

Council Assessment Panel Minutes

15 June 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 Norwood Concert Hall, Norwood Town Hall

HOUR 7:00 PM

PRESENT

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

Staff Mark Thomson Manager Development Assessment
Tala Aslat Planning Assistant
Ellen De Souza Development Officer, Planning

APOLOGIES

ABSENT

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT
PANEL HELD ON 18 MAY 2020**

Motion was put that the minutes of the Meeting of the Council Assessment Panel, held on 18 May 2020 be taken as read and confirmed.

Seconded and Carried

2. STAFF REPORTS

2.1 DEVELOPMENT APPLICATION 155/C008/2020 & 155/792/2019 – NORWOOD DEVELOPMENTS – 10-12 STEPHEN STREET, NORWOOD

DEVELOPMENT APPLICATION:	155/C008/20 and 155/792/19
APPLICANT:	Norwood Developments
SUBJECT SITE:	10-12 Stephen Street, Norwood (Certificate of Title Volume: 6153 Folios: 844, 858 and 859)
DESCRIPTION OF DEVELOPMENT:	155/C008/20: Community Title land division (creating seven additional allotments) 155/792/19: Construction of a three storey residential flat building containing eight dwellings
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 information to the Panel in order for a determination to be made on two development applications which were previously considered and deferred by the Panel, at its meeting held on 18 May 2020. The Applicant has submitted amended plans and it is necessary for the Panel to determine whether or not the applications sufficiently accord with the Development Plan to merit consent.

Background

The Applicant is seeking consent for a Community Title land division creating seven additional allotments (155/C008/20) and to construct a three storey residential flat building containing eight dwellings (155/792/19).

At its meeting held on 18 May 2020, the Panel determined:

*“That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, Development Application Number 155/C008/20 by Norwood Developments to undertake a Community Strata land division creating seven additional allotments, on the land located at 10-12 Stephen Street, Norwood, is deemed to insufficiently accord with the Development Plan such that it does not warrant consent in its current form and as such, consideration of the Application is **deferred**, to enable the Applicant to consider amending their proposal to overcome the following concern:*

- *To provide the developer the opportunity to revise the proposal to alter the rear setback to improve solar access to the property to the south and to substantially increase the quality of the landscaping to improve visual amenity.”*

And

*“That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, Development Application Number 155/792/19 by Norwood Developments to Construct a three storey residential flat building containing eight dwellings at 10-12 Stephen Street, Norwood, is deemed to insufficiently accord with the Development Plan such that it does not warrant consent in its current form and as such, consideration of the Application is **deferred**, to enable the Applicant to consider amending their proposal to overcome the following concern:*

- *To provide the developer the opportunity to revise the proposal to alter the rear setback to improve solar access to the property to the south and to substantially increase the quality of the landscaping to improve visual amenity.”*

A copy of the relevant section of the Minutes of the Panel meeting held on 18 May 2020, including attachments, is contained in **Attachment A**.

The applicant has subsequently submitted amended plans. The amendments can be summarised as follows:

- a reduction in the external wall height at the rear of the building by approximately 750mm;
- an increase in the rear setback of the main rear wall of the building by 1 metre;
- an increase in the rear setback of the common corridor privacy screen by approximately 1.4m;
- increased ground level front setback by approximately 300mm; and
- increased landscaping at the front and rear of the building.

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

Discussion

The following discussion is based on the two aspects of the proposal which the Panel raised concern with upon consideration of the original application and provided the applicant the opportunity to amend.

Solar Access to the Property to the South

On 20 November 2019, Norwood Developments Pty Ltd obtained Development Plan Consent for the construction of two pairs of semi-detached dwellings on the land adjoining the subject land to the south. On 16 March 2020 Building Rules Consent was granted and on 25 March, full Development Approval was granted. The ground level living rooms of the approved semi-detached dwellings are set back 5.5 metres from the boundary of the subject land.

City Wide Principles of Development Control 195 and 196 state respectively:

“Unless otherwise specified in the relevant Zone and/or Policy Area, development should ensure that the north-facing windows of habitable rooms of dwelling(s) on adjacent sites receive at least 3 hours of direct sunlight over a portion of their surface and in the case of the main living area windows, a minimum of 50% of their surface, between 9am and 5pm on the winter solstice (21 June). Development should not increase the overshadowed area in cases where overshadowing from existing structures, fences and non-deciduous vegetation already exceeds this requirement.”

and

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

The applicant has provided shadow diagrams in plan form for 21 June, at 9:00am, 10:00am, 11:00am, midday, 1:00pm, 2:00pm and 3:00pm. In addition, a section drawing has been provided, showing the angle of the sun on 21 June at midday.

Based on the section drawing, approximately 40% of the surface of the main living area windows of the adjacent future semi-detached dwellings would receive sunlight at midday. As the sun is at its highest point in the sky at midday, the proportion of the windows receiving sunlight would decrease before and after midday. Exceptions to this are the dwellings on either end. The easternmost dwelling would receive sunlight over a larger portion of its main living area window in the morning and the westernmost would receive sunlight over a larger portion in the afternoon.

Whilst it is difficult to gauge with accuracy, it is likely that two out of the four dwellings (ie. the middle two dwellings) would not achieve sunlight to main living area windows strictly in accordance with City Wide Principle 195, while the outside two dwellings would.

This is a significant improvement over the original application. The section drawing shows the outline of the building in the previous application. If the winter midday sun angle is applied to that previous outline, no sunlight reaches the surface of the main living area windows of the dwellings to the rear.

Conversely, the amended proposal results in little difference to the amount of overshadowing of the private open space areas of the townhouses during the winter solstice. The shadow diagrams show that the 5.5 metre deep rear yards of the dwellings are almost entirely overshadowed by the proposal in its amended form. Some sunlight would reach the private open space of the easternmost and westernmost dwelling in the morning and afternoon respectively.

Accordingly, the amended proposal would not achieve City Wide Principle 196. In practical terms, the amendments to the application would result in increased sunlight to the private open space of the adjacent dwellings at other times of the year. The Development Plan does not set criteria for sunlight access at other times of the year and as such, shadow diagrams have not been provided to show the amount of shadowing which would be caused by the proposal at other times. However, with a steeper sun angle at other times, including spring and autumn when direct sunlight is beneficial to occupant amenity, the amendments would result in improved sunlight access to the adjacent private open space areas.

Quality of Landscaping

The applicant engaged a Landscape Designer, Mr David Burnett, to assist with improving the quality of landscaping in the application. Mr Burnett has designed eight (8) garden areas, as set out below.

Garden Beds 1-4 are within the setback of the building from Stephen Street. This setback has been increased by approximately 300mm from the original application and the garden beds are proposed to be planted with a mix of trees, ground covers and potted plants.

Garden Beds 5 and 6 are at first floor level, between the rear boundary and the privacy screen of the common corridor. The setback of this privacy screen has been increased by 1.4 metres, resulting in a setback of 2.2 metres. Within this setback, potted plants (*Waterhousia floribunda*) are proposed to create an informal hedge.

Garden Beds 7 and 8 are proposed at first floor level as planter boxes within the balconies of Townhouses 2, 3, 6 and 7 and are proposed to be planted with mixed trailing succulents.

The amended landscaping scheme is considered to be a vast improvement over the original application, which would assist in softening and enhancing the appearance of the building from both Stephen Street and the rear of the semi-detached dwellings to the south.

Summary

The amendments to the application have resulted in improvements to solar access to the approved future dwellings on the property to the south and enhancements to the overall appearance of the building, through improved quality and quantity of landscaping.

The resultant overshadowing to the future dwellings to the south remains inconsistent with the quantitative criteria of the Development Plan, although in the case of access to living area windows, the relevant criteria is close to being achieved.

The quantitative criteria set out in City Wide Principles 195 and 196, are considered to serve two related purposes. Firstly, they serve to ensure development does not lead to unreasonable conflict between a new development and occupants of existing dwellings, by reducing the amount of sunlight they receive to an unacceptable level. Secondly, they seek to achieve good quality development outcomes, so that occupiers of dwellings (whether existing or future) can enjoy an appropriate level of living amenity and energy efficiency.

As the dwellings on the property to the south have not yet been constructed and are being developed by the applicant for the subject proposal, the former purpose is of less relevance in this instance. That said, the latter purpose remains relevant.

Despite the amended proposal not achieving the quantitative overshadowing criteria in the Development Plan, on balance the application is considered to sufficiently accord with the Development Plan to merit consent.

RECOMMENDATION 1

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application Number 155/C008/20 by Norwood Developments to undertake a Community Strata land division creating seven additional allotments, on the land located at 10-12 Stephen Street, Norwood, subject to the imposition of the following conditions and notes:

Relevant Plans

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

- Plan of Division prepared by State Surveys, Reference 19196, sheets 1 to 5, version dated 29 May 2020.

Conditions

Nil.

RECOMMENDATION 2

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application Number 155/792/19 by Norwood Developments to Construct a three storey residential flat building containing eight dwellings at 10-12 Stephen Street, Norwood, subject to the imposition of the following conditions and notes:

Relevant Plans

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

- Plans by Nic Design Studio, Drawing Numbers N2006-SD01-SD10, dated 27 May 2020;
- Landscaping plans by David Burnett, Drawing No.s DA000, DA100, DA101, DA102 and DA 103;
- Waste management plan by Colby Phillips dated 28 April 2020;
- Traffic and Parking assessment by Phil Weaver and Associates dated 26 March 2020.

Conditions

1. A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land being maintained at pre-development levels and includes investigation of the possible use of the stormwater easement to the east of the land to avoid reliance on pumps. On-site detention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.

2. All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the approved landscaping plan and schedule, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.
3. The existing mature ash tree adjacent Stephen Street which is shown on the plans to be retained, shall be replaced with another tree to the reasonable satisfaction of the Council in the event that it becomes diseased or dies following construction.
4. A sixteen kilolitre (16000 litres) communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m² of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.
5. The portion of the upper floor windows facing south, less than 1.7 metres above the floor levels, shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony to the reasonable satisfaction of the Council or its delegate.

Notes to Applicant

1. The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.
2. The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.
3. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.

The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
4. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
5. The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.

All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
6. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
7. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

Mr Gibson was invited to address the Panel from 7:04pm until 7:06pm

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 Number 155/C008/20 by Norwood Developments to undertake a Community Strata land division creating seven additional allotments, on the land located at 10-12 Stephen Street, Norwood, subject to the imposition of the following conditions and notes:*

Relevant Plans

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

- *Plan of Division prepared by State Surveys, Reference 19196, sheets 1 to 5, version dated 29 May 2020.*

Conditions

Nil.

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application Number 155/792/19 by Norwood Developments to Construct a three storey residential flat building containing eight dwellings at 10-12 Stephen Street, Norwood, subject to the imposition of the following conditions and notes:*

Relevant Plans

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

- *Plans by Nic Design Studio, Drawing Numbers N2006-SD01-SD10, dated 27 May 2020;*
- *Landscaping plans by David Burnett, Drawing No.s DA000, DA100, DA101, DA102 and DA 103;*
- *Waste management plan by Colby Phillips dated 28 April 2020;*
- *Traffic and Parking assessment by Phil Weaver and Associates dated 26 March 2020.*

Conditions

1. *A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land being maintained at pre-development levels and includes investigation of the possible use of the stormwater easement to the east of the land to avoid reliance on pumps. On-site detention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.*
2. *All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the approved landscaping plan and schedule and irrigation installed, prior to the occupation of the premises and shall be maintained, with any dead or disease plants replaced, to the reasonable satisfaction of the Council or its delegate.*
3. *The existing mature ash tree adjacent Stephen Street which is shown on the plans to be retained, shall be replaced with another tree to the reasonable satisfaction of the Council in the event that it becomes diseased or dies following construction.*

4. *A sixteen kilolitre (16000 litres) communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m² of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.*
5. *The portion of the upper floor windows facing south, less than 1.7 metres above the floor levels, shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony to the reasonable satisfaction of the Council or its delegate.*

Notes to Applicant

1. *The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.*
2. *The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.*
3. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.*

The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
4. *The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.*
5. *The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.*

All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
6. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*
7. *The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.*

Seconded and Carried

2. STAFF REPORTS

2.2 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 ten (10) Community Lots and the construction of a mixed use development comprising nine (9) three-storey townhouses and a single-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 provide details to the Panel on a third compromise proposal which has been submitted in relation to a Development Application that was refused by the Panel at its meeting held on 21 October 2019 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

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 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"

At its meeting held on 16 March 2020, the Panel provided the following further and better particulars of its refusal grounds:

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*

The Applicant has subsequently made further amendments to the proposal and has now submitted a third compromise proposal for the Panel’s consideration. In summary, the changes to the proposal include:

- the total number of dwellings has been reduced from ten (10) to nine (9) with one of the dwellings contained in the proposed residential flat building adjacent St Johns Lane removed.
- the mezzanine level of the office building has been removed, reducing the floor area of the office from 250m² to 175m².

- three (3) additional residential visitor car parking spaces have been created to service the now nine (9) dwellings.
- the fencing to the front yards of the dwellings fronting St Johns Lane has been amended from high solid fencing to 900mm high open-style fencing.

A copy of the amended plans that are the subject of this report are contained in **Attachment B**.

Discussion

The amended plans will be discussed in the context of the refusal grounds given by the Panel at its meeting held on 16 March 2020. All other aspects of the proposal are addressed in previous staff reports and are not significantly affected by the amended plans.

Setback to St Johns Lane/massing

The number of dwellings contained in the residential flat building fronting St Johns Lane has been reduced from four (4) to three (3).

By reducing the number of dwellings and revising the configuration, the three dwellings are set back 2.0 metres from St Johns Lane at the ground and first floor level and 3.0 metres at the second floor level (ie. the third storey).

The 2.0 metre setback from St Johns Lane is consistent with the secondary road frontage guideline in Medium Density Zone Principle of Development Control 7.

The increased setback at both ground level and first floor level (ie. 2.0 metres) combined with the 3.0 metre setback at the second floor level, is considered to result in a less visually dominant appearance when viewed from both St Johns Lane and neighbouring residential land at 2 Briar Road. In this regard, the proposal is considered to be consistent with Residential Zone Principle of Development Control 8 as well as the Residential Zone Desired Character Statement (in part) and City Wide Principle of Development Control 206(a), which state respectively:

“Dwellings will be designed to provide a good level of visual interest and articulation and should avoid large expanses of uninterrupted walling, tilt-up concrete or glass, or the monochromatic use of materials and finishes.”

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;”

Street interface

At the street level within St Johns Lane, the proposed front fencing and design appearance to the three dwellings have been revised. In particular, the fencing to the front yards has been amended from 1.8 metre high solid fencing to 900mm high open-style vertical aluminium slats (Colorbond colour “Monument”). In this context, the proposal results in an improved level of streetscape activation/connectivity at ground level which in turn is consistent with City Wide Principle of Development Control 79(c) which states (in part):

“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;”

In this regard, the compromise proposal is considered to address the Panel’s previous concerns in this respect.

Dwelling orientation and solar access

The now nine (9) proposed Community Lots and the nine (9) proposed dwellings are configured and orientated the same as the original proposal considered by the Panel at its meeting in October 2019. The proposed dwellings still do not maximise access to northern sunlight due to the orientation of the proposed lots and subsequent configuration of the dwellings and as such, the compromise proposal does not address the Panel's previous concerns in this respect.

Adequacy of parking

The configuration and number of car parking spaces both in the open-air car park and associated with the nine dwellings has been amended.

The office component has been reduced in floor area from 250m² to 175m² (ie. the mezzanine floor level has been removed so that the building is single-storey). Commensurately, the number of car parking spaces in the open-air office car park has been reduced from ten to seven. Applying the rate of 4 spaces per 100m², the office generates a car parking demand of seven spaces, which in turn is catered for within the revised open-air car parking area.

In terms of visitor car parking spaces, the two spaces adjacent the north-western rear boundary are maintained that formed part of the February 2020 compromise proposal. The latest compromise incorporates three additional visitor spaces between the south-eastern side of the residential flat building adjacent St Johns Lane and the northern side of the open-air office car parking area. As such, a total of five designated residential visitor car parking spaces are proposed to service the nine dwellings. In this regard, the proposed visitor car parking demand associated with the dwellings (ie. five spaces) satisfies the requirements detailed in Table NPSP/8, with none of these residential spaces being shared with visitors to the office as was the case with previous proposals.

The car parking configuration and the proposed number of car parking spaces is considered acceptable and in accordance with the relevant Development Plan policies, as set out in the previous reports presented to the Panel.

Summary

The most notable change adopted as part of this compromise proposal is the reduction in the number of dwellings from ten to nine. In addition to this, the size of the office has been reduced in floor area by way of removing the mezzanine level so that the building is now a single-storey building.

The overall siting and configuration of the dwellings remains relatively unchanged, as does the location of the office and the overall proposed bulk and scale of the development.

Both the ground and first floor levels of the residential flat building facing St Johns Lane have been set back further from the Lane, which assists in reducing the visual bulk and dominance within the lane and adjacent residential properties.

The three dwellings fronting St Johns Lane incorporate low-open style fencing (as opposed to 1.8 metre high Colorbond fencing) which in turn provides greater visual connectivity to and from the public realm.

The proposal now achieves the relevant car parking demand rates within the Development Plan, without reliance on 'sharing' of spaces between visitors to the dwellings and the office.

The proposed changes are generally considered to add further merit to the proposed development.

Although the Appellant has not completely addressed all of the Panel's reasons for refusal, it remains the view of staff that the proposal sufficiently accords with the Development Plan to warrant consent, for the reasons set out in the previous reports and the further analysis provided in this report.

RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, the Environment Resources & Development Court be advised that Development Application No 155/C31/19 by KSBA Invest Pty Ltd, to undertake a Community Title Land Division creating ten (10) Community Lots and the construction of a mixed use development comprising nine (9) three-storey townhouses and a single-storey office, including a car parking area, civil works and landscaping, at 413 Payneham Road, Felixstow, is acceptable subject to the following conditions, or similar conditions as deemed suitable by the Court:

Relevant Plans

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

- Community Plan of Division (Reference Number 19705.2; Drawing Number 19705.2-COM; and Version Number 1) prepared by John C Bested 7 Associates Pty Ltd and received by the Council on 25 July 2019.
- Scheme Description prepared by Raymond 7 Co. Conveyancers and received by the Council on 15 October 2019.
- plans and elevations (Project Number 30044 and Revision 4.0) prepared by TECTVS and received by the Council on 6 May 2020.

SCAP Conditions of Consent

1. The financial requirements of the SA Water Corporation shall be met for the provision of water supply and sewerage services. (SA Water H0087476)

The developer must inform potential purchasers of the community lots in regards to the servicing arrangements and seek written agreement prior to settlement, as future alterations would be at full cost to the owner/applicant.

For SA Water to assess this application, the developer must advise SA Water the preferred servicing option. Information can be found at: <http://www.sawater.com.au/developers-and-builders/building,-developing-and-renovating-your-property/subdividing/community-title-development-factsheets-and-information>. For queries call SAW Land Developments on 74241119

2. Payment of \$65,277.00 into the Planning and Development Fund (9 allotment/s @ \$7253.00 /allotment). Payment may be made by credit card via the internet at www.edala.sa.gov.au or by phone (7109 7018), by cheque payable to the State Planning Commission marked "Not Negotiable" and sent to GPO Box 1815, Adelaide 5001 or in person, by cheque or credit card, at Level 5, 50 Flinders Street, Adelaide.
3. A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the State Commission Assessment Panel for Land Division Certificate purposes.

Department of Planning, Transport and Infrastructure Conditions

1. Any obsolete crossover(s) on Payneham Road shall be closed and reinstated to Council's kerb and gutter standards at the applicant's expense prior to operation of the development.
2. Stormwater run-off shall be collected on-site and discharged without jeopardising the safety and integrity of the road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's expense.

Council Conditions

1. The portion of all upper floor windows on the two residential flat buildings, less than 1.7 metres above the internal floor level shall be treated prior to occupation of the dwellings in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)
2. The portion of all upper floor windows on the south-western elevation of the office building, less than 1.7 metres above the internal floor level shall be treated prior to occupation of the office area in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)
3. The portion of the upper floor balcony areas of Dwellings 1 – 4 less than 1.7 metres above the floor level of the balcony shall be treated prior to occupation of the dwellings in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval (Suggested treatments include, but are not restricted to, wing walls, solid or translucent panels or perforated panels or metal trellises which have a maximum of 24% openings).
4. The northwest side of the upper level balcony of Dwelling 5, shall be screened to a minimum height of 1.7 metres above the finished floor level of the balcony, in order to prevent views of the private open space area at 13 and 15 Pearce Avenue.
5. 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.
6. A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.
7. Each dwelling shall be installed with a rainwater tank with a storage capacity not less than 2 kilolitres (2,000 litres), or alternatively, a 20 kilolitre communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m² 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.
8. All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.
9. 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.
10. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.

11. All of the car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.
 12. 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.
 13. 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.
 14. All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Council or its delegate.
 15. At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.
 16. 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.
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Moved

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 the report at Item 2.2 of the agenda submitted by the Assessment Manager.

Seconded and Carried

Moved

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan, the Environment Resources & Development Court be advised that Development Application No 155/C31/19 by KSBA Invest Pty Ltd, to undertake a Community Title Land Division creating ten (10) Community Lots and the construction of a mixed use development comprising nine (9) three-storey townhouses and a single-storey office, including a car parking area, civil works and landscaping, at 413 Payneham Road, Felixstow, is acceptable subject to the following conditions, or similar conditions as deemed suitable by the Court:

Relevant Plans

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- *plans and elevations (Project Number 30044 and Revision 4.0) prepared by TECTVS and received by the Council on 6 May 2020.*

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For SA Water to assess this application, the developer must advise SA Water the preferred servicing option. Information can be found at: <http://www.sawater.com.au/developers-and-builders/building,-developing-and-renovating-your-property/subdividing/community-title-development-factsheets-and-information>. For queries call SAW Land Developments on 74241119

2. *Payment of \$65,277.00 into the Planning and Development Fund (9 allotment/s @ \$7253.00 /allotment). Payment may be made by credit card via the internet at www.edala.sa.gov.au or by phone (7109 7018), by cheque payable to the State Planning Commission marked "Not Negotiable" and sent to GPO Box 1815, Adelaide 5001 or in person, by cheque or credit card, at Level 5, 50 Flinders Street, Adelaide.*
3. *A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the State Commission Assessment Panel for Land Division Certificate purposes.*

Department of Planning, Transport and Infrastructure Conditions

1. *Any obsolete crossover(s) on Payneham Road shall be closed and reinstated to Council's kerb and gutter standards at the applicant's expense prior to operation of the development.*
2. *Stormwater run-off shall be collected on-site and discharged without jeopardising the safety and integrity of the road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's expense.*

Council Conditions

1. *The portion of all upper floor windows on the two residential flat buildings, less than 1.7 metres above the internal floor level shall be treated prior to occupation of the dwellings in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)*
2. *The portion of all upper floor windows on the south-western elevation of the office building, less than 1.7 metres above the internal floor level shall be treated prior to occupation of the office area in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)*
3. *The portion of the upper floor balcony areas of Dwellings 1 – 4 less than 1.7 metres above the floor level of the balcony shall be treated prior to occupation of the dwellings in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval (Suggested treatments include, but are not restricted to, wing walls, solid or translucent panels or perforated panels or metal trellises which have a maximum of 24% openings).*
4. *The northwest side of the upper level balcony of Dwelling 5, shall be screened to a minimum height of 1.7 metres above the finished floor level of the balcony, in order to prevent views of the private open space area at 13 and 15 Pearce Avenue.*

5. *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.*
6. *A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.*
7. *Each dwelling shall be installed with a rainwater tank with a storage capacity not less than 2 kilolitres (2,000 litres), or alternatively, a 20 kilolitre communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m² 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.*
8. *All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, and irrigation installed, prior to the occupation of the premises and shall be maintained, with any dead or diseased plant replaced, to the reasonable satisfaction of the Council or its delegate.*
9. *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.*
10. *Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.*
11. *All of the car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.*
12. *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.*
13. *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.*
14. *All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Council or its delegate.*
15. *At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.*
16. *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.*
17. *All external surfaces of the residential component of the proposed development shown on the plans as being Basalt in colour shall be Shale Grey in colour.*

Seconded and Carried

Moved

That the meeting be re-opened to the public.

Seconded and Carried

3. OTHER BUSINESS

Nil

4. CONFIDENTIAL REPORTS

Nil

5. CLOSURE

The Presiding Member declared the meeting closed at 8:07pm.

Terry Mosel
PRESIDING MEMBER

Mark Thomson
MANAGER DEVELOPMENT ASSESSMENT