed semi-detached dwellings are illustrated on the plans as incorporating 1000 litre rainwater tanks. If the Panel determines to approve the application, it is recommended that a condition be imposed requiring 2000 litre rainwater tanks for each dwelling to be consistent with City Wide Principle of Development Control 159.

The proposed semi-detached dwellings will not have good access to northern light for internal living areas, however the living areas will have access to both eastern and western light and will have good opportunities for cross ventilation. The west facing windows/doors to the living areas will be protected from western sun by the overhang of the upper level. The upper level west facing windows will have some sun protection from the western eaves and the affected rooms are limited to Bedrooms 2 & 3.

**Summary**

The proposed development incorporates residential land uses which are not specifically anticipated within the Local Shopping Zone. However, the siting of the proposed dwellings is not considered to compromise the continued use of commercial land, result in conflicts between commercial and residential use, and is not dissimilar to the anticipated 'shop and dwelling' land use which is complying within the Local Shopping Zone. The proposal is also consistent with the allotment sizes and intended use of the land division Approved by the Panel in January.

The presentation of the buildings is considered to result in an appropriate streetscape outcome and the development is not considered to result in any unreasonable impacts on the amenity of adjacent residential occupants. The dwellings are provided with sufficient car parking, private open space and have reasonable access to light given the orientation of the allotments.

The development will result in an increase in hard paved areas and a loss of an on-street park which are negative aspects of the proposal.

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

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/253/2017 by Dr M D Ghan & N T Ghan for construction of a pair of semi-detached dwellings facing Thomas Avenue with associated fencing and landscaping (non-complying) on the land located at 417 Magill Road St Morris, subject to the concurrence of the Development Assessment Commission and the following requirements, conditions and notes:

### Relevant Plans

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

- Site Plan, Floor plans, Elevations and Fence elevations prepared by Progetto Design, Drawing No's 1509-110-002BB - 1509-110-005BB, 1509-110-007BB, received by the Council 1 May 2017
- Landscape plan prepared by LCS Landscapes, received by the Council 1 May 2017

### Conditions

1. The portion of all upper floor windows, with the exception of the east (front) facing windows of both dwellings, which is less than 1.7 m above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 m above the internal floor level or a window sill height of 1.7 above the internal floor level.)
2. A rainwater tank with a storage capacity not less than 2 kilolitre (2000 litres), shall be installed for each dwelling herein approved. Water from the tanks shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.
3. All 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 adjacent street water table.
4. All areas nominated as landscaping or garden areas on the approved plans shall be established and maintained with a suitable mix and density of trees, shrubs and groundcovers prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate.

### Notes to Applicant

1. The 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.

2. 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.

3. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
4. 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.
5. Certain activities on construction sites are noisy. Although some noise may be unavoidable, it can often be controlled using improved work practices. The responsible person, who is the owner, occupier or contractor, must take all reasonable and practicable measures to minimise noise resulting from the activity and to reduce its impact.

Construction noise that causes an adverse impact on amenity is only permitted between 7am and 7pm, Monday to Saturday. If you have any further queries, please contact the Council on 8366 4555.

## 2. STAFF REPORTS

### 2.3 DEVELOPMENT APPLICATION 155/895/2016 – P&J HURLEY PTY LTD – 23 REGENT STREET, KENSINGTON

<b>DEVELOPMENT APPLICATION:</b>	<b>155/895/2016</b>
<b>APPLICANT:</b>	<b>P&amp;J Hurley Pty Ltd</b>
<b>SUBJECT SITE:</b>	<b>23 Regent Street, Kensington (Certificate of Title Volume: 5167 Folio: 697)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Deletion of conditions 20 and 21 of Development Approval for DA No. 155/751/1998 (relating to entertainment); deletion of conditions 13 and 17 of Development Approval for DA No. 155/751/1998 (relating to trading hours); variation of Condition 2 and deletion of Condition 3 of Development Approval for DA No. 155/872/2005 (relating to Sunday trading hours); and variation of Condition 1 of Development Approval for DA No. 155/426/2015 (relating to trading hours for the outdoor dining area on Council land).</b>
<b>ZONE:</b>	<b>Residential Historic Conservation Zone – Kensington 1 Policy Area - Norwood, Payneham and St Peters (City) Development Plan (28 April 2016)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 3</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application to vary conditions attached to three (3) existing Development Approvals, which relate to the permissible trading hours for the Kensington Hotel and the permissible times for entertainment to be provided and the nature of entertainment permitted within the Hotel.

Staff do not have delegated authority to determine the Application, as it was subject to Category 3 notification.

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

#### **Subject Land and Locality Attributes**

The subject land is the site of the Kensington Hotel, which is located on the corner of Thornton Street and Regent Street, Kensington. The Hotel comprises an historic two-storey building, with modern additions and car parking to the sides and rear of the original building. The locality is mostly residential, except for the subject Hotel and the nearby Marryatville Primary School, Mary McKillop College and the McKellar Stuart Kindergarten. All of these non-residential uses and the proximity to The Parade have a noticeable impact on traffic conditions and on-street vehicle parking within the locality.

A plan of the subject land and its surrounds is attached (**Attachment A**).

## Background

In 1999, Development Approval was granted by the Council's Development Assessment Panel, to undertake alterations and additions to the Hotel. This approval was subject to twenty-two (22) conditions, including the following four (4) conditions, which relate to entertainment and/or operating hours of the Hotel:

**Condition 13:** *The hours of operation for the hotel shall be limited to Monday to Saturday 10.00 AM till 12.00 midnight and Sundays 11.00 AM till 8.00 PM, unless otherwise approved by the Council.*

\*Note that this condition is already varied via Condition 2 of DA No. 155/872/2005 with regard to Sunday trading hours.

**Condition 17:** *Outdoor dining shall cease at 9.00pm Monday to Saturday and 8.00pm Sunday.*

**Condition 20:** *The entertainment consent shall apply Monday to Sunday and shall cease at the following times:-*

- *Monday to Saturday at 11.30 PM*
- *Sunday at 7.30 PM,*

*unless otherwise approved by the Council.*

**Condition 21:** *Entertainment shall be restricted to unaccompanied pianist/vocalist, guitarist/vocalist, playing easy listening 60/40 style music or entertainment of a similar nature (this definition does not include bands, discotheque, heavy metal or rock or any similar style entertainment).*

In April 2006, Development Approval was granted by the Panel to extend Sunday trading hours from 8pm until 11pm, for the sale of liquor for consumption on the premises and from 8pm until 9pm, for the sale of liquor for consumption off the premises, subject to the following three (3) conditions:

**Condition 2:** *Extension of trading hours from 8pm to 9pm Sundays shall only apply to the Dining Bar, Gaming and Dining Room food service areas for consumption on the licensed premises. Extension of trading hours for consumption off the licensed premises shall be extended from 8pm to 9pm Sundays.*

**Condition 3:** *There shall be no extension of trading hours relating to the outdoor dining area of the hotel.*

**Condition 4:** *The hotel management shall ensure an authorised Responsible Person as defined in the Liquor Licensing Act 1997 shall patrol the car parking area and footpath area adjoining the Hotel from at least 8pm until 30 minutes after closing on Sunday nights.*

In June 2016, Development Approval was granted to commence outdoor dining on the Thornton Street council-owned footpath, subject to the following condition:

**Condition 1:** *The operation hours of the outdoor dining area shall be limited to the following times:*  
*Monday – Saturday: 10:00am until 9:00pm*  
*Sunday: 11:00am until 8:00pm*

In December 2015, the *Liquor Licensing Act 1997* was amended to change the laws regarding Entertainment Consents, the rationale being to better support South Australia's live music industry and reduce the costs to businesses of providing live music in South Australia. As a result, licensees no longer require the consent of the Liquor and Gambling Commissioner or the Licensing Court to provide entertainment between 11.00am and midnight on any day. Outside of these hours and for certain types of entertainment (e.g. adult entertainment), consent will still be required.

In January 2017, Schedule 3 of the *Development Regulations 2008* was amended, to exclude the following use of land and buildings from the ambit of development:

- the carrying on of low impact entertainment on premises other than residential premises.

For the purpose of the amendment, low impact entertainment, in relation to premises, means live entertainment that is carried on:

- (a) *inside a building; and*
- (b) *in accordance with the lawful use and occupation of the premises; and*
- (c) *in compliance with the Environment Protection Act 1993, but does not include—*
- (d) *prescribed entertainment within the meaning of section 105 of the Liquor Licensing Act 1997; or*
- (e) *entertainment that is to be carried on in connection with a proposed change of use of the premises.*

Section 105 of the *Liquor Licensing Act 1997* defines prescribed entertainment as:

- (a) *entertainment of a sexually explicit nature; or*
- (b) *a professional or public boxing or martial art event within the meaning of the Boxing and Martial Arts Act 2000.*

The effect of the amendment to the *Development Regulations*, is to clarify that the provision of entertainment at commercial premises (licensed or otherwise) does not of itself constitute a change of use of land and therefore does not require Development Approval, subject to the conditions stated above.

Neither the changes to the *Liquor Licensing Act* in 2015, nor the changes to the *Development Regulations* in 2017, override pre-existing conditions of approval imposed under other legislation and as such, the Kensington Hotel can only provide entertainment in accordance with its existing Development Approvals under the *Development Act 1993*. For this reason, the Applicant is seeking to either delete or amend the following existing conditions which limit the permissible trading hours and the nature of entertainment provided at the Hotel, to better reflect what is now permissible under the new Entertainment Consent laws:

- deletion of Conditions 20 and 21 of Development Approval 155/751/1998, which limit the hours of entertainment and the type of music played;
- deletion of Conditions 13 and 17 of Development Approval 155/751/1998, which limit the 'normal' trading hours allowed under the Liquor Licensing Act;
- variation of Conditions 2 and 3 of Development Approval 155/872/2005, which relate to extended trading hours on Sundays; and
- variation of Condition 1 of Development Approval 155/426/2015, which relates to the Sunday trading hours for the newly created outdoor dining area on the Thornton Street footpath.

Further detail of the proposed variations is contained in letter provided by MasterPlan on behalf of the Applicant, which is contained in **Attachment B**.

## **Notification**

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

Sixteen (16) representations were received (all opposed) in response to this notification, copies of which are attached (**Attachment C**). The key issues raised by representors are, in summary:

- concern regarding allowing additional hours for entertainment and removing current restrictions on the type of music played;
- the extension of trading hours will increase hotel related traffic and parking issues;
- the extension of trading hours will mean that hotel patrons will be leaving the hotel later and increasing the potential for noise and disturbance later into the evening;
- concern that an acoustic assessment has not been undertaken to support the Application; and
- concern that an existing noise complaint relating to an air-conditioning unit has not been addressed by the hotel management.

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

- *Josephine Barnes – represented by Keith DeGiglio*
- *William Morris– represented by Keith DeGiglio*
- *Fay Maria Morris – represented by Keith DeGiglio*
- *Casandra Francas– represented by Keith DeGiglio and Alexander Rix*
- *Keith DeGiglio*
- *Donna Burg –represented by Keith DeGiglio*
- *Alexander Rix*
- *Eric and Maria DeMichelle*
- *Dr Judy Carman*

The Applicant has responded to the representations received and a copy of their response, prepared by Julie Jansen of MasterPlan, is attached (**Attachment D**).

A summary of the response is provided below:

- an acoustic report has now been prepared by Sonus Pty Ltd, a copy of which is contained in **Attachment E**;
- the existing noise complaint relating to the air-conditioning unit has been addressed by the hotel management through the installation of a timer device, which limits the operation of the air conditioner and the installation of an acoustic screen;
- the Applicant does not consider that there is a correlation between patron behaviour and the type of entertainment allowed. The owners and management have been actively working to manage patron movement, which is acknowledged in one of the representations; and
- with regard to the extension of trading hours for the outdoor dining areas, the Applicant is now only seeking an extension of trading hours until 9pm (one additional hour) for the dining area on the Thornton Street footpath.

### **State Agency Consultation**

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

### **Discussion**

The subject land is located within the Residential Historic (Conservation) Zone - Kensington 1 Policy Area, of the Norwood, Payneham and St Peters (City) Development Plan. The proposal is seeking to vary previously imposed conditions which were determined by the Panel and as such, the Panel is required to consider the merit or otherwise of deleting and/or varying the subject conditions of Development Approval.

Section 39(7) of the *Development Act 1993* allows a person to seek the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation), provided that:

- the relevant authorisation is still operative;
- in a case where the development to which the development authorisation previously given was Category 3 development—the variation is also dealt with as an application for Category 3 development if any representations were made, 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;

It should also be noted that an application to vary a previous authorisation 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
- 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.

#### Proposed variations to the Hotel's current trading hours

The *Liquor Licensing Act* sets out the 'normal' trading hours for the consumption of liquor on and off the licensed premises as being:

- Monday to Saturday between 5am and midnight; and
- Sunday between 11am and 8pm.

Some variation is provided for New Year's Eve, New Year's Day and Christmas Day.

If a licensee wishes to trade outside of these hours, the licensee may apply for an Extended Trading Authorisation.

Currently, the Kensington Hotel's 'normal' trading hours reflect the above times, except for a later starting time of 10am from Monday to Saturday (Condition 13 of DA No. 155/751/1998) and an earlier finish time of 9pm from Monday to Saturday for the outdoor dining areas (Condition 17 of DA No. 155/751/1998 and Condition 1 of DA No.155/426/2015).

The Hotel also has an Extended Trading Authorisation to operate between 8pm and 9pm on Sundays, however, this does not apply to either of the outdoor dining areas (Licensed Area 4 and Licensed Area 9) or the front bar area (Conditions 2 and 3 of DA 155/872/2005 and Condition 1 of DA 155/426/2015).

The initially proposed variations to the conditions affecting trading hours ('normal' and extended) would allow all areas of the Hotel to trade as follows:

- Monday to Saturday between 5am and midnight; and
- Sunday between 11am and 10pm.

Some concern was raised regarding the extension of the trading hours relating to the outdoor dining areas, one being the newly established area on the Thornton Street footpath (Licensed Area 9) and the other being the alfresco/smokers court (Licensed Area 4).

In response to the concerns raised, the Applicant has amended the proposal to only seek extended trading for the Thornton Street outdoor dining area, which currently ceases one hour before the other outdoor dining area. As such, the Hotel management has indicated that it is willing to accept the following condition:

*The hours of operation for the outdoor dining areas (Licensed Areas 4 and 9) shall be as follows:*

- *Monday to Saturday between 10.00am and 9.00pm; and*
- *Sunday between 11.00am and 9.00pm*

This change equates to only one additional hour of trading within the Thornton Street outdoor dining area, which is unlikely to have any significant or unreasonable impact on the occupants of nearby dwellings.

Whilst it is not clear whether the Hotel intends to utilise the option to trade before 10am on Monday to Saturday, it is considered that early morning patronage is unlikely to be significant and therefore the possibility of earlier opening hours on Monday to Saturday is unlikely to have any significant impact on nearby residential amenity with regard to traffic and noise.

Overall, it is considered that the proposed variation to the trading hours of the Hotel are unlikely to significantly extend the current trading hours and therefore would have little additional impact on the amenity of the locality.

#### Proposed amendments to the Hotel's current Entertainment Consent

The *Liquor Licensing Act* allows a licensee to provide entertainment on the licensed premises between the hours of 11am and midnight on any day without the need for an Entertainment Consent. In addition, the *Development Act* allows entertainment (other than entertainment of a sexually explicit nature, or a professional or public boxing or martial art event, or where the entertainment is not in compliance with the Environment Protection Act) to occur without the need for Development Approval. Notwithstanding this, the

Hotel is bound by any existing conditions imposed under any other Act, which may restrict entertainment during these hours. These conditions cannot be altered or removed without the consent of the body which imposed them.

The Kensington Hotel currently has an Entertainment Consent which is limited by Conditions 20 and 21 of DA No. 155/872/2005, which were imposed by the Council under the Development Act. These conditions limit entertainment to an *'unaccompanied pianist/vocalist, guitarist/vocalist, playing easy listening 60/40 style music or entertainment of a similar nature'* during the following hours:

- Monday to Saturday at 11.30pm; and
- Sunday at 7.30pm.

The Applicant proposes to delete both of these conditions, which would mean that the Hotel would be able to provide entertainment between the hours of 11am and midnight on any day. This however, would be limited by the Hotel's trading hours (normal and extended) which are also under consideration in this report. The type of entertainment currently provided by the Hotel could be expanded to include amplified music and a range of 'band' music, but not entertainment of a sexually explicit nature, or a professional or public boxing or martial art event, nor entertainment not in compliance with the Environment Protection Act.

In response to concerns raised by the representors, the Applicant commissioned an Acoustic Report, a copy of which is contained in **Attachment E**. The report has been prepared by Sonus Pty Ltd, an Adelaide based acoustic consulting firm. Sonus undertook an assessment of the acoustic requirements for live music which would satisfy City-wide Principle of Development Control 89 of the Development Plan which states:

*'Development proposing music should include noise attenuation measures that achieve the following desired noise levels:*

<b>Noise level assessment location</b>	<b>Desired noise level</b>
<i>Adjacent existing noise sensitive development property boundary</i>	<i>Less than 8 dB above the level of background noise (L90,15min) in any octave band of the sound spectrum; and Less than 5 dB(A) above the level of background noise (LA90,15min) for the overall (sum of all octave bands) A-weighted level.</i>
<i>Adjacent land property boundary</i>	<i>Less than 65dB(Lin) at 63Hz and 70dB(Lin) in all other octave bands of the sound spectrum; or Less than 8 dB above the level of background noise (L90,15min) in any octave band of the sound spectrum and 5 dB(A) overall (sum of all octave bands) A-weighted level.'</i>

The acoustic assessment was based on the findings of the following:

- background noise monitoring taken over a one week period (Thursday to Thursday), at a position representative of the closest dwelling;
- a noise transfer test of music from various locations inside the hotel to the surrounding dwellings; and
- a demonstration of typical music levels via the in-house speaker system.

From this information, resultant maximum allowable music levels from the different reference positions within the hotel have been derived and are set out in Table 2 of the report. The report states that *'these levels could be practically achieved and are of a similar order to the music levels that already occur at the hotel'*. Staff sought further clarification from the acoustic consultant on this statement, with regard to the type of music that could be provided and not exceed the maximum allowable music levels. Jason Turner of Sonus has provided the following response:

*'The music levels at RP1 and RP2 would at most accommodate an amplified acoustic performance or music through the in-house system which is slightly higher than what would be deemed "background music" in a restaurant or dining area (the term which is now appearing for this type of music is "ambient" and there are a number of venues which have an "ambient DJ", whereby the music is part of the entertainment, but it is not the central element).*

*The music levels at RP3 (the bar) are slightly higher, but still closely aligned with the restrictions in the dining area. That is, the levels could accommodate an amplified acoustic performance or an ambient DJ.*

*The music levels at RP7 (the function area) provide a greater level of flexibility and are consistent with other function rooms we design or are involved with. That is, the levels would accommodate a party environment such as a birthday; but would not be suitable for a dedicated live music performance by a band.'*

Based on the outcome of the Acoustic report and in response to the concerns raised by the representors, the Applicant has indicated that the Hotel management would be willing to accept the following four (4) conditions of consent:

1. Entertainment (as defined in the *Liquor Licensing Act 1997* as "live entertainment") shall cease 30 minutes prior to the end of the licensed liquor service time. Such entertainment shall not include "prescribed entertainment" (as defined in the *Liquor Licensing Act 1997*) or heavy metal or rock music.
2. Live entertainment shall only occur inside the hotel.
3. All external windows and doors of the premises remain closed when entertainment is provided.
4. The music level from the live entertainment must not exceed the following when measured at a reference position within the licensed area where the entertainment is provided:

Licensed Area	Music level (dB) by Octave Band Centre Frequency (Hz)							Total Noise level dB(A)
	63	125	250	500	1000	2000	4000	
1	85	83	87	88	82	79	74	82
2	85	80	84	82	72	75	70	78
3	91	90	81	86	78	76	78	84
7	93	98	107	98	88	98	83	97

It is considered that these conditions strike a reasonable balance between providing greater flexibility regarding the type of music entertainment provided for patrons, whilst maintaining a reasonable level of residential amenity, in accordance with City-wide PDC 89.

The combination of the changes to the trading hours and the proposed deletion of Condition 20 of DA No. 155/751/1998, will mean that entertainment could be provided for an additional two (2) hours on a Sunday evening, until 9.30pm (taking into the consideration the proposed condition which requires music to cease 30 minutes prior to the end of the licensed service time). Subject to the imposition of the condition which sets maximum music levels, plus a further condition requiring that doors and windows remain closed while music is playing, it is considered that a 9.30pm finish time is an acceptable outcome.

With regard to ensuring that music levels are managed in accordance with this condition, it would be possible to further condition an approval to require the installation of some form of noise limiting device. This has been discussed with the Applicant who has advised that such a device would require an extensive retrofit of their current sound system, which would be costly. Without such a noise limiting device it would be the responsibility of staff to understand the noise level requirements and be clear about the volume settings so that it stays at or below the maximum music levels. One way of achieving this without expensive equipment would be to simply mark the volume control at the acceptable level for each area.

To this end, the following additional condition is recommended:

*'The Hotel management shall ensure that a sound level meter is available at all times on the premises and that responsible staff are trained to use the meter to monitor sound levels. Monitoring of sound levels shall occur at the start of any live music performance or music associated with a private function and shall be used to set maximum volume controls'*

Should the Panel support the deletion of Conditions 20 and 21 and subsequently complaints are made about music noise levels, then the Council has the option of undertaking enforcement action if it considers that the Hotel is in breach of its conditions. Alternatively, the Council (or residents) could lodge a complaint with the Liquor Licensing Commission, which could subsequently impose stricter conditions on the Entertainment Consent.

In this context, subject to the imposition of the above recommended conditions, it is considered that the proposed deletion of Conditions 20 and 21 is reasonable and will satisfy City-Wide PDC 89.

### Summary

The Applicant is seeking to vary or delete a number of previously imposed conditions of Development Approval relating to the operating hours and entertainment consent for the Kensington Hotel. Essentially it is seeking to increase its hours of operation and reduce the current restrictions on the type of music it is able to provide.

The Application was subject to Category 3 notification because it proposes to vary previous Development Applications which were subject to Category 3 notification. Sixteen (16) representations were received in opposition to the proposal, with most expressing concern regarding possible noise, traffic impacts and patron behaviour impacts. Some representors also raised concern that the Hotel was proposing to increase the opportunities for live music without an acoustic report to substantiate such a proposal.

In response to these concerns, the Applicant engaged Sonus, an Adelaide based firm specialising in acoustic testing and assessments. The report concludes that City-Wide PDC 89 of the Development Plan (which guides acceptable music noise levels) could be practically satisfied whilst allowing the Hotel to offer patrons a wider variety of music options. This would be subject to the imposition of conditions which include setting maximum noise levels, keeping doors and windows closed while music is playing and requiring the cessation of music 30 minutes prior to closing times.

The combination of the changes to the trading hours and the proposed deletion of Condition 20 of DA No. 155/751/1998 will mean that entertainment could be provided for an additional two (2) hours on a Sunday evening, until 9.30pm. This is considered to be an acceptable outcome, given the limitations of the proposed conditions.

With regard to the proposed changes to the hours of operation, a minimal increase in the closing time is sought on Sunday for the outdoor dining area on the Thornton Street footpath (8pm until 9pm). This change is considered reasonable and would provide more flexibility particularly in the warmer months during daylight saving.

The changes would also mean that on Monday to Saturday, the Hotel could commence trading at 5am instead of 10am. It is not clear whether the Hotel intends to utilise this additional time but in any case, it is not considered that there would be any significant increase in patronage during the early morning period.

Accordingly, it is considered that the proposal to vary and/or delete a number of the previously imposed conditions of Development Approval for the Kensington Hotel, is considered acceptable and would not alter the general intent of the previously imposed conditions which was to maintain a reasonable level of residential amenity.

### 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 155/895/2016 by P& J Hurley Pty Ltd, to:

- Delete Conditions 13, 17, 20 and 21 of Development Approval 155/751/1998;
- Vary Condition 2 of Development Approval 155/872/2005;
- Delete Condition 3 of Development Approval 155/872/2005; and
- Vary Condition 1 of Development Approval 155/426/2015;

on the land located at 23 Regent Street, Kensington, subject to the following conditions:

Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the information presented in a letter prepared by Julie Jansen of MasterPlan dated and received by the Council on 10 May 2017.

Conditions

1. The hours of operation for all areas of the Hotel except for the outdoor dining areas (Licensed Areas 4 and 9) shall be as follows:
  - Monday to Saturday between 5.00am and midnight
  - Sunday between 11.00am and 10.00pm
2. The hours of operation for the outdoor dining areas (Licensed Areas 4 and 9) shall be as follows:
  - Monday to Saturday between 10.00am and 9.00pm
  - Sunday between 11.00am and 9.00pm
3. Entertainment (as defined in the *Liquor Licensing Act 1997* as 'live entertainment') shall cease 30 minutes prior to the end of the licensed liquor service time. Such entertainment shall not include 'prescribed entertainment' (as defined in the *Liquor Licensing Act 1997*) or heavy metal or rock music.
4. Live entertainment shall only occur inside the Hotel.
5. All external windows and doors of the premises remain closed when entertainment is provided.
6. The music level from the live entertainment must not exceed the following when measured at a reference position (which is indicated for each Licensed Area in the Sonus Report which forms part of the Approval documents) within the licensed area where the entertainment is provided:

Licensed Area	Music level (dB) by Octave Band Centre Frequency (Hz)							Total Noise level dB(A)
	63	125	250	500	1000	2000	4000	
1	85	83	87	88	82	79	74	82
2	85	80	84	82	72	75	70	78
3	91	90	81	86	78	76	78	84
7	93	98	107	98	88	98	83	97

7. The Hotel management shall ensure that a calibrated sound level meter is available at all times on the premises and that responsible staff are trained to use the meter to monitor sound levels. Sound level monitoring shall occur at the start of any live music performance or music associated with a private function and shall be used to set maximum volume controls.

**2. STAFF REPORTS**

**2.4 DEVELOPMENT APPLICATION 155/169/2016 – MR SIMON & MS HELEN BERRY – 198-202 MAGILL ROAD, 204 MAGILL ROAD, 35 PROSSER AVENUE AND 2 QUEEN STREET, NORWOOD**

**DEVELOPMENT APPLICATION:** 155/169/2016

**APPLICANT:** Mr Simon & Ms Helen Berry

**SUBJECT SITE:** 198-202 Magill Road, Norwood  
(Certificate of Title - Volume: 5490, Folio: 146  
Volume: 5892 Folio: 244)  
204 Magill Road, Norwood  
(Certificate of Title - Volume: 5892, Folio: 244)  
35 Prosser Avenue, Norwood  
(Certificate of Title - Volume: 5508 Folio 848)  
2 Queen Street, Norwood  
(Certificate of Title - Volume: 5848, Folio: 28)

**DESCRIPTION OF DEVELOPMENT:** Expansion of the existing funeral home to 2 Queen Street, Norwood, converting an existing dwelling to meeting rooms (with associated car parking), the construction of a vehicle access gate at 2 Queen Street, Norwood and alterations to the funeral home.

**ZONE:** Residential Historic (Conservation) Zone  
Norwood, Payneham and St Peters (City)  
Development Plan (dated 28 April 2016)

**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 that involves the expansion of the existing funeral home on to 2 Queen Street, Norwood, with the existing dwelling converted to meeting rooms (with associated car parking) and alterations to the funeral home.

Staff do not have delegated authority to determine the Application, as it is a Category 3 form of development 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: 66.54m  
Depth: 56.69m  
Area: 3960m<sup>2</sup>  
Topography: essentially flat

Existing Structures: a funeral home and associated car parking at 198-204 Magill Road, Norwood & 35 Prosser Avenue, Norwood and a detached dwelling at 2 Queen Street, Norwood

Existing Vegetation: Mature landscaped garden beds and courtyard within the existing funeral home grounds and a landscaped front and rear yard at 2 Queen Street, Norwood

The subject land contains a funeral home and a car parking area with a capacity of forty four (44) car parking spaces. The property at 2 Queen Street is a single storey detached dwelling with a pergola and garage located within the rear yard.

**Locality Attributes**

Land uses: mix of office, retail show room, petrol filling station, shop and residential

Building heights (storeys): several two storey

Streetscape amenity: moderate – the amenity is compromised by the vehicular movements associated with Magill Road

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

A large two-storey showroom and office building and an associated car parking area is located at 206 Magill Road (Burns for Blinds) directly to the east of the subject land. Offices are located at 194 & 196 Magill Road, Norwood and 1 Queen Street, Norwood to the west of the subject land. Dwellings in detached, semi-detached and group forms are evident along Prosser Avenue and Queen Street heading south from Magill Road.

**Proposal in Detail**

The Applicant is seeking consent for the expansion of the existing funeral home on to 2 Queen Street, Norwood, with the existing dwelling converted to meeting rooms (with associated car parking), the construction of a vehicle access gate at 2 Queen Street, Norwood and alterations to the funeral home.

The alterations and additions to the existing funeral home are limited to the construction of additional carport areas in the centre of the site and the construction of internal masonry walling to delineate car parking areas. The proposed additions are of a complementary architectural style to the existing structures on the land. The proposed vehicle access gate at 2 Queen Street is to be remote activated to minimise traffic interference and constructed with a metal frame and corrugated iron infill.

The existing car parking area at the rear of the subject land is proposed to be supplemented with six (6) additional car parking spaces within the rear portion of the property at 2 Queen Street, Norwood, resulting in the provision of a total of sixty one (61) on-site car parking spaces. Vehicular access and egress arrangements remain unchanged, with access from Magill Road, Prosser Avenue and Queen Street.

The existing landscaping is proposed to be supplemented to off-set the loss of landscaping at the rear of 2 Queen Street resulting from the proposed additional car parking spaces.

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

**TABLE 1: DEVELOPMENT DATA:**

Consideration	Proposal	Development Plan Merit Assessment Quantitative Guideline
Site Area	3960m <sup>2</sup>	N/A
Allotment Width	66.54m	N/A
Allotment Depth	56.69m	N/A
Floor Area (total)	1213m <sup>2</sup>	N/A
Car Parking Provision	61 spaces	N/A

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

### **Notification**

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

Thirteen (13) representations were received (twelve (12) opposed and one (1) in favour) in response to this notification, copies of which are contained in **Attachment C**.

The key issues raised by representors are, in summary:

- concern over the proposed commercial land use within the Residential (Historic) Conservation Zone;
- the potential detrimental impact on the character of the locality;
- the exacerbation of existing car parking issues;
- the interface between land uses;
- the decrease in property values.

The concern expressed by some representors over existing car parking issues relates to vehicles associated with the funeral home (patrons and staff) utilising the surrounding street network for parking, rather than the existing on site car parking facilities.

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

- Sandra Sanderson;
- Constantina Hatwell;
- Luciana Marcuccitti;
- Silvana Greco;
- Vincenzina Ciccarello;
- John Lombardi;
- Tim & Josie Crowley

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

A summary of the amendments made to the Application and a response to the relevant issues is provided below:

#### Amendments

- change to the proposed use of the building at 2 Queen Street, Norwood. Whereas it was originally proposed to be used for meetings with families, coffin selection and viewings of deceased, it is no longer proposed that viewings will take place within this building;
- a standard colorbond fence is to be installed to the common boundary of 2 Queen Street and 4 Queen Street, Norwood at a height of 2.1m to 2.5m;
- an automated sliding vehicular gate will be installed at 2 Queen Street, Norwood.

#### Response to Representations

- the proposed change of use is a reasonable expansion of the existing funeral home;
- additional car parking will be provided to offset any potential additional demand as a result of the change of use;
- staff will be encouraged to park on site, rather than the surrounding street network, from 1 July 2017; and
- it is inappropriate for a planning authority to have regard to the impact of a proposed development on the value of existing adjoining properties; and
- the existing car parking area will be open and freely accessible to staff and patrons between 9am and 5pm Monday – Friday, to comply with existing conditions of Development Approval, commencing on 1 July 2017.

Some representors raised concern with the potential loss of property values as a result of the development, but such concerns are not considered to be valid planning considerations.

### State Agency Consultation

Whilst the subject land is located adjacent to an arterial road (Magill Road), the proposed development was not referred to Commissioner of Highways pursuant to Schedule 8 of the *Development Regulations 2008*, as the proposed development does not alter an existing access point, nor will it change the nature of movement through and existing access point.

### Discussion

The subject land is located within the Residential Historic (Conservation) Zone and the Business Zone of the Norwood Payneham and St Peters (City) Development Plan.

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

### Land Use

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

Residential Historic (Conservation) Zone	Desired Character Statement
Residential Historic (Conservation) Zone Objectives	1, 2, 4, 5 & 8
Residential Historic (Conservation) Zone PDC's:	1, 2, 7 & 15
Norwood 4 Policy Area	1 & 2
City Wide Objectives:	1, 2, 3, 5, 7, 12, 13, 26 & 27
City Wide PDC's:	1, 3, 4, 6, 80 & 82-84

The following statements, objectives and principles are considered to provide the most direct guidance when reviewing the proposed development:

The Residential Historic (Conservation) Zone Desired Character Statement states (in part)

*This traditional character is a major point of attraction for the City of Norwood, Payneham and St Peters and will be preserved through the continued residential use of original dwellings and the conservation of the significant elements of these buildings. Where non-residential uses are proposed, these will be located in premises historically designed for non-residential use, for example, old corner shops.*

Principle of Development Control 7 of the Residential Historic (Conservation) Zone

*The following kinds of development are considered appropriate in the Residential Historic (Conservation) Zone:*

- (a) *dwellings at densities that reflect of the historic development patterns of the locality and the established residential amenity and the historic character of the zone;*
- (b) *dwelling additions;*
- (c) *outbuildings and minor forms of development that are ancillary to the residential use of land;*
- (d) *the retention, continuation and rehabilitation of old buildings reflecting the traditional character of the area; and*
- (e) *non-residential use where there is a historic basis for such a use, for example, old corner shops.*

Principle of Development Control 15 of the Residential Historic (Conservation) Zone

*Development should predominantly be for residential purposes and should reflect the historical built form and visual character of the relevant policy area.*

City Wide Objective 26

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

The existing funeral home fronts Magill Road and is located within the Business Zone. A portion of the existing car park is located at 35 Prosser Avenue and is located within the Residential Historic (Conservation) Zone. The existing dwelling at 2 Queen Street, Norwood is located within the Residential Historic (Conservation) Zone and it is proposed that this site be amalgamated into the operations of the existing funeral home. If the Panel were to grant Development Plan Consent, then it should be noted that the property at 2 Queen Street would only be able to be operated in association with the existing funeral home. It would not be able to be used as a stand-alone office for example, without separate Development Approval.

The property at 2 Queen Street, Norwood is located at the interface of the Residential Historic (Conservation) Zone and the Business Zone. To the north at 196 Magill Road is an office building, to the north west is a former dwelling currently operating as an office with a car parking area to the rear. To the west are a pair of two storey semi-detached dwellings and to the south is a detached dwelling.

The Desired Character Statement for the Residential Historic (Conservation) Zone states that opportunities for non-residential land uses should be confined to the re-use of buildings originally constructed for non-residential use, such as corner shops. The property at 2 Queen Street was originally constructed as a dwelling and has always been utilised for residential purposes according to Council records. As such it is clear that a non-residential use is contrary to the Desired Character Statement for the Zone.

Whilst it is clear the residential Historic Conservation Zone does not typically support the conversion of residential properties to commercial uses, some further guidance can be gained from City Wide Principle of Development Control 82, which states:

*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.*

It is apparent when considering all relevant provisions of the Development Plan, that the clear intent of the Residential Historic (Conservation) Zone, is to preserve a high level of amenity for residents within the zone, thereby avoiding the impacts that can be associated with commercial activities, such as noise related to staff and customer vehicular movements and the visual amenity impacts of signage, car parking areas and the like.

The building at 2 Queen Street, is proposed to be used as meeting rooms associated with the existing funeral home where families are able to meet with funeral directors, in a private setting, to make the necessary arrangements for a funeral. These arrangements are currently undertaken within lounge areas and offices within the existing facility facing Magill Road. In addition to the meeting rooms, the applicant has advised that some rooms in the existing dwelling will be utilised for coffin selection, as the current facility lacks the necessary space to store a wide range of products. Viewings of deceased persons is no longer proposed for the building at 2 Queen Street.

With respect to the vehicle movements resulting from the proposal, the Applicant has advised that the vehicular cross-over for the property at 2 Queen Street will only be accessible by funeral home staff, with all clients entering the site through the existing crossovers on Magill Road and Prosser Avenue. The Applicant has amended the landscaping plan to include signage to make it clear for motorists within the on-street car parking area that the driveway adjacent the building at 2 Queen Street is a no entry/exit area and is for staff use only.

If approved, the proposed development will result in an increase in the number of vehicular movements to and from the subject land. However, the increased traffic movements are not likely to impact on the amenity of any nearby residential properties, due to the background noise associated with existing traffic volumes on Magill Road during operating hours.

It is considered that given the relatively low volume of patronage likely to be serviced by the property at 2 Queen Street, the fact that all clients must first present to the main office and the additional car parking within the existing rear yard of 2 Queen Street is only accessible to the general public via the existing entrances on Magill Road and Prosser Avenue, the likely negative amenity impacts associated with the proposed land use are considered minimal.

The Applicant has stated that the proposed operating hours will be between 9:00am and 5:00pm Monday to Friday. If the Panel determines to grant Development Plan Consent, then it is recommended that a condition of consent be included, reflecting these hours, as the property is located partially within a Residential Zone. Despite the proposed land use being contrary to the desired character statement and principles of the Residential Historic (Conservation) Zone, it is considered that there are sufficient site-specific circumstances that apply in this instance, to warrant the expansion of the existing funeral home. In particular, the proposed use of the land and building at 2 Queen Street is relatively low intensity and the background noise levels resulting from traffic on Magill Road are such that impacts on nearby residential properties are likely to be negligible. As such, the proposed land use is considered to be acceptable.

Streetscape/bulk/scale/character

The following Development Plan provisions provide guidance with respect to the built form considerations:

Residential Historic (Conservation) Zone	Desired Character Statement
Residential Historic (Conservation) Zone Objectives	1, 3, 5, 6 & 8
Residential Historic (Conservation) Zone PDC's: Table NPSP/4	1, 2, 3, 13, 14, 16, 23, 36, 37
Business Zone	Desired Character Statement
Business Zone PDC's	7
City Wide Objectives:	18, 19 & 20
City Wide PDC's:	28, 29, 30, 31, 33, 34, 37, 42, 44, 45, 46,47 & 58

The proposed development includes the construction of a flat roofed carport and masonry wall within the centre of the existing funeral home site. Given the significant separation between the proposed building works and the adjoining residential properties and the fact that the proposed works will match the existing structures in terms of bulk, height and scale, it is considered that this element of the proposed development is acceptable and consistent with the relevant provisions of the development plan.

With respect to the property at 2 Queen Street, Norwood, following on from the period of public notification period, the applicant has amended the Application to include a corrugated iron sliding vehicular access gate. The style of the gate was developed in consultation with Councils' Heritage Adviser, and importantly retains the mature hedge to the front of the property. It is considered that the proposed vehicle access gate is consistent with the relevant provision of the Development Plan. Overall the fencing is consistent with the relevant provisions of the Development Plan. A full copy of Mr Brown's report is contained in **Attachment E**.

As part of the response to representations, the Applicant has proposed to install a new colorbond fence on the southern boundary between 2 and 4 Queen Street, Norwood. **Attachment B59** depicts a 2.5m high colorbond fence, whilst **Attachment D2** provides a height range of between 2.1 and 2.5m. The existing fence is approximately 1500mm high.

Having regard to side fences in the locality, Council staff consider that a 2.1m high colorbond fence is adequate to protect the privacy of the adjoining property at 4 Queen Street, Norwood. If the Panel determines to grant Development Plan Consent, it is recommended that a condition be imposed requiring the southern boundary fence to be 2.1m in height to keep a residential scale where the topography of both allotments is relatively flat. In addition, a condition should be imposed requiring wheel stops to be installed within the car parking bays, to protect the proposed landscaping and new fence from damage from vehicles.

No business identification signage is proposed as part of this Application. In the event that signage is desired for the proposed meeting rooms (as is likely), it will need to be the subject of a separate Development Application. That said, any future business identification signage will need to be reasonably discreet and coordinated in appearance so as to conform to the relevant provisions of the Development Plan.

#### Car-parking/access/manoeuvring

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

City Wide Objectives:	31, 32, 34.
City Wide PDC's:	98, 99, 102, 104, 112, 115, 117, 121, 122, 123, 124, 127, 128,
Tables:	NPSP/9

In terms of the provision of on-site car parking, the Development Plan does not provide any guidance for funeral homes. In this regard, the Applicant has engaged Mr Ben Wilson, a consultant and experienced traffic engineer, to review the provision of car parking and vehicle manoeuvring within the site. Mr Wilson has opined that the closest appropriate car parking rate for the proposed land use would be offices. Given the dwelling has a gross leasable floor area of 153m<sup>2</sup>, the theoretical car parking demand for the dwelling is seven (7) car parking spaces (actually 6.12), resulting in a shortfall of one (1) car parking space.

The proposed development will include an upgrade of the existing car parking area to provide an additional six (6) car parking spaces within the rear section of the allotment at 2 Queen Street. The rationale provided by Mr Wilson stating that the former dwelling would be utilised by existing employees, who would already be on site and that the layout of the building does not allow for a considerable amount of new floor space (as a result of thick masonry walling, hallways and fire places), is sound and a reasonable rationale to underpin his assertions about on-site car parking demand and any shortfalls identified.

The Applicant has stipulated that only funeral home vehicles will utilise the driveway from 2 Queen Street Norwood and only in a one-way direction entering the premises. All other vehicle access will be via the existing entry and exit points. Given the separation of the existing crossover from the neighbouring residential property and the likely limited use, it is considered that the vehicle movements associated with 2 Queen Street, will not have an adverse or significant impact on the amenity of the locality.

In this context, whilst there is a theoretical shortfall of one (1) on-site car parking space, the provision of vehicle parking is considered adequate to meet the likely needs of the funeral home.

The current funeral home provides forty six (46) car parking spaces for staff and visitors. As a result of the reconfiguration of the existing car park and the addition of the proposed car park at the rear of the property at 2 Queen Street, the revised capacity will be sixty one (61) car parking spaces.

It is considered that the proposed car parking at 2 Queen Street and reconfiguration of the existing car parking are adequate to service the additional demand associated with the proposed land use at 2 Queen given the fact that staff will already be on the site, and may in fact improve car parking conditions.

Trees (significant, mature & street) and landscaping

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

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

There are no regulated trees located on the subject land or surrounding properties affected by the proposed development. There are also no street trees located adjacent to the subject land that may be affected.

The Applicant has provided an indicative landscaping plan which illustrates a range of species including small trees, shrubs and ground-covers adjacent the southern boundary and also a landscaped bed adjacent the vehicle turn-around area. This new landscaping expands on the already established landscaping beds associated with the funeral home adjacent the southern boundary. The proposed landscaping includes reasonable areas adjacent to the rear car parking area, which will complement the development and provide for a reasonable level of amenity, although it is considered that the loss of the back yard and the conversion of it to hard paved car parking is a negative aspect of the proposal.

### Summary

The Residential Historic Zone primarily anticipates residential land uses. However, given the fact that the subject land is at the periphery of the zone and will be integrated into an existing business that already operates within the Residential Historic (Conservation) Zone and the Business Zone. The proposed use of the building for meeting and arrangement rooms will ensure the economic viability of the building, which is a positive aspect of the development.

Furthermore, adequate on-site car parking is proposed to cater for the likely demand of the staff and visitors, with limited vehicular movements associated with 2 Queen Street.

In terms of impacts on adjoining residential properties, taking into account the background noise of traffic on Magill Road and the fact that no meetings could occur beyond 5pm Monday to Friday, it is likely that the proposal will not impact unreasonably on the amenity of nearby residents.

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

### RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/0813/15 by Mr Simon & Ms Helen Berry for the expansion of the existing funeral home on to 2 Queen Street, Norwood, with the existing dwelling converted to meeting rooms (with associated car parking), the construction of a vehicle access gate at 2 Queen Street, Norwood and alterations to the funeral home, on the land located at 198-202 Magill Road, Norwood, 204 Magill Road, Norwood, 35 Prosser Avenue, Norwood and 2 Queen Street, Norwood subject to 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:

- Planning Report and accompanying plans prepared by URPS marked received by the Council on 16 March 2017;
- Existing Ground Floor Plan and proposed ground floor plan prepared by Arcuate Architecture marked received by Council on 11 April 2017;
- Landscaping plan prepared by URPS marked received by Council on 28 June 2017;

- Response to representations prepared by URPS marked received by Council on 14 June 2017; and
- Gate elevation prepared by URPS marked received by Council on 28 June 2017.

#### Conditions

1. The use of the building at 2 Queen Street, Norwood in association with the funeral home business, shall be restricted to meetings with clients and coffin (and other) selections associated with funeral services and shall not be used for viewing of deceased persons or for funeral services. The hours of use for this building shall be limited to between 9:00am until 5:00pm Monday to Friday.
2. All plants within the proposed and or 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.
3. All plants shall be watered through the installation of a suitable irrigation system which shall be maintained to the reasonable satisfaction of the Council or its delegate.
4. All landscaped areas shall be separated from adjacent driveways and parking areas by a suitable kerb or non-mountable device to prevent vehicle movement thereon (incorporating ramps or crossovers where appropriate to facilitate the movement of disabled persons).
5. All car parking spaces shall be line marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.
6. All trade waste and other rubbish shall be stored in covered containers pending removal and shall be kept screened from public view, to the reasonable satisfaction of the Council or its delegate.
7. All external lighting of the site, including car parking areas and buildings, shall be located, directed and shielded and of such limited intensity that no nuisance or loss of amenity is caused to any person beyond the site to the reasonable satisfaction of the Council or its delegate.
8. Wheel stopping devices constructed of concrete, metal or wood shall be placed at the end of each parking bay so as to prevent damage to adjoining fences, buildings or landscaping to the reasonable satisfaction of the Council or its delegate.
9. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.
10. All stormwater discharged from the land shall remain at pre-development levels with 1 in 5 year ARI events detained on-site.
11. The fence on the southern boundary of 2 Queen Street Norwood (between 2 and 4 Queen Street, Norwood) shall be 2.1m in height.

#### Notes to Applicant

1. The granting of this 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.
2. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
3. 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.
4. The Applicant is advised that business identification signage does not form part of this approval and that any future signage may require Development Approval. The Applicant and future occupants should make enquiries to the Council's planning staff on 8366 4530 with regards to business identification signage.

## 2. STAFF REPORTS

### 2.5 DEVELOPMENT APPLICATION 155/495/2016 – TAMIR DUNNING PROPERTY GROUP – 13 EDWARD STREET, GLYNDE

<b>DEVELOPMENT APPLICATION:</b>	<b>155/495/2016</b>
<b>APPLICANT:</b>	<b>Tamir Dunning Property Group</b>
<b>SUBJECT SITE:</b>	<b>13 Edward Street, Glynde (Certificate of Title Volume: 5540 Folio: 71)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Demolition of an existing dwelling and the construction of a residential flat building comprising nine (9) dwellings and associated fencing and landscaping</b>
<b>ZONE:</b>	<b>Norwood, Payneham and St Peters (City) Development Plan (28 April 2016)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

#### **Purpose of Report**

The purpose of this report is to provide details to the Panel on a second compromise proposal which has been submitted in relation to a Development Application that was refused by the Panel at its meeting held on 20 February 2017 and which is the subject of an Appeal to the Environment Resources and Development (ERD) Court. The Panel is required to consider the amended plans and advise the ERD Court as to whether or not the amended plans satisfactorily address the concerns identified with the Application, such that a consent would now be warranted.

#### **Background**

On 21 July 2016, Development Application No. 155/573/2016 was lodged with the Council for the construction of a residential flat building comprising nine (9) dwellings.

Subsequent to the lodgment of this Application, a Community Title Land Division creating nine (9) community lots and a common property lot (being for driveway access) was lodged by the same Applicant and approved under delegation as it met the relevant Development Plan land division criteria with respect to site area and frontage width.

The Panel considered the land use Application at its meeting held on 20 February 2017 and determined to refuse the Application for the following reasons:

1. *The proposal is an over-development of the site;*
2. *The proposal is lacking in visitor car parking;*
3. *The proposal is lacking in safe and convenient access for all forms of transport;*
4. *The proposed dwellings have inadequate setbacks from boundaries;*
5. *The proposal has inadequate landscaping; and*
6. *The proposal had inadequate provision for bin collection.*

The Applicant commenced an appeal in the ERD Court against the Council's decision and subsequently submitted a compromise proposal, which was considered by the Panel at its meeting held on 19 April 2017. The Panel determined that it was not satisfied that the amended proposal was sufficiently in accord with the Development Plan to merit Development Plan Consent for the same reasons as previously resolved. A copy of the relevant part of the Minutes of the Panel meeting held on 19 April 2017 is contained in **Attachment A**.

The Applicant has made further amendments to the proposal and has now submitted a second compromise proposal for the Panel's consideration.

In summary, the latest compromise proposal maintains the same number of dwellings (nine) but the Applicant has reduced the floor areas of the dwellings, which has allowed the building form to be split into three (3) separate buildings, with space for additional visitor parking, landscaping and a dedicated on-site bin storage area for green waste and recycling. The building set-backs have also changed as a result of the amendments to the floor areas.

A copy of the amended plans (including the landscaping plan) and letter of support from the Applicant's planning consultant, Mr Garth Heynen, is contained in **Attachment B**.

### **Discussion**

The amended plans will be discussed in the context of the reasons for refusal given by the Panel.

#### *The proposal is lacking in visitor car parking*

The proposal has been amended to provide four (4) of the five (5) on-site visitor parking spaces which are required by the rate stated in Table NPSP/8, (i.e. one (1) visitor space for every two (2) dwellings).

In the original assessment and report, consideration was given to City Wide PDC 122, which states (in part):

*"A lesser on-site car parking rate may be applied to applicable elements of a development in any of the following circumstances:*

- (b) sites are located within 200 metres walking distance of a convenient and frequent service fixed public transport stop;"*

The subject land is located within 200m of a high frequency bus stop located on Payneham Road, close to Edward Street, which satisfies this criterion for applying a discount to the applicable rate. As discussed in the original report, a discount amount of 20% is considered acceptable, based on the advice of a recent study - *Parking Spaces for Urban Places: Car Parking Study*, which was prepared by Aurecon Australia in 2013 and funded by the Local Government Association and several South Australian Councils.

Without factoring in any applicable discount, the addition of four (4) on-site visitor parking spaces reduces the overall on-site parking shortfall from five spaces (22%) to one space (4%). Notwithstanding that this shortfall is considered to be minor, if a discount of 20% were to be applied, the shortfall would be overcome in its entirety.

As such, it remains the view of staff, that the proposal satisfies the Development Plan policies for the provision of on-site vehicle parking.

#### *The proposal is lacking in safe and convenient access for all forms of transport*

It is understood that this reason for refusal related mainly to the length of the driveway and the inability for a visitor vehicle (which might include a delivery truck) to turn around and exit in a forward manner if a vacant parking space is not available within the site.

In this respect, City Wide PDC 189 part (a) does require that a development site makes provision for vehicles to turn around so that entry and egress from the site can be in a forward direction. Part (d) of PDC 189 also provides guidance that driveways servicing this type of allotment should be no more than 35m in length.

The four (4) additional vehicle parking spaces (two (2) between Dwellings 3 and 4 and two (2) between Dwellings 6 and 7) would provide two opportunities for visitor vehicles to turn around and exit in a forward manner if a visitor space was not available.

Additionally, the Panel should note that the landscaping along the northern side of the driveway has been altered from the original proposal and the first compromise proposal in order to provide more efficient vehicle manoeuvring. The resulting change to the landscaping is discussed in a following section of this report which discusses the adequacy of the landscaping.

With regard to the length of the driveway exceeding 35m, the unusually deep site (being nearly 100m deep) means that it would be difficult to limit the driveway length and achieve a reasonable density on this site.

Accordingly, the amended proposal is considered to adequately address this concern of the Panel.

*The proposed dwellings have inadequate setbacks from boundaries*

The proposal has been further amended to reconfigure and reduce the floor areas of the proposed dwellings, allowing the original continuous building form to be split into three (3) separate buildings. This has been achieved by reconfiguring the upper level space of Dwellings 1 – 8, to provide each with a small open 'retreat' area and a slightly larger balcony in lieu of a third bedroom. The upper level floor area of Dwelling 9 has been more significantly reduced by deleting the third bedroom and the balcony. This has allowed Dwelling 9 to achieve the required 4.5m upper level set-back from the rear boundary of the subject land. The loss of the balcony has been compensated by additional ground level private open space which at 45m<sup>2</sup>, exceeds the 35m<sup>2</sup> requirement of City Wide PDC 225.

As a result of these further amendments, all of the upper level set-backs of Dwellings 2 – 9 satisfy the 4.5m requirement of City Wide PDC 203, which is relevant for considering the side and rear set-backs of dwellings sited behind a dwelling fronting the primary street. That said, the alteration of the roof form of Dwellings 2 – 9 (from a pitched form to a skillion form) and the subsequent removal of the eave has reduced the amount of depth and to some extent, the level of visual interest to the southern elevation of the dwellings, which is considered to be a relatively minor but negative aspect of the compromise proposal.

The ground level set-back of Dwellings 2-9 from the southern boundary remains unaltered at between 900mm to the flat roofed lightweight carport component and 2.5m to the alfresco components. As per the discussion in the original report, these ground level set-backs are considered to be acceptable.

The upper level front set-back of Dwelling 1 has also been amended (through a reduction in the width of the balcony) to now satisfy the minimum front set-back requirement of 4m (Medium Density Policy Area PDC 7).

Accordingly, the amended plans are considered to address this concern of the Panel.

*The proposal has inadequate landscaping*

The proposed landscaping plan has been amended to include additional ornamental trees within the rear yards of the dwellings and along the common driveway. The fenced section of private open space adjacent to Edward Street has also been altered to provide more front yard for landscaping which would be visible from Edward Street. This front yard area now includes three (3) ornamental trees (Crepe Myrtles) which would assist in softening the streetscape appearance of the development.

The Panel should also note that the landscaping along the northern side of the driveway has been altered from the original proposal and the first compromise proposal in order to provide more efficient vehicle manoeuvring in and out of the carports. This has resulted in sections of the landscaping being cut back, which means that there would be some sections of the driveway which do not satisfy the requirement of City Wide PDC 189(d)(iii), that a combined total width of one (1) metre of landscaping is provided along the entire length of the driveway handle. Notwithstanding this, there are four (4) sections along the northern side of the driveway which are maintained at a width sufficient for the planting of seven (7) trees, which would assist in reducing the 'gun barrel effect' that this policy seeks to address. The remaining sections are of a sufficient width to plant grasses, which would provide an understorey to the tree plantings.

Overall the landscaping includes twenty-six (26) ornamental trees, as well as numerous plantings of smaller small shrubs and grasses. In this regard it is considered that the amended landscaping plan sufficiently addresses this concern of the Panel.

*The proposal had inadequate provision for bin collection*

The Panel raised concerns that there would be insufficient kerb space for the placement of 18 household bins (general waste and recycling/green waste). The most relevant Development Plan policy relating to his concern is City Wide PDCs 141 which states:

*'Development should enable economic and effective servicing for public transport, recycling and waste collection...'*

The subject land has a frontage width of 18.3m, of which 6m is required for the proposed driveway crossover. This leaves a kerb space of 12.3m in which to place bins, although a juvenile street tree located on the verge further reduces the available space to approximately 11 metres.

East Waste has advised that the optimum spacing of bins on the verge is 500mm apart, although in practice, many households place their bins closer. Taking into account the width of the smaller general waste bin (535mm) and the larger recycling/green waste bins (580mm) and an average spacing of 300mm (factoring in what happens in practice), the length required along the verge for the placement of two (2) bins per household would need to be approximately 14.5 metres. In this regard, it is obvious that all 18 bins could not be placed on the verge in front of the subject land.

In the first compromise proposal, the Applicant proposed a communal bin system whereby the occupants would share five (5) large (240 litre) general waste bins, seven (7) recycling bins and four (4) green waste bins. It was calculated that this amount of bins could be accommodated within the available verge space. The communal bin area was to be located on-site, within a dedicated bin storage area. The Panel did not support this concept, as it had concerns about how the occupants would resolve any issues relating to moving the bins to and from the verge for collection and possibly how the sharing of bins would be managed.

The Applicant has subsequently engaged the services of VEOLIA, to provide advice on a possible waste management solution for the site, a copy of which is contained in **Attachment C**. Based on this advice, the proposal has been amended to include a communal bin system (serviced by VEOLIA) for green waste and recycling. Each household would maintain its own general waste bin for weekly kerbside collection by EastWaste. In this regard, the nine (9) general waste bins could be easily accommodated on the available kerb space adjacent to the subject land.

The revised communal bin area is located between Dwellings 3 and 4 and has been altered to provide an additional width for accessing the storage area when vehicles are parked in the visitor parking spaces. The bin storage area would provide space for three (3) standard size green waste bins and two (2) 1100 litre recycling bins (equivalent to nine (9) standard (240 litre) recycling bins). VEOLIA has advised that, based on the dimensions shown on the plans, these bins could be serviced by their smaller truck entering and exiting the site in a forward manner, subject to the visitor parking spaces being vacant during pick-up times. VEOLIA has further advised that should the spaces be occupied, there is sufficient space for the bins to be wheeled past the cars, to the waiting truck. The Applicant has advised these two (2) visitor spaces would be sign-posted to ensure that these spaces remain vacant during designated pick-up times.

Subject to such an arrangement being in place, it is considered that the proposal satisfies PDC 141 and accordingly the Panel's concern regarding the efficient collection of nine (9) household waste and recycling bins. As such, it is considered appropriate to include a condition of approval requiring that collection of green waste and recycling from the nine (9) dwellings on the subject land be maintained and serviced through a commercial waste disposal contractor, to the reasonable satisfaction of the Council or its delegate.

*The proposal is an overdevelopment of the site*

The Panel's concern that the proposal is an overdevelopment of the site appears to be a conclusion derived from the number of areas where the proposal did not, in its opinion, fully satisfy the relevant provisions of the Development Plan.

Whilst the amended proposal does not reduce the number of dwellings proposed for the subject land, it is the opinion of staff the amended plans are considered to address the Panel's concerns about individual aspects of the proposal, which in turn may alleviate the concern that it is an overdevelopment of the site.

In setting more flexible policies for residential flat buildings within the Medium Density Policy Area (in particular no minimum site area for dwellings in residential flat buildings), the policy rationale was to encourage more flexible housing options, design innovation and to support the supply of more affordable housing.

Whilst such flexibility in density is provided, ultimately, the built form proposed will then be constrained by potentially smaller sites and by the range of other land use and built form policy requirements such as site coverage, private open space, building set-backs and the provision of on-site vehicle parking.

In this regard, the amended proposal is considered to satisfy the relevant land use and built form requirements to a degree which supports the number of dwellings which have been proposed for the subject land.

### **Summary**

The compromise proposal has either partially or fully addressed the concerns of the Panel regarding on-site visitor parking, set-backs and bulk and scale.

With regard to on-site visitor parking, the amended proposal now includes four (4) on-site visitor parks, which reduces the overall on-site shortfall (without any consideration of discounting) from five (5) spaces to one (1) space. City Wide PDC 122 provides the ability to discount the required rate based on, amongst other things, proximity to a high frequency bus stop. If a 20% discount were to be applied in accordance the a recent South Australian Study – *Parking Spaces for Urban Places – Car Parking Study*, this shortfall would be overcome.

The inclusion of the four (4) on-site visitor parking spaces has resulted in the overall building form being amended from one continuous building form, to three (3) separate building forms, with a separation of 6m between Dwellings 3 and 4 and a separation of 5.4m between Dwellings 6 and 7. It is considered that this has assisted in reducing the overall bulk and scale of the development to a degree which is considered to be acceptable with the Medium Density Policy Area.

The landscaping plan has been amended to include a greater number of ornamental trees across the site (26 in total). There has however been some amendment to the width of the landscaping bed on the northern side of the driveway in order to provide more efficient vehicle manoeuvring in and out of the carports. This has resulted in some sections of the driveway which now do not satisfy the requirement of City Wide PDC 189(d)(iii), that a combined total width of one (1) metre of landscaping is provided along the entire length of the driveway handle. Notwithstanding this, there are four (4) sections along the northern side of the driveway which are maintained at a width sufficient for the planting of seven (7) trees, which would assist in reducing the 'gun barrel effect' that this policy seeks to address. The remaining sections are of a sufficient width to plant grasses, which would provide an understory to the tree plantings.

The upper level set-backs of Dwellings 2 – 9 have been amended so that they now all satisfy the 4.5m minimum requirement of City Wide PDC 203.

The upper level front set-back of Dwelling 1 has also been amended (through a reduction in the width of the balcony) to now satisfy the minimum front set-back requirement of 4m (Medium Density Policy Area PDC 7).

The ground level set-back of Dwellings 2 - 9 from the southern boundary remains unaltered at between 900mm to the flat roofed lightweight carport component and 2.5m to the alfresco components. As per the discussion in the original report, these ground level set-backs are considered to be acceptable.

It is considered that the Panel's concern regarding the proposal being an overdevelopment of the site has been largely overcome by the fact that the amended plans have addressed the above-mentioned areas of concern.

With regard to kerbside bin collection, the Applicant has engaged an independent waste company (VEOLIA) to provide advice regarding a solution for on-site recycling and green waste management. The proposal involves a communal system for recycling and green waste to be serviced by VEOLIA without the need for bins to be placed out for kerbside collection. This means that only nine (9) general waste bins would be placed on the verge each week for kerbside collection by EastWaste.

The compromise proposal is considered to sufficiently accord with the relevant Development Plan provisions to warrant consent, for the reasons set out in the previous report and the further analysis provided in this report.

## RECOMMENDATION

That the Environment Resources and Development Court be advised that the Development Assessment Panel is satisfied that the amended proposal sufficiently accords with the Development Plan to merit Development Plan Consent, subject to the following conditions (or any similar conditions deemed appropriate by the ERD Court):

### Relevant Plans

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

- Amended site plan, floor plans and elevations prepared by 'in property design' (Revision F) and received by the Council on 4 July 2017;
- Amended Landscape Plan prepared by Yardstick Landscape Services Pty Ltd and received by the Council on 4 July 2017;
- Civil Works Site Layout Plan prepared by 'Intrax' (amended plan dated 2 February 2017) and received by the Council on 2 February 2017; and
- Waste Management Solution advice prepared by VEOLIA (dated 3 May 2017) and received by the Council on 1 June 2017.

### Conditions

1. All stormwater from buildings and paved areas shall be disposed of in accordance with recognised engineering practices in a manner and with materials that does not result in the entry of water onto any adjoining property or any building, and does not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into the adjacent street water table.
2. All plants existing and/or within the proposed landscaped areas shall be nurtured and maintained in good health and condition at all times with any diseased or dying plants being replaced, to the reasonable satisfaction of the Council or its delegate.
3. All plants shall be watered through the installation of a suitable irrigation system which shall be maintained to the reasonable satisfaction of the Council or its delegate.
4. That the two (2) visitor parking spaces in front of the communal bin storage area be sign-posted to ensure that no parking is allowed during the designated bin pick-up times in agreement with VEOLIA (or equivalent Waste Management Company or Contractor).
5. That the collection of green waste and recycling waste from the nine (9) dwellings on the subject land be maintained and serviced through a commercial waste disposal contractor, to the reasonable satisfaction of the Council or its delegate.

### Notes to Applicant

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

2. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.

The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.

3. The Applicant 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.

4. 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

### 2.6 DEVELOPMENT APPLICATION 155/911/2016 – LARES HOMES – 16 PROSSER AVENUE, NORWOOD

<b>DEVELOPMENT APPLICATION:</b>	155/911/16
<b>APPLICANT:</b>	Lares Homes
<b>SUBJECT SITE:</b>	16 Prosser Avenue, Norwood (Certificate of Title - Volume: 5731, Folio: 724)
<b>DESCRIPTION OF DEVELOPMENT:</b>	Construction of a pair of two-storey semi-detached dwellings, together with associated in-ground swimming pools, outbuildings, fencing and landscaping
<b>ZONE:</b>	Residential Historic (Conservation) Zone – Norwood 4 Policy Area - Norwood, Payneham and St Peters (City) Development Plan (dated 28 April 2016)
<b>PUBLIC NOTIFICATION CATEGORY:</b>	Category 1

#### **Purpose of Report**

The purpose of this report is to provide details to the Panel on a compromise proposal which has been submitted in relation to a Development Application that was refused by the Panel at its meeting held on 19 April 2017 and which is the subject of an Appeal to the Environment Resources and Development (ERD) Court. The Panel is required to consider the amended plans and advise the ERD Court as to whether or not the amended plans satisfactorily address the concerns identified with the Application, such that consent would now be warranted.

#### **Background**

A Development Application (Development Application No. 155/911/16) was lodged on 16 January 2017, for the construction of a pair of two-storey semi-detached dwellings together with associated in-ground swimming pools, outbuildings, fencing and landscaping at 16 Prosser Avenue, Norwood.

The Panel considered the Application at its meeting held on 19 April 2017 and determined to refuse the Application for the following reasons:

1. *The proposal is not consistent with the Desired Character of the Zone and Policy Area.*
2. *The proposal does not preserve, enhance and reinforce the streetscape appeal of the Policy Area.*
3. *The proposal does not present as a single integrated building.*

A copy of the relevant section of the Minutes of the Panel meeting held on 19 April 2017, including the refused plans, is contained in **Attachment A**.

Following the refusal of the Application by the Panel, the Applicant lodged an appeal with the ERD Court. The Applicant has prepared a compromise proposal, which is the subject of this report.

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

A summary of the proposed amendments is provided below:

- the proposed semi-detached dwellings incorporate an integrated single roof form over the single-storey components;
- the garages for both dwellings are incorporated underneath the integrated single roof form and 'disguised' as living rooms, through the use of tilt-up garage doors that mimic the appearance of windows set in masonry. More specifically, solid timber tilt-up doors which incorporate clear glass inserts. The clear glass inserts are separated by central 'pier' elements that comprised of 350mm wide x 4.0mm thick acrylic render (ie. the same render that is to be used to the facades of the semi-detached dwellings); and
- the facade of the dwellings is in line with the garages, whereas the original proposal had the garages set back behind the facades.

### Discussion

The following discussion is based on the reasons for refusal that were given by the Panel at its meeting held on 19 April 2017. All other aspects of the proposal are addressed in the previous staff report contained in **Attachment A** and are not significantly affected by the amended plans.

The amended proposal has been referred to the Council's Heritage Advisor, David Brown, to review from a heritage compatibility perspective. Mr Brown has identified several concerns with the amended proposal, which are summarised as follows:

- the garages are flush with the facades of the dwellings with tilt garage doors comprising timber framed pseudo dwelling doors/windows with white glazing;
- in a practical sense, the proposed garage tilt door structure is very unlikely to appear as depicted in the artist impression. When viewed within a streetscape context, the driveway areas and driveway gates indicate the pseudo dwelling doors/windows are actually garage doors and not white glazed windows;
- seeking to "hide" the garage doors within the facades of the dwellings is not an appropriate design response within an Historic (Conservation) Zone as garage doors should not dominate the facade of the associated proposed dwelling;
- the policies contained within the Development Plan specify that garage doors should be set back from the main facade of the dwelling and not under the main roof. Therefore, the amended proposal does not satisfy these requirements; and
- the most appropriate design solution would involve relocating the stobie pole in order to enable a garage to be situated on the eastern side of Dwelling 1; and

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

The amended proposal results in the semi-detached dwellings presenting as a single integrated building when viewed from the street. However, the alignment of the garages with the facades and the extent to which the garages are integrated within the dwellings is uncharacteristic of historic buildings in the locality.

Residential Historic (Conservation) Zone Principle of Development Control 31 and City Wide Principle of Development Control 211 provide the most guidance regarding the development of garages within the zone and state:

*"Development of carports and garages or other outbuildings should, without necessarily replicating the historic detailing of the surrounding Heritage Places or Contributory Items:*

- (a) *be set behind the main face of the dwelling and may be freestanding;*
- (b) *be designed and sited to ensure garage doors do not visually dominate the primary or secondary street frontage of the dwelling;*
- (c) *not extend design elements such as verandahs, roof forms or historic detailing at the same alignment as the main face of the principal building;*
- (d) *exhibit architectural and roof form designs, and exterior finishes to enhance and not diminish the historic character of the locality; and*
- (e) *not incorporate undercroft parking or other parking or access arrangements that are not in keeping with the historic character of the area."*

and

*“Unless the desired character of an area provides otherwise, garages and carports fronting a primary street should:*

- (a) be of a width that is minimised relative to the width of the dwelling frontage and in any case, should be designed with a maximum width (including the total width of any support structure) of 6.5 metres or 50 per cent (or 40 per cent in a Residential Historic (Conservation) Zone) of the allotment or building site frontage width, whichever is the lesser distance; and*
- (b) be set back at least 0.5 metres behind the main face of the associated dwelling, unless the main face incorporates projecting elements such as a portico or verandah, in which case the garage or carport may be in line with the main face of the associated dwelling; and*
- (c) be set back no less than 5.5 metres from the primary street frontage, to allow for vehicle parking.”*

With respect to Residential Historic (Conservation) Zone Principle of Development Control 31, the amended proposal is contrary to parts (a), (c) and (d) in that the garages are not set behind the main faces of the dwellings, the garage doors are intended to form part of the facades, the roof form over the dwellings extends over the garages and the tilt-doors incorporate non-traditional materials and finishes within an Historic (Conservation) Zone.

In terms of City Wide Principle of Development Control 211, the amended proposal is at odds with parts (a) and (b) of this provision. Whilst the proposed garage door design treatment has been used to deliberately disguise the garages, part (a) requires that the width of a garage should be ‘minimised’. With an internal width of 3.6 metres, the garage of Dwelling 2 has not been minimised as was the case with the original proposal considered by the Panel at its meeting in April 2017. The garage doors are in-line with the facade of the dwellings, which is at odds with part (b) and not set back at least 500mm behind the main face of each dwelling.

The amended design also results in the proposed dwellings being set closer to Prosser Avenue than the previous design and closer than the neighbouring dwellings at 14 and 18 Prosser Avenue. The detached dwelling to the west of the subject land (14 Prosser Avenue) has a front setback of 9.4 metres to its verandah and a 10.8 - 11.7 metre setback to its staggered facade. The detached dwelling to the east of the subject land (18 Prosser Avenue) has a front setback of 6.1 metres and 9.5 metres to its front verandah and facade respectively. The proposed semi-detached dwellings have a setback of 8.5 metres to the their facades and garages, which in turn is 2.3 – 3.2 metres and 1.0 metre forward of the main facades of 14 and 16 Prosser Avenue respectively.

With respect to the original proposal and discussions by Panel members, the Panel raised concerns with the vertically proportioned nature of the dwellings and the resulting presentation to the street, which was not considered to result in a complementary built form appearance, relative to the historic building stock. The Appellant has sought to address this concern by proposing an integrated roof form and greater horizontal massing through the facade of the dwellings, the integration of garages under the single roof form combined with no setback behind the facades. However, the amendments are considered to result in an inappropriate design response. More specifically, having the garages situated underneath the single roof form results in an unbroken hipped roof form and a facade that spans 17.4 metres of the 18.3 metre width of the site, which is not reflective of original historic dwellings within the locality, in terms of garages being situated behind facades and garages and/or carports having separate roof forms to the associated dwellings.

The fact that the garage for the western dwelling is to be situated on the western side boundary is also inconsistent with Development Plan provisions, aimed at ensuring new buildings in the Residential Historic (Conservation) Zone maintain spacing and setbacks that reflect the pattern established by historic buildings in the locality. In this proposed it is concluded that the compromise proposal is at odds with the Residential Historic (Conservation) Zone Desired Character Statement and Residential Historic (Conservation) Zone Principle of Development Control 16(b), which state respectively (in part):

*'The setback of new development will match the predominant setback established by existing dwellings.'*

And

*'Development of a new building or building addition should demonstrate a compatible visual relationship with the buildings that contribute to the historic character of the relevant policy area through consideration of the following:*

*(b) width of site frontage, front and side boundary setback patterns...'*

An alternative design where the garages are placed on the outside, at a lower height than the roof over the dwellings and set back behind the facade, would in the opinion of staff, present a better design solution, more in keeping with the intent of the relevant Development Plan provisions.

The amended proposal is not considered to conserve and maintain nor enhance the existing historic building character of the locality as is called for by the Norwood Policy Area Desired Character Statement and Objective 1 of the Norwood 4 Policy Area respectively.

### **Summary**

The amended proposal does not satisfactorily address the Development Assessment Panel's original reasons for refusal as set out in the discussion section of this report.

Whilst it is acknowledged that there is a cost implication for the Applicant/Owner associated with relocating the existing stobie pole to enable a design that has a garage on the outside of both dwellings, it is considered that this is a reasonable imposition having regard to the design policies contained within the Residential Historic (Conservation) Zone.

The proposed dwellings are not considered to make a positive contribution to this part of the Prosser Avenue locality and are considered to detract from the contribution that historic buildings make to the character of the immediate area.

Accordingly, it is considered that the amended proposal is not seriously at variance with the Development Plan, however, it is not sufficiently in accordance with the Development Plan to merit consent.

### **RECOMMENDATION**

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, the Environment Resources & Development Court be advised that the compromise plans submitted in respect to Development Application No. 155/911/16, by Lares Homes, for the construction of a pair of two-storey semi-detached dwellings together with associated in-ground swimming pools, outbuildings, fencing and landscaping at 16 Prosser Avenue, Norwood, are unacceptable and that the Panel's original reasons for refusal, remain valid.

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