

Council Assessment Panel Minutes & Reports

16 March 2020

Our Vision

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

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

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City of
Norwood
Payneham
& St Peters

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VENUE Mayors Parlour, Norwood Town Hall

HOUR 7pm

PRESENT

Panel Members Mr Terry Mosel
Mr Phil Smith
Ms Fleur Bowden
Mr John Minney
Ms Jenny Newman

Staff Mark Thomson Manger Development Assessment
Adam Bowey Senior Urban Planner
Ellen de Souza Development Officer Planning

APOLOGIES

ABSENT

1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL HELD ON 17 FEBRUARY 2020

Motion was put that the minutes of the Meeting of the Council Assessment Panel, held on 17 February 2020.

Seconded and carried

Mr Mosel declared a conflict of interest for item 2.3 for the reasons previously given

Mr Mosel asked the Panel to elect an Acting Presiding Member to chair item 2.3.

Motion was put that Mr Smith act as Presiding Member for item 2.3.

Seconded and carried

2. STAFF REPORTS

2.1 COUNCIL ASSESSMENT PANEL PROCEDURE – CONSIDERATION OF ERD COURT APPEAL COMPROMISE PROPOSALS

PURPOSE OF REPORT

The purpose of this report is to advise the CAP of advice received with respect to the consideration of ERD Court appeal compromises.

BACKGROUND

At its meeting held on 17 February 2020, the CAP asked the Assessment Manager to prepare a report for the consideration of the CAP, on the options available to it with respect to the consideration of ERD Court appeal compromise proposals. In particular, advice was sought on the advantages and disadvantages of considering such matters in camera, rather than in public as currently occurs.

DISCUSSION

Advice was sought from Gavin Leydon of Norman Waterhouse Lawyers, on any legal considerations associated with considering appeal compromises. In addition, Mr Leydon was asked to provide an opinion on what he considers would be 'best practice'.

Mr Leydon has advised that the *Planning, Development and Infrastructure (General) Regulations 2017* (Regulations) allow the CAP to exclude the public from attendance and meet in camera in the following circumstances:

- (a) during so much of the meeting as is necessary to receive, discuss or consider in confidence a prescribed range of matters; and
- (b) during so much of the meeting that consists of its discussion or determination of any application or other matter that falls to be determined by the CAP.

The prescribed matters referred to in part (a) include for the purposes of receiving, discussing or considering legal advice and/or information relating to actual litigation, or litigation that the CAP believes on reasonable grounds will take place.

Therefore, the relevant legislation provides an option for the CAP to determine to consider ERD Court appeal matters in camera, should it determine to do so. The CAP has not done so in the past and its Terms of Reference are silent on the matter.

Historically, the CAP and the DAP before it, have chosen to consider all matters in public, in order to be as transparent as possible. Mr Leydon has advised that the current 'best practice' would be for the CAP to discontinue the current practice and to consider appeal compromises in camera in order to avoid the CAP compromising the Council's position in the event that matters progress to trial. For example, advice received by the CAP from staff or consultants, could if divulged to an appellant, compromise the Council's position at trial.

CONCLUSION

For the reasons outlined in the advice received from Mr Leydon, it is considered most appropriate that the CAP considers ERD Court appeal compromises in camera.

Whilst it would be possible for the CAP to determine whether to receive, discuss or consider each appeal compromise matter on an individual basis, a more practical approach would be to establish a consistent procedure to be reflected in its Terms of Reference.

COMMENTS

As the agenda for the meeting of the CAP on 16 March has been made public prior to the resolution of this matter, the two appeal compromise matters on the agenda are not able to be *received* in camera. However, should the Panel wish to do so, it could determine to *discuss* and *consider* those appeal compromises in camera.

RECOMMENDATION

1. That the Council Assessment Panel Terms of Reference be amended to introduce the following two clauses:
 - a. The CAP will exclude the public from attendance and meet in camera when receiving, discussing or considering potential compromises in respect to appeals which are before the Environment Resources and Development Court.
 - b. Where the CAP excludes the public from attendance pursuant to clause 10.16, the Presiding Member may, in his or her discretion, allow an applicant to address the CAP prior to being excluded from attendance, for the purpose of answering any questions that the CAP may have.
 2. That the two items on the agenda of the Council Assessment Panel meeting of 16 March 2020 which relate to ERD Court appeal compromises be discussed and considered in camera.
-

Moved

1. *That the Council Assessment Panel Terms of Reference be amended to introduce the following two clauses:*
 - a. *The CAP will exclude the public from attendance and meet in camera when receiving, discussing or considering potential compromises in respect to appeals which are before the Environment Resources and Development Court.*
 - b. *Where the CAP excludes the public from attendance pursuant to clause 10.16, the Presiding Member may, in his or her discretion, allow an applicant to address the CAP prior to being excluded from attendance, for the purpose of answering any questions that the CAP may have.*
2. *The Council Assessment Panel orders pursuant to Regulation 13(2)(a) of the Planning Development and Infrastructure Regulations 2016, that the public, with the exception of the Assessment Manager and other staff so determined, be excluded from attendance at so much of the meeting as is necessary to discuss, consider and determine in confidence, information contained within reports at Items 2.3 and 2.4 of the agenda submitted by the Assessment Manager.*
3. *That at completion of the confidential session, the meeting be re-opened to the public.*

Seconded and carried

2. STAFF REPORTS

2.2 DEVELOPMENT APPLICATION 155/796/2019 – ST PETER’S COLLEGE – 71-77 HACKNEY ROAD, HACKNEY

DEVELOPMENT APPLICATION:	155/796/19
APPLICANT:	St Peter’s College
SUBJECT SITE:	71-77 Hackney Road, Hackney (Certificates of Title Volume: 5720 Folio: 84)
DESCRIPTION OF DEVELOPMENT:	Change of use from a vacant industry (formerly Sanitarium Health Food Company production and administration facility) to a maintenance and grounds depot in association with an existing educational establishment (St Peter's College); alterations and additions; and the creation of a bituminised car parking area
ZONE:	Community Zone (Education Policy Area) - Norwood, Payneham and St Peters (City) Development Plan (dated 21 March 2019)
PUBLIC NOTIFICATION CATEGORY:	Category 2

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 involving the change of use from a vacant industry (formerly Sanitarium Health Food Company production and administration facility) to a maintenance and grounds depot in association with an existing educational establishment (St Peter's College); alterations and additions; and the creation of a bituminised car parking area.

Staff do not have delegated authority to determine the application, as it is Category 2 and a representation was received, in opposition to the application. As such, the Application is referred to the Panel for determination.

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

Subject Land Attributes

Shape:	irregular
Frontage width:	36.89m frontage to Hackney Road 75.05m frontage to Cambridge Street 55.37m frontage to Hatswell Street
Depth:	150.72m
Area:	8162m ²
Topography:	sloping from south-east to north-west
Existing Structures:	there are several buildings on the subject land that were part of the former Sanitarium Health Food Company administration and production facility. The former office/administration building part of the facility is set back from Hackney Road and is separated by a large lawned area. The other buildings that were associated with the former production facility are located behind the office/administration building.

Existing Vegetation: the site is predominantly covered with built form and/or hard paving. The western section of the site (ie. adjacent the Hackney Road frontage) is lawned and landscaped.

The subject land is partially bounded by Hackney Road and Cambridge Street to the west and north respectively and Hatswell Street to the east. Vehicular access to the subject land is currently only via Hatswell Street.

Between 1941 and 2010, the Sanitarium Health Food Company occupied and utilised the subject land for manufacturing, processing and distributing their products. That use has since been abandoned. As such, any lawful land use rights associated with the previous occupant of subject land have since ceased, pursuant to Section 6(2)(a) of the *Development Act 1993*.

Locality Attributes

Land uses:	predominantly residential
Building heights (storeys):	single-storey and two-storey
Streetscape amenity	moderate to high – the surrounding residential streets comprise a number of original character dwellings.

The subject land is located within the Community Zone on the western perimeter of the Council Area, which is bounded by Hackney Road. Botanic Park, which is part of the Adelaide Parklands, is located on the western side of Hackney Road, adjacent the subject land. Hackney Road is a heavily trafficked primary arterial road, however, a raised median separates the main vehicular traffic carriageway from a local traffic lane, servicing properties fronting Hackney Road.

Mocatta House, a colonial Georgian-style single storey Local Heritage Place, adjoins the subject land to the south at 69 Hackney Road. Mocatta House is sited on spacious grounds and is used as a dwelling and medical clinic. To the north of the subject land at 79 Hackney Road, is a two storey Local Heritage Place, known as 'Park Lodge', which is occupied as a dwelling.

Cambridge Street is characterised by residential development in the form of modest single-storey dwellings, many of which are original building stock. All of the dwellings east of and including 3 Cambridge Street (southern side of Cambridge Street) and 6 Cambridge Street (northern side of Cambridge Street) are located within the Residential Historic (Conservation) Zone. The two-storey Local Heritage Place at 79 Hackney Road along with ten (10) cottages and maisonettes, which occupied the land bounded by Hackney Road, Cambridge Street, University Street and Oxford Street, were developed in 1870. Of the cottages that front the northern side of Cambridge Street, 6, 8, 10, 12, 14 and 16 Cambridge Street remain. The southern side of Cambridge Street is also characterised by 19th century workers maisonettes.

Hatswell Street is characterised by residential development on the western side, whilst directly to the east, is a sports oval associated with St Peters College.

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

Proposal in Detail

The proposal involves converting the currently vacant industry (formerly Sanitarium Health Food Company production and administration facility) to a maintenance and grounds depot in association with existing directly neighbouring St Peter's College. This involves alterations and additions to several of the existing buildings located on the site and the creation of a bituminised car parking area comprising 39 spaces. The proposed internal alterations and additions are largely confined to the northernmost buildings adjacent to the Cambridge Street frontage. The buildings are proposed to be used for office/administration areas, staff amenities, a workshop area and storage areas.

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

Notification

The proposal has been identified and processed as a Category 2 form of development, as it comprises: *“any kind of development associated with, or ancillary to an Educational Establishment that is located 20 metres or less from a zone boundary”*.

In this instance, the subject land borders both the Residential Historic (Conservation) Zone and the Residential Character Zone.

Two (2) representations were received (one in favour and one opposed) in response to this notification, copies of which are contained in **Attachment C**. The representor who is opposed to the development raised the following issue:

- *“this area needs to be residential not a parking lot”*.

The Applicant has responded to the representations received and a copy of the response is contained in **Attachment D**. The response highlights that although the proposal includes resurfacing of an existing car parking area, the proposal is not for a ‘parking lot’ but rather various components of use associated with the school.

State Agency Consultation

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

Discussion

The subject land is located within the Community Zone and with that, the Education Policy Area 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:

Education Policy Area Objective:	1, 2, 4 & 6
Education Policy Area Principle of Development Control:	1
Community Zone Objective:	1 & 2.
Community Zone Principle of Development Control:	1, 2, 4 & 7.
City Wide Objectives:	1, 2, 7, 8, 10, 26 & 27.
City Wide Principles of Development Control:	1, 2, 3, 4, 12, 16, 19, 83 – 87, 90 & 91.

The proposed development involves a change of use of the land from a vacant site (formerly an industrial use) to a maintenance and grounds depot in association with an existing educational establishment (ie. St Peter's College), which is located directly adjacent to the east of the subject land.

Objective 1 and Principle 1 of the Education Policy Area state the following respectively:

“A policy area accommodating education and recreational activities and associated administrative facilities.”

and

“Land uses that support a range of activities associated with educational facilities and where appropriate, extend to the broader community out of school hours.”

This proposal is consistent with these two principles as it is intended to provide an ancillary function to the ongoing operation and maintenance of the existing educational establishment.

Consideration needs to be given to the likely impacts associated with the operation of the proposed uses of the land on the adjacent residential properties. The subject land is surrounded to the north, south and west by residential properties.

The Education Policy Area Desired Character Statement states (in part):

“The Education Policy Area provides for the consolidation and continuation of education activities. Any increased recreational or institutional use, particularly out of school hours shall, be undertaken in a manner that will not have a detrimental impact on the amenity of adjacent residential areas.”

In addition to this, both City Wide Principles of Development Control 83 and 84 relate to developments that abut residential zones.

In terms of assessing likely noise impacts, City Wide Principle of Development Control 86 states:

“Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises.”

To achieve the *Environment Protection (Noise) Policy 2007*, which provides recommended noise level criteria for noise sources associated within developments adjacent residential areas, the Applicant sought advice from Sonus, an acoustic consulting firm. Sonus have recommended that acoustic treatment be undertaken in the following manner:

- construct a nib wall adjacent the south facing roller door of the “deliveries/trade” building that is located directly adjacent to the rear yard area of 3 Cambridge Street. The location of the nib wall is shown in red in **Attachment B23** with the intended height to be above the south facing roller door opening; and
- construction of internal partitions within the “workshop” building. The location of the internal partitions are shown in blue in **Attachment B23**. Furthermore, the personal access door situated along the southernmost partition wall is to remain closed other than when access/egress is required.

Subject to the above recommendations being implemented, Sonus have advised that the proposal would accord with the *Environment Protection (Noise) Policy 2007* and City Wide Principle 86.

Having regard to the advice from Sonus, the anticipated noise generating activities within the existing buildings are not considered to result in an unreasonable impact on directly neighbouring residential properties, subject to the acoustic measures recommended.

From a land use perspective, the proposed development is consistent with the intended land uses within this particular policy area and the development will form a coordinated and consolidated extension of an existing educational establishment.

streetscape/bulk/scale/height/character

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

Education Policy Area Objective:	4
Education Policy Area Principle of Development Control:	4, 5, 6 & 7.
City Wide Objectives:	18, 19 & 20.
City Wide Principles of Development Control:	29-33, 35, 37 & 39

Aside from the construction of the acoustic nib wall adjacent the “deliveries/trade” building, the majority of the proposed building work is confined to the internal areas of the designated existing buildings on the subject land. In this context, the proposed building work will not have any discernible impact on the streetscapes of Hackney Road, Cambridge Street or Hatswell Street.

Car parking/access/manoeuvring

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

Table NPSP/9

City Wide Objectives:	32 & 34.
City Wide Principles of Development Control:	98, 102, 103, 104, 113, 115, 117, 120, 122, 123, 124, 127, 129 & 130.

Vehicular access to the proposed development is proposed via a dual crossover (ie. entry and exit) adjacent the Hatswell Street frontage.

City Wide Objective 34 and City Wide Principle of Development Control 98 state the following respectively:

“Development which provides adequate and safe car parking appropriate to the demands generated.”

and

“Development should provide safe and convenient access for all anticipated modes of transport.”

The proposed development includes a bituminised and linemarked car parking area comprising 39 car spaces.

In terms of the car parking demand that the proposed development is likely to generate, Table NPSP/9 in the Development Plan provides the following car parking rates:

- office - 4 spaces per 100m²; and
- light industry/warehouse/service industry 3 spaces per 100m² (office component plus 1 space per 100m² (non-office component).

The Applicant engaged the services of Ms Melissa Mellen, a Traffic Engineer from MFY Pty Ltd, to provide an analysis of the car parking demand that the proposed development is likely to generate and whether the proposed on-site car parking provision is adequate to service the proposal. In summary, Ms Mellen’s report states the following:

- adopting the car parking rates specified in the Council’s Development Plan for the proposed land use components, the proposed development would generate a car parking demand of 41 spaces whereas 39 spaces are to be provided. The car parking spaces are intended to be staff from St Peter’s College and associated contractors.
- the majority of the anticipated traffic movements will be between the existing St Peter’s College outdoor areas and the subject land via Hatswell Street; and
- the proposed car parking layout and configuration satisfies the requirements of *Australian/New Zealand Standard 2890.1: 2004* and *Australian/New Zealand Standard 2890.6-2009*.

A copy of Ms Mellen’s report is contained in **Attachment B30- B33**.

The development has a theoretical shortfall of two (2) car parking spaces, which is unlikely to have any significant discernible impact on the existing road network or the amenity of nearby residents.

With respect to the configuration of the car park, Ms Mellen has advised that the bay lengths, bay widths and aisle widths are all consistent with the relevant car parking standards.

Overall, the car parking provision is considered acceptable and the development is considered to enable safe and convenient access/egress to the subject land, consistent with City Wide Objective 34 and Principles of Development Controls 98 respectively.

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:	42
City Wide Principles of Development Control:	147, 148, 149 & 151

A relatively small portion of the western lawned area of the subject land (ie. directly adjacent Hackney Road) is situated within the 1 in 100 year ARI flood plain.

The former Sanitarium Health Food Company production and administration facility had an internal sealed car parking area whereas now, this area of the property is largely unsealed. As discussed earlier in this report, the proposal involves creating an internal bituminised car parking area.

The conceptual Stormwater Management Plan (ie. **Attachment B34-B49**) prepared by FMG Engineering indicates that stormwater runoff from the car parking area is to be directed to the Cambridge Street water table via a combination of “wet” underground drainage system and surface flow.

The Council’s Project Manager – Assets, has reviewed the proposed stormwater management measures and has advised that in principle, he is satisfied that the proposal conforms to the Council’s Urban Services stormwater management requirements, with respect to managing volumes of stormwater discharged from the site. However, the Project Manager – Civil has requested that should the Panel determine to approve the proposed development, a condition of consent be imposed requiring that a detailed stormwater network plan be submitted, prior to Development Approval being granted.

Summary

From a land use perspective, the proposal is considered to be consistent with both the zone and policy area objectives. The proposed land use is unlikely to create any significant loss of amenity for directly adjacent and nearby residents within the locality, subject to the measures recommended by Sonus.

Notwithstanding the car parking shortfall of two (2) spaces, the extent of car parking that is proposed is considered to be acceptable. Vehicular access and egress is considered to be safe and convenient.

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

RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/796/19 by St Peter’s College, to change of use from a vacant industry (formerly Sanitarium Health Food Company production and administration facility) to a maintenance and grounds depot in association with an existing educational establishment (St Peter’s College); alterations and additions; and the creation of a bituminised car parking area., on the land located at 71-77 Hackney Road, Hackney, subject to the following requirements, conditions and notes:

Relevant Plans

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

- plans (Project Number A18-0109) prepared by DesignInc Adelaide Pty Ltd and received by the Council on 9 December 2019.
- Stormwater Management Plan (Job Number S30465-262919) prepared by FMG Engineering and received by the Council on 21 February 2020.
- recommendations contained in the Environmental Noise Assessment Reports (Reference Numbers S6236C3) prepared by Sonus Pty Ltd and received by the Council on 7 January 2020.

Conditions

1. Stormwater and engineering calculations detailing pre-development and post-development levels in 1 in 5 year ARI events shall be provided by the Applicant, confirming that the detention storage provided is adequate and conforms to the Council's Urban Services requirements, prior to the granting of Development Approval.
2. All stormwater from buildings and paved areas shall be disposed of in accordance with recognised engineering practices in a manner and with materials that does not result in the entry of water onto any adjoining property or any building, and does not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into either the adjacent street kerb & water table or a Council underground pipe drainage system.
3. All car parking spaces shall be linemarked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.
4. 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.
5. All car parking spaces, driveways, and vehicle manoeuvring areas shall be maintained in a good condition at all times to the reasonable satisfaction of the Council or its delegate.
6. At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.
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. 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.

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 requirements of the Fences Act 1975 regarding permission from any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission available at www.lsc.sa.gov.au. Alternatively a hard copy can be mailed to you on request by contacting the Planning Department on 8366 4530 or 8366 4508.

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

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

Moved

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/796/19 by St Peter's College, to change of use from a vacant industry (formerly Sanitarium Health Food Company production and administration facility) to a maintenance and grounds depot in association with an existing educational establishment (St Peter's College); alterations and additions; and the creation of a bituminised car parking area., on the land located at 71-77 Hackney Road, Hackney, subject to the following requirements, conditions and notes:*

Relevant Plans

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

- *plans (Project Number A18-0109) prepared by DesignInc Adelaide Pty Ltd and received by the Council on 9 December 2019.*
- *Stormwater Management Plan (Job Number S30465-262919) prepared by FMG Engineering and received by the Council on 21 February 2020.*
- *recommendations contained in the Environmental Noise Assessment Reports (Reference Numbers S6236C3) prepared by Sonus Pty Ltd and received by the Council on 7 January 2020.*

Conditions

1. *Stormwater and engineering calculations detailing pre-development and post-development levels in 1 in 5 year ARI events shall be provided by the Applicant, confirming that the detention storage provided is adequate and conforms to the Council's Urban Services requirements, prior to the granting of Development Approval.*
2. *All stormwater from buildings and paved areas shall be disposed of in accordance with recognised engineering practices in a manner and with materials that does not result in the entry of water onto any adjoining property or any building, and does not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into either the adjacent street kerb & water table or a Council underground pipe drainage system.*
3. *All car parking spaces shall be linemarked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.*
4. *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.*
5. *All car parking spaces, driveways, and vehicle manoeuvring areas shall be maintained in a good condition at all times to the reasonable satisfaction of the Council or its delegate.*

6. *At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.*
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. *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.*

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 requirements of the Fences Act 1975 regarding permission from any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission available at www.lsc.sa.gov.au. Alternatively a hard copy can be mailed to you on request by contacting the Planning Department on 8366 4530 or 8366 4508.

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

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

Seconded and carried

2. STAFF REPORTS

2.3 DEVELOPMENT APPLICATION 155/C066/2019 & 155/416/2019 – MR M COOPER – 92B & 92C OSMOND TERRACE, NORWOOD

DEVELOPMENT APPLICATION:	155/C066/19 and 155/416/19
APPLICANT:	Mr M Cooper
SUBJECT SITE:	92B and 92C Osmond Terrace, Norwood (Certificate of Title Volume: 6191 Folio: 2 and 3)
DESCRIPTION OF DEVELOPMENT:	Construction of a three-storey residential flat building (comprising five dwellings) with associated basement car parking; and Community Title Land Division (creating five lots from two existing allotments)
ZONE:	Residential Character (Norwood) Zone – Norwood, Payneham and St Peters (City) Development Plan (dated 21 March 2019)
PUBLIC NOTIFICATION CATEGORY:	Category 3

Purpose of Report

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

Background

Both Community Title Land Division Application 155/C066/19 (creating five lots from two existing allotments) and Development Application 155/416/19 (comprising the construction of a three-storey residential flat building (comprising five dwellings) with associated basement car parking) were considered by the Panel at its meeting held on Monday 18 November 2019. The Panel determined to refuse the Community Title Land Division Application for the following reasons:

The proposed division of land is contrary with City Wide Principle of Development Control 21(d), in particular:

- *A three-storey residential flat building is at odds with City Wide Principle of Development Control 32 and Residential Character (Norwood) Zone Principle of Development Control 12 which prescribes that the maximum building height above natural ground level should not exceed two-storeys.*
- *The overall height and scale of the building which would result from the land division has a poor relationship with the adjacent single storey dwellings at 92 and 94 Osmond Terrace, which are identified as Local Heritage Places (LHP's) within the Council's Development Plan. The overall building mass would loom large in relation to the LHP's and result in an overbearing building. The proposed development is therefore contrary to City Wide Principles of Development Control 359 and 361.*
- *The overall height and scale of the building which would result from the land division is contrary to City Wide Principle of Development Control 29(c) as it is inconsistent with the established built form character of adjacent and surrounding development when viewed within the context of the Osmond Terrace locality.*

As the land division was refused, the Panel did not proceed to determine the application for the built form / land use.

A copy of the relevant section of the Minutes of the Panel meeting held on 18 November 2019, including the refused plans, is contained in **Attachment A**.

Following the refusal of the Application by the Panel, the Applicant lodged an Appeal with the ERD Court. A preliminary conference was held at the ERD Court on Monday 3 February 2020, at which the Court directed the matter into the pending track at the request of the appellant, to provide an opportunity to seek to resolve the issues of contention and to gain the Panel's support of the proposal.

Amended plans and details are contained in **Attachment B** and are the subject of this report. In summary, the proposed amendments comprise:

- Reducing the floor area of the dwelling at second floor level (ie. third level);
- Lowering the roof pitch and tapering the eaves
- Reducing the forward projection of the southern terrace at ground and first floor level;
- Reducing the 'strength' of the proposed materials and colours; and
- Providing additional articulation and modulation to the northern and southern apartment walls at ground and first floor.

Discussion

With respect to the fifth dwelling at the third level, the main and secondary face of the western (street facing) elevation have been set back further east 1.6 metres and 1.9 metres respectively. The portion of the terrace on the northern elevation, which formed part of the original proposal, has been removed. In addition approximately half of the northern elevation has been set back 1.3 metres towards the south. As a result of the amended setbacks, the internal floor area of the fifth dwelling is now 172m², whereas previously it was 194m²

The original proposal considered by the Panel incorporated a 10 degree roof pitch to the fifth dwelling at the third level, whereas the fifth dwelling now has a 5 degree roof pitch. In terms of the overall height of the proposal, the lowered roof pitch of the fifth dwelling results in a reduction in overall height from 12.5 meters to 11.7 metres.

In terms of proposed changes to the eaves/canopies at ground and first floor levels, the original proposal incorporated 1.0 metre deep projecting aluminium clad rectilinear canopies. The compromise proposal maintains projecting canopies to the fifth dwelling, however the canopies are splayed and vary in depth from approximately 400mm to 1.3 metres.

The depth of the terrace/balcony areas of the two (2) dwellings adjacent the southern side boundary have been reduced in depth by 1.9 metres and the associated masonry pier and roof area above the dwellings at the second-storey have been removed. Conversely, the width of the terrace/balcony areas of the two (2) dwellings adjacent the northern side boundary have been reduced by 2.1 metres with the external associated masonry pier and roof area above the dwelling at the second-storey having been removed.

In terms of the change in materials and colours to the proposed building, the only change that is documented on the architectural plans and in particular, listed in the "External Finishes" schedule (ie. **Attachments A21 and B5**) is that the colour of the standing seam wall cladding to the fifth dwelling has been changed from "Windspray" to "Monument". The soffit lining and fascia (ie. aluminium panels) of the projecting canopies is noted as an off white colour. This is considered to draw attention to the projecting canopies of the fifth dwelling at the third level.

Attachments A20 and B5 illustrate the streetscape effect of the proposed changes. In this respect, the modifications to the terrace/balcony areas are considered to result in the building having a somewhat less "framed" out appearance at the first two levels, given the removal of the two masonry pier elements.

In term of the prominence of the fifth dwelling at the third level, the western facing facade has been setback further east and the overall roof height of the building has been reduced (ie. in the order 800mm) given the reduction in roof pitch. That said, the wall heights of the fifth dwelling still remain at 2.6 metres and combined with the projecting canopy elements (ie. up to 1.3 metres), result in third level being clearly visually prominent when viewed within a streetscape context.

The proposed design changes do not alter the fact the residential flat building is ostensibly three-stories in height. Visually, the building is still incompatible in terms of bulk and scale when viewed within the Osmond Terrace streetscape and directly adjacent land. The amended proposal still has an incompatible streetscape relationship with the two adjacent Local Heritage Places, given its large and dominant visual form.

Summary

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

The Residential Character (Norwood) Zone anticipates development up to two-storeys in height. The proposed three-storey development is at odds with this policy. From a built form perspective, the proposed three-storey building will dominate the surrounding landscaping and is considered to detract from the existing contribution that the two directly adjacent 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/C066/19 by Mr M Cooper to undertake a Community Title Land Division (creating five lots from two existing allotments) on the land located at 92B and 92C Osmond Terrace, Norwood, for the following reasons:

1. A three-storey residential flat building is at odds with City Wide Principle of Development Control 32 and Residential Character (Norwood) Zone Principle of Development Control 12 which prescribes that the maximum building height above natural ground level should not exceed two-storeys.
2. The overall height and scale of the building which would result from the land division has a poor relationship with the adjacent single storey dwellings at 92 and 94 Osmond Terrace, which are identified as Local Heritage Places (LHP's) within the Council's Development Plan. The overall building mass would loom large in relation to the LHP's and result in an overbearing building. The proposed development is therefore contrary to City Wide Principles of Development Control 359 and 361.
3. The overall height and scale of the building which would result from the land division is contrary to City Wide Principle of Development Control 29(c) as it is inconsistent with the established built form character of adjacent and surrounding development when viewed within the context of the Osmond Terrace locality.

Mr Mosel left the meeting at 7:33pm

Mr Smith chaired the meeting for item 2.3.

Ms Bowden declared a perceived conflict of interest.

Ms Bowden left the meeting at 7:34pm.

The Presiding member ordered that the public, with the exception of the Assessment Manager and other staff so determined, be excluded from attendance to discuss, consider and determine in confidence, information contained within reports at Items 2.3 and 2.4 of the agenda submitted by the Assessment Manager.

Moved

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, the Environment Resources & Development Court be advised that the compromise plans submitted in respect to Development Application No. 155/416/2019 by Mr M Cooper to construct a three storey residential flat building (comprising five dwellings) with associated basement car parking on the land located at 92B and 92C Osmond Terrace, Norwood, are not supported for the following reasons:

- 1. A three-storey residential flat building is at odds with City Wide Principle of Development Control 32 and Residential Character (Norwood) Zone Principle of Development Control 12 which prescribes that the maximum building height above natural ground level should not exceed two-storeys. However, the Panel accepts that a third level could be acceptable provided it is significantly reduced in area with:
 - Increased front setback including to the balustrades of the terrace and the main face of the apartment.
 - Increased rear setback to the apartment.*
- 2. The overall height and scale of the building has a poor relationship with the adjacent single storey dwellings at 92 and 94 Osmond Terrace, which are identified as Local Heritage Places (LHP's) within the Council's Development Plan. The overall building mass would loom large in relation to the LHP's and result in an overbearing building. The proposed development is therefore contrary to City Wide Principles of Development Control 359 and 361. However, the Panel would accept a compromise which incorporated a greater horizontal expression and reduced the impact of the blade walls flanking the car park entry which currently extend to the full height of the building. In addition, the Panel would seek further refinement of the materials pallet to include muted, softer, non-contrasting tones and textured materials.*
- 3. The Council Assessment Panel (CAP) notes that there is no valid development authorisation to divide the land and that until such time as such approval to divide the land is granted, the Panel understands that the ERD Court is not in a position to issue a consent in respect of Development Application No. 155/416/19.*

Seconded and carried

2. STAFF REPORTS

2.4 DEVELOPMENT APPLICATION 155/C031/2019 – KSBA INVEST PTY LTD – 413 PAYNEHAM ROAD, FELIXSTOW

DEVELOPMENT APPLICATION:	155/C031/19
APPLICANT:	KSBA Invest Pty Ltd
SUBJECT SITE:	413 Payneham Road, Felixstow (Certificate of Title - Volumes: 5189 & 5190 and Folios: 928 & 40)
DESCRIPTION OF DEVELOPMENT:	Community Title Land Division creating eleven (11) Community Lots and the construction of a mixed use development comprising ten (10) three-storey townhouses and a two-storey office, including a car parking area, civil works and landscaping
ZONE:	Residential Zone – Medium Density Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 21 March 2019)
PUBLIC NOTIFICATION CATEGORY:	Category 3

Purpose of Report

The purpose of this report is to seek from the Panel further and better particulars in respect to its reasons for not accepting a compromise proposal at its meeting held on 17 February 2020.

Background

Development Application 155/C031/19 was lodged in July 2019 for a Community Title Land Division creating eleven (11) Community Lots and the construction of a mixed use development comprising ten (10) three-storey townhouses and a two-storey office, including a car parking area, civil works and landscaping.

The Panel considered the Development Application at its meeting held on Monday 21 October 2019 and determined to refuse the Application for the following reasons:

“That the proposal inadequately addresses the provisions of the Development Plan (mainly in respect of City Wide PDCs 120, 267, 275 & 276, 279 & 282, 284 & 285, Medium Density Policy Area PDC 7) with respect to:

- Setback to St Johns Lane/massing*
- Usability of private open space and relationship to living areas*
- Street interface*
- Dwelling orientation*
- Landscaping*
- Site facilities and storage*
- Adequacy of parking”*

Following the refusal of the Application by the Panel, the Applicant lodged an Appeal with the ERD Court. A preliminary conference was held at the ERD Court on Monday 2 December 2019, at which the Court directed the matter into the pending track at the request of the appellant, to provide an opportunity to seek to resolve the issues of contention and to gain the Panel’s support of the proposal.

The first compromise proposal was considered by the Panel at its meeting held on 16 December 2019. The Panel determined that it was not satisfied that the amended proposal was sufficiently in accordance with the Development Plan to merit Development Plan Consent for the same reasons as previously resolved.

The second compromise proposal was considered by the Panel at its meeting held on 17 February 2020. The Panel also determined that the second compromise proposal was not sufficiently in accordance with the Development Plan to merit Development Plan Consent for the same reasons that were given at the 21 October 2019 meeting. A copy of the relevant section of the minutes of the meeting held on 17 February is contained in **Attachment A**.

A resuming conference was held at the ERD Court on 19 February 2020. At the conference, the Appellant advised the Court that they would like greater clarity regarding the Panel's reasons for not accepting the second compromise.

To this end, the ERD Court issued an Order directing the Panel "*to provide further and better particulars of its refusal grounds for (DA 155/C031/2019) in particular:*

- *Setback to St Johns Lane/massing*
- *Street interface*
- *Dwelling orientation; and*
- *Adequacy of parking"*

A copy of the ERD Court Order is contained in **Attachment B**.

Upon issuing the Order, the Court also closed the conciliation conference and listed the Appeal for a Directions Hearing to be held on 26 March 2020.

Discussion

Section 16(7) of the *Environment Resources and Development Court Act 1993*, states that the member of the Court presiding at a conference may require a party to the proceedings to furnish particulars of his or her case. As such, the Panel, as the relevant delegate of the Council in this instance, is required to provide the Court with the requested particulars.

Recommendation

That the Environment Resources and Development Court be provided with the following further and better particulars of its refusal grounds for DA 155/C031/2019:

1. Setback to St Johns Lane/massing
 - a.
 - b.
 - c.

2. Street interface
 - a.
 - b.
 - c.

3. Dwelling orientation; and
 - a.
 - b.
 - c.

4. Adequacy of parking
 - a.
 - b.
 - c.

Mr Mosel and Ms Bowden returned to the meeting at 8:18pm

Moved

That the Environment Resources and Development Court be provided with the following further and better particulars of its refusal grounds for DA 155/C031/2019:

Setback to St Johns Lane/massing

- Regardless if a development comprises two or three stories, the upper level(s) (including balconies) should be set back at least 2.0 metres as called for by Residential Zone Principle of Development Control 8 which states that development should be designed with the following setback parameters:

“Minimum setback from secondary road frontage:

- Arterial roads 4.5 metres
- Non-arterial roads 0.9 (single storey)
2 metres (upper storey)”

- When viewed from St Johns Lane and the adjacent residential properties at 2 Briar Road, the visual massing of Dwellings 1 – 4 is considered to be too dominant which is therefore inconsistent with both City Wide Principle of Development Control 193(a) and 206(a) which state respectively:

Dwellings should be designed and sited to minimise the impact of the building’s bulk when viewed from the private open space of adjacent sites by:

- (a) *increasing setbacks on upper levels of buildings in order to achieve greater separation from neighbouring private open space;*

And

“Unless otherwise specified in the relevant Zone and/or Policy Area, the set-back of dwellings from their side and rear boundaries should be progressively increased as the height of the building increases:

- (a) *to minimise the visual impact of the building from adjoining properties;”*

- *The proposed setbacks provide insufficient opportunity to incorporate landscaping in accordance with the Residential Zone Desired Character which seeks front gardens and spaces between buildings in a way that projects suburban feel.*

Street interface

- *The 1.8 metre high solid fencing adjacent St Johns Lane does not enable the possibility of passive surveillance to occur from the ground level areas of Dwellings 1 – 4. In this context, the proposal is at odds with City Wide Principles of Development Control 59, 60 and 66 which state respectively:*

“Development should be designed to maximise surveillance of public spaces through the incorporation of clear lines of sight, appropriate lighting and the use of visible permeable barriers wherever practicable;

Buildings should be designed to overlook public and communal open spaces and streets to allow casual surveillance; and

Development fronting a laneway (including a service lane), or other minor or unserviced street should maximise the potential for passive surveillance by ensuring that the building can be seen from nearby buildings and the laneway/minor streets/unserviced streets.”

- *The 1.8 metre high solid fencing does little to activate the St Johns Lane frontage as part of the proposed development. In this regard, the proposal is inconsistent with City Wide Principle of Development Control 79(c) which states:*

“Fences and walls, including retaining walls, should:

- (c) enable some visibility of buildings from and to the street or laneway (only where it is the primary street) to allow casual surveillance;”*

Dwelling orientation and solar access

- *The overall development site is large enough to orientate, configure and design dwellings on their associated sites in such a way that maximises access to northern light as called for by the Residential Character Zone Desired Character Statement (in part) and City Wide Objective 66 and Principle of Development Control 24(c), 67 and 186(d), which state respectively:*

“Buildings designed and sited to be energy and water efficient;”

“Building design will have regard to best practice energy efficiency principles, in order to reduce dependency on mechanical heating, cooling and lighting systems and provide year-round comfort and amenity to occupants. In this context, dwellings will be designed having regard to the benefits of northern sun exposure to main living areas (internal and external), with appropriate window sizing and positioning and use of eaves and verandahs;

The layout of a land division should:

- (c) provide for efficient solar access.*

Development should provide for efficient solar access to buildings and open space all year round; and

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

- (d) passive energy design;”*

- *Bedroom two of dwellings 6-10 have poor solar access*

Adequacy of parking

- *The proposed development has insufficient car parking provision in order to simultaneously accommodate both residential visitor parking and office employee/visitor car parking. On this basis, the proposed development is at odds with the parking rates for both residential and non-residential land uses contained in Tables NPSP/8 and 9 respectively. This is a particularly important failure of the Development in light of the limited capacity for on street car parking abutting the site.*

Seconded and carried

3. OTHER BUSINESS

Nil

4. CONFIDENTIAL REPORTS

Nil

5. CLOSURE

The Presiding Member declared the meeting closed at 8:47pm

Terry Mosel
Presiding Member

Mark Thomson
Manager Development Assessment