

# Council Assessment Panel Minutes

**16 August 2021**

## **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** Council Chambers, Norwood Town Hall

**HOUR** 7.00pm

**PRESENT**  
Mr John Minney  
Mr Phil Smith  
Ms Jenny Newman  
Ms Fleur Bowden

**Panel Members**

**Staff** Mark Thomson, Manager Development Assessment  
Adam Bowey Senior Urban Planner  
Tala Aslat Planning Assistant

**APOLOGIES** Mr Terry Mosel

**ABSENT**

In the absence of Mr Mosel The Panel elected an Acting Presiding Member to chair this meeting.  
Motion was put that Mr Phil Smith act as Presiding Member for this meeting.

Seconded and Carried

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT  
PANEL HELD ON 21 JUNE 2021**

Seconded and Carried

## 2. STAFF REPORTS

### 2.1 DEVELOPMENT APPLICATION 155/201/2021 – DRUSIAN PROPERTIES PTY LTD – 35 NORTH TERRACE, HACKNEY

<b>DEVELOPMENT APPLICATION:</b>	155/201/21
<b>APPLICANT:</b>	Drusian Properties Pty Ltd
<b>SUBJECT SITE:</b>	35 North Terrace, Hackney (Certificate of Title Volume: 5278 Folio: 407)
<b>DESCRIPTION OF DEVELOPMENT:</b>	Demolition of existing building and the construction of a three-storey building comprising office accommodation, a shop (cafe) and car parking
<b>ZONE:</b>	Local Commercial Zone Norwood, Payneham and St Peters (City) Development Plan (dated 11 February 2021)
<b>PUBLIC NOTIFICATION CATEGORY:</b>	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 for the Demolition of existing building and the construction of a three-storey building comprising office accommodation, a shop (cafe) and car parking

Staff do not have delegated authority to determine the Application, as it is a Category 2 development application for public notification purposes and representations were received from persons opposed 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:	rectangular
Frontage width:	15.24 metres
Depth:	45.72 metres
Area:	696.77m <sup>2</sup>
Topography:	essentially flat
Existing Structures:	single storey office
Existing Vegetation:	low hedges and small trees

#### Locality Attributes

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

The locality is considered to extend approximately 100 metres east and west of the subject land along North Terrace.

Along the northern side of North Terrace, all properties within the locality are located within the Local Commercial Zone and comprise a mix of commercial and residential uses. Some of the commercial uses are within purpose-built commercial buildings, while others are within former dwellings.

There are six (6) Local Heritage Places located along this northern side of North Terrace within the locality, at 23, 31, 33, 37, 39 and 41 North Terrace. Aside from offices, other commercial uses along this northern side include a motor repair station at 55 North Terrace, within a three storey building. All other buildings are one or two storey, with the two storey buildings being office buildings at 25 and 43-45 North Terrace.

Along the southern side of North Terrace, there is a mix of one and two storey retail showroom buildings and vacant warehouse buildings. This southern side of North Terrace is located within the Urban Corridor Zone.

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

### **Proposal in Detail**

The proposed building comprises office accommodation over two floor levels, above car parking at ground level. The office space is divided into two tenancies, with each tenancy occupying both floor levels and separated by common amenities, lift and circulation areas. The total gross leasable floor area of office accommodation is 610m<sup>2</sup>. A small café of 30m<sup>2</sup> is located at ground level with the car parking.

Twenty (20) car parking spaces are proposed, of which twelve (12) spaces are proposed to be stacked through the use of a mechanical car stacking system which allows the upper stacked car to be accessed even when the lower space is occupied.

Two-way vehicular access is proposed via both North Terrace and Nuffield Lane. No doors, gates or other security measures are proposed for either entrance to the ground floor.

Above the relatively open ground level, the front and rear facades are mostly glazed in clear glass, with metal fins providing architectural features. Balconies are proposed at the front and rear of the building at the third level, with the metal fins acting as balustrades. A verandah is proposed in front of the café at ground level.

The side elevations are pre-cast concrete with vertical grooves.

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

### **Notification**

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

Five (5) representations were received (all opposed) in response to this notification, copies of which are attached (**Attachment C**). The key issues of concern raised by representors are, in summary:

- Insufficient on-site car parking, exacerbating existing on-street parking problems;
- Increased traffic in Nuffield Lane, resulting in congestion and wear and tear;
- Excessive building height and bulk and resultant impact on heritage value of surrounding properties;
- The materials and finishes are not in character with heritage in the area;
- Noise impacts associated with waste collection;
- Overlooking;
- Demolition of the existing historic building;
- Disturbance during construction;
- Inadequate front setback; and

The following representors desire to be heard personally by the Council Assessment Panel (CAP):

- *Mr John and Mrs Helen Leake*
- *Mr Paul James*
- *Mr John Charles Wyndham House*

The Applicant has responded to the representations received and a copy of their response is attached (**Attachment D**). In responding to the representations, the Applicant amended the application to:

- include additional car parking spaces through the introduction of the mechanical car stackers; and
- reduce the gross leasable floor area by increasing the amount of common areas and off-setting the third floor level from side boundaries.

Upon informing the representors of the details of the Council Assessment Panel meeting at which the application will be considered, copies of the amended plans were provided to the representors for their information.

A summary of the Applicant's response to the representations is provided below:

- the existing building is not heritage listed and there is no legal impediment to its demolition;
- Car parking has been increased and now accords with the Development Plan rates;
- Traffic volumes generated by the proposal will be low and have minimal impact on Nuffield Lane;
- The Local Commercial Zone does not specify a maximum building height and the proposed height is appropriate notwithstanding the scale of buildings on adjoining sites;
- Suitable setbacks from boundaries are proposed;
- High quality materials and finishes are proposed;
- Suitable screening is proposed to prevent overlooking;

### **State Agency Consultation**

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

### **Discussion**

The subject land is located within the Local Commercial Zone of the Norwood, Payneham and St Peters (City) Development Plan. The proposed development is neither a non-complying nor a complying form of development and therefore must be assessed on its merits against the relevant provisions of the Development Plan.

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

#### Land Use and Density

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

Local Commercial Zone Objective: 1

Local Commercial Zone Principle of Development Control: 1

City Wide Objectives: 1, 2, 3, 7, 67,

City Wide Principles of Development Control: 3, 291, 303, 305, 306

Objective 1 and Principle of Development Control 1 of the Local Commercial Zone state respectively:

*“A zone primarily accommodating local service activities which are compatible with the amenity of the locality.”*

and

*“Development undertaken in the Local Commercial Zone should be, primarily, local service activities which are compatible with the amenity of the locality”*

The following list of complying uses for the zone is useful in understanding the type of uses which are intended to be encompassed by the term 'local service activities':

- *Electricity Sub-station*
- *Minor Public Service Depot*
- *Non-residential Club*
- *Petrol Filling Station*
- *Residential Club*
- *Service Industry*
- *Store (except in the St Peters area shown on Map NPSP/1 (Overlay 1))*
- *Timber Yard*
- *Warehouse*

Unlike zones such as the Business Zone and Urban Corridor Zone (Business Policy Area), the Local Commercial Zone is not primarily intended to accommodate offices. Whilst not consistent with the primary intent of the zone, offices are a 'merit' form of development within the Local Commercial Zone and are generally compatible with local service activities. The same can be said of the proposed small café at ground level.

That said, care should be taken when considering any use which is not consistent with the primary intent of a zone, in that the proposed use will not undermine or be detrimental to objectives of the zone, or those of another zone in which the use is primarily intended. In this respect, with a gross leasable floor area of 610m<sup>2</sup> in a building of three floor levels, the proposed office building is akin to that which would be typically found in a business precinct alongside other similar scale office buildings. To allow an office use of this scale out of a designated business zone, could act as a precedent for future such developments, which would in turn undermine the objectives of the Local Commercial Zone and be detrimental to nearby business type zones achieving their objectives.

The zoning which applies to the subject land has recently been changed through the introduction of the Planning and Design Code. The subject land is now located within the Suburban Business Zone, so any Development Applications lodged after 19 March 2021 along the relevant section of North Terrace, would be assessed against the new policy relevant to that zone. In this respect, the Suburban Business Zone anticipates offices up to 500m<sup>2</sup> in area and up to two storeys in height. Whilst this new policy does not apply to the assessment of the subject Development Application (as it was lodged prior to 19 March 2021), it is useful to understand how the proposed development relates to future development which can be anticipated along this section of North Terrace.

On balance, it is considered that the proposed scale of office is not consistent with the Local Commercial Zone from a land use perspective.

streetscape/bulk/scale/height/character/Heritage

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

City Wide Objectives: 18-22, 111

City Wide Principles of Development Control: 28-47, 359, 360, 361

The Local Commercial Zone policies do not provide any guidance on building appearance. Therefore, in assessing the appropriateness of the proposal in terms of its impact on the streetscape and character of the locality, it is appropriate to consider the City Wide section of the Development Plan. In particular, the policies under the following headings are of greatest relevance:

- Design and Appearance of Land and Buildings (pages 15-19)
- Medium and High Rise Development (3 or More Storeys) (pages 54-59)
- Development on land adjacent to land containing a heritage place (page 78)

City Wide Principle of Development Control 29 states:

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

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

There is a wide range of building heights and styles within the locality, ranging from single storey heritage listed buildings at 23, 31, 33, 37, 39 and 41 North Terrace, to two storey buildings 25 North Terrace and 43-45 North Terrace. A three storey building is located at 55 North Terrace. Just outside the locality, at 19 North Terrace, is a ten storey building.

With such a mix of building heights within the locality, the proposed three storey building is considered to be partially consistent with Principle of Development Control 29 (b), in that it would complement the urban

context of existing buildings on *nearby* land and in general terms, would not visually dominate the surrounding locality.

However, Principle of Development Control 29 (b) not only states that new buildings should complement the urban context of existing buildings on *nearby* land, but that they should also complement the urban context of existing buildings on *adjoining* land. In this respect, the buildings on adjoining land at 31-33 North Terrace and 37-41 North Terrace are single storey Local Heritage Places and the proposed building is not compatible with the scale or architectural style of those buildings.

City Wide Principles of Development Control 359 and 361 states:

*“Development on land adjacent to land containing a State or Local Heritage Place as designated in Tables NPSP/5 and 6 should respect the heritage value, integrity and character of the heritage place and should clearly demonstrate design consideration of the relationships with the heritage place and its setting (without necessarily replicating its historic detailing) and the character of the locality by establishing compatible:*

- (a) scale and bulk;*
- (b) width of frontage and boundary setback patterns;*
- (c) proportion and composition of design elements;*
- (d) form and visual interest (as determined by play of light and shade, treatment of openings and depths of reveals, roofline and pitch and silhouette, colour and texture of materials as well as detailing, landscaping and fencing);*
- (e) fencing and areas set aside for landscaping, particularly on the primary street frontage of an allotment, which complement the era, style and landscaping setting of the heritage place; and*
- (f) garages, carports or outbuildings set-back at a greater distance from the primary street frontage than the main face of the primary building.”*

and

*“Development on land adjacent to land containing a State or Local Heritage Place should not be undertaken if it is likely to dominate or detract from the heritage value and integrity of the heritage place by way of design, appearance or standard of construction.”*

In considering the compatibility of the proposal with the adjacent Local Heritage Places, the decision of the Environment Resources and Development Court in BOND v CITY OF NORWOOD, PAYNEHAM & ST PETERS [2007] SAERDC 56 (10 October 2007) is a useful reference. That appeal matter related to a contemporary outwardly two storey dwelling in a mixed use zone, on a site adjoining a pair of single storey Local Heritage Place maisonettes, in a street where there are no other Local Heritage Places and the built form was variable in scale and form. In that decision, the Commissioner found that the lack of cohesiveness in architectural style and character in the locality provided justification for what might otherwise be inappropriate adjacent to a Local Heritage Place. In particular, he stated:

*“were the latter (the Local Heritage Place) to form part of a “run” of Local Heritage Places, such that they made a collective contribution to the character of King Street, my conclusion might well have been different, but in all the circumstances, I am satisfied that the subject proposal would be compatible with and complimentary to the Local Heritage Place....”*

Accordingly, the Commissioner considered that the policies related to buildings being compatible with adjacent Local Heritage Places are of lesser importance in situations of development adjacent to an isolated Local Heritage Place, than it is in situations where more consistent historic character exists, such as within a historic (conservation) zone.

In the case of the subject proposal, there is not one, but six Local Heritage Places in close proximity to the subject land, creating a run of heritage character. The proposed three storey office building is proposed in the middle of this run of heritage character.

The application was referred to the Council’s Heritage Advisor, David Brown. In summary, Mr Brown has advised:

- the design for the proposed office building appears to have little consideration of its context. Apart from the token verandah element, the design completely ignores the adjacent Local Heritage Places. Built boundary to boundary and forward of No 31-33 it will visually dominate the small-scale early buildings.



- the proposed development shows no scale, bulk or form relationship to the adjacent buildings, setback patterns are ignored, proportions and design elements do not relate to the Local Heritage Places.
- Of particular concern are the large boundary walls. The latest design sets the upper floor in slightly, but realistically this will be imperceptible unless you are viewing the building front on. The top level walls appear to be treated slightly differently, which helps break the large blank walls up. However, these walls will be forever visible from a distance in both directions, as the Local Heritage Places will not be replaced with similar scale structures as the new development to cover the side walls.
- The front setback forward of No 33 is a concern with the blade wall that will obstruct the view of the building from the east.
- The open nature of the ground floor is incongruent with the surroundings, and does not relate at all well to the mostly solid facades of the adjacent buildings. There is no obvious front door to the building, with all access via the driveway.
- The height of the proposed building is completely out of scale with the Local Heritage Places.

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

The proposed building is therefore considered to be inconsistent with City Wide Principles of Development Control 359 and 361 to an extent which is fatal to the application. Some degree of inconsistency with Principles 359 and 361 is expected as the subject land is not in a historic (conservation) zone. However, as the land is in the middle of a run of Local Heritage Places, the scale of the building is considered fundamentally problematic. A two storey building with greater boundary setbacks would be a more appropriate solution.

#### Overshadowing/overlooking

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

City Wide Principles of Development Control: 11, 31, 35, 71, 195, 196 & 235

Some concerns were raised by representors in response to the notification of the application, regarding overlooking and overshadowing. The applicant has adequately responded to those concerns, confirming that appropriate screening is proposed to upper level windows and balconies to prevent overlooking of adjacent residential properties to the north. In relation to overshadowing, whilst the properties to the east and west would be affected in the afternoon and morning respectively, the proposal would achieve compliance with the quantitative criteria contained in City Wide Principles of Development Control 195 and 196.

#### Carparking/access/manoeuvring

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

City Wide Objective: 34

City Wide Principles of Development Control: 98, 102, 113, 115, 118, 120, 122, 123, 124, 130, 134

With respect to the adequacy of the proposed amount of car parking spaces, City Wide Principles of Development Control 120 states:

*“Development should provide off-street vehicle parking in accordance with rates contained in Tables NPSP/8 and 9.”*

The following table outlines the car parking demand and supply associated with each element of the proposal.

Element	Table NPSP/9	Required
Office	4 spaces per 100m <sup>2</sup>	24.4 spaces
Cafe	1 per 3 seats (no additional requirement for outdoor dining up to 25% of indoor seating)	3.3 spaces
<b>Total Demand</b>		<b>28 spaces</b>
<b>Proposed</b>		<b>20 spaces</b>

The Applicant's Traffic Consultant, Mr Ben Wilson, has suggested that Table NPSP/9A should be applied, rather than Table NPSP/9. Table NPSP/9A contains the car parking rates which apply to 'Designated Areas', which includes the Urban Corridor Zone, District Centre Zones and Local Centre Zones, amongst others. The Local Commercial Zone is not a Designated Centre and therefore Table NPSP/9A does not apply.

Mr Wilson's reasons for suggesting that Table NPSP/9A should be applied, relate to the accessibility of the site to walking, cycling and public transport users and the fact that under the new Planning and Design Code, the rates which would apply to the subject land are the same as those contained in Table NPSP/9A. On this latter point, the rates contained in new Planning and Design Code are irrelevant to the assessment of the application, just as the two storey height limit and 500m<sup>2</sup> floor area limit are irrelevant.

The subject land is directly adjacent to the Urban Corridor Zone in Kent Town, which is a Designated Area where Table NPSP/9A applies. If those rates were applied, the requirement would be 19 car parking spaces. Given the close proximity of the subject land to the Urban Corridor Zone and the CBD, it is considered reasonable to have some regard to the lower parking rates in Table NPSP/9. At the same time however, consideration should be given to the problems that would arise from overspill parking from the subject land if the on-site supply is inadequate. Limited opportunity exists on North Terrace for on-street parking, due to an adjacent bus zone and the areas available for parking being subject to a clearway in the afternoons (after 3:00pm) and outside of those times not being conducive to convenient use due to traffic speed and volumes.

As a result, any over-spill parking would likely occur in the local residential streets of Osborne Street and Westbury Street, where further on-street parking would likely be detrimental to residential amenity.

The traffic volumes which have been forecast by Mr Wilson are based on the parking supply proposed (20 spaces) and does not factor in additional movements associated with persons circulating through the site when the parking spaces are all occupied in an attempt to find a vacant space. Regardless, the overall traffic volumes created by the subject land are likely to be reasonably modest in the context of traffic volumes already experienced in Nuffield Lane as a result of existing developments.

## Summary

The proposed use of the land for an office building with a small café at ground level is generally considered appropriate within the Local Commercial Zone, despite being inconsistent with the primary intent of the zone.

The Local Commercial Zone does not specify a maximum building height and there is a range of building heights existing within the locality. In this context, the proposed 3 storey height would ordinarily be considered acceptable.

However, the subject land is located amongst a group of Local Heritage Places, which together create a run of historic character. With the subject land not containing a Local Heritage Place, some disruption to that run is expected. However, the proposed building would result in too much of a disruption, to an extent which would significantly impact on the heritage value and contribution of the nearby Local Heritage Places.

Whilst the height of the building is the primary concern, other elements which make it incompatible with adjacent Local Heritage Places are the mostly open ground floor frontage, large expanses of pre-cast concrete side walls and inadequate front setback.

The amount of on-site car parking does not accord with the relevant car parking rates and whilst there is some justification for a lower rate given the proximity of the site to the Urban Corridor Zone and CBD, on balance it is considered that insufficient on-site parking has been proposed.

## 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 **refused** to Development Application No 155/201/21 by Drusian Properties Pty Ltd to demolition an existing building and the construction of a three-storey building comprising office accommodation, a shop (cafe) and car parking for the following reasons:

1. The proposed building is inconsistent with City Wide Principles of Development Control 359 and 361, insofar as it does not show design consideration of the relationships with adjacent Local Heritage Places and their setting, and is likely to dominate and detract from the heritage value and integrity of the adjacent Local Heritage Places by way of its design and appearance.
2. The proposal is inconsistent with City Wide Principle of Development Control 120, as it does not provide off-street vehicle parking in accordance with rates contained in Table NPSP/9.

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*Mr and Mrs Leake addressed the Council Assessment Panel from 7:04pm until 7:8pm*  
*Mr James addressed the Council Assessment Panel from 7:09pm until 7:13pm*

## MOVED

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **refused** to Development Application No 155/201/21 by Drusian Properties Pty Ltd to demolition an existing building and the construction of a three-storey building comprising office accommodation, a shop (cafe) and car parking for the following reasons:*

1. *The proposed building is inconsistent with City Wide Principles of Development Control 359 and 361, insofar as it does not show design consideration of the relationships with adjacent Local Heritage Places and their setting, and is likely to dominate and detract from the heritage value and integrity of the adjacent Local Heritage Places by way of its design and appearance.*
2. *The proposal is inconsistent with City Wide Principle of Development Control 120, as it does not provide off-street vehicle parking in accordance with rates contained in Table NPSP/9.*

*Seconded and Carried*

**2. STAFF REPORTS**

**2.2 DEVELOPMENT NUMBER 21005366 – DANIEL LABELLA – 8 THOMAS AVENUE, ST MORRIS**

<b>DEVELOPMENT NO.:</b>	21005366
<b>APPLICANT:</b>	Daniel Labella
<b>ADDRESS:</b>	8 THOMAS AV ST MORRIS SA 5068
<b>NATURE OF DEVELOPMENT:</b>	Installation of tennis court lighting and fencing
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Established Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Character Area</li> <li>• Hazards (Flooding - General)</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Traffic Generating Development</li> <li>• Urban Tree Canopy</li> </ul> <p><b>Technical Numeric Variations (TNVs):</b></p> <ul style="list-style-type: none"> <li>• Minimum Frontage</li> <li>• Minimum Site Area</li> <li>• Maximum Building Height (Levels)</li> <li>• Minimum Side Boundary Setback</li> <li>• Site Coverage</li> </ul>
<b>LODGEMENT DATE:</b>	23 Apr 2021
<b>RELEVANT AUTHORITY:</b>	Assessment panel at City of Norwood, Payneham and St. Peters
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>REFERRALS STATUTORY:</b>	None
<b>REFERRALS NON-STATUTORY:</b>	None

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<b>APPENDIX 1:</b>	<b>Relevant P&amp;D Code Policies</b>	<b>ATTACHMENT 4:</b>	<b>Representation Map</b>
<b>ATTACHMENT 1:</b>	<b>Application Documents</b>	<b>ATTACHMENT 5:</b>	<b>Representations</b>
<b>ATTACHMENT 2:</b>	<b>Subject Land Map</b>	<b>ATTACHMENT 6:</b>	<b>Response to Representations</b>
<b>ATTACHMENT 3:</b>	<b>Zoning Map</b>		

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**DETAILED DESCRIPTION OF PROPOSAL:**

The Applicant seeks to install tennis court lighting and fencing within the rear yard of 8 Thomas Avenue St Morris. The tennis court lighting includes the installation of four 7 metre high light posts consisting of two light poles on the northern boundary, and two light poles set inside the southern property boundary. To provide lighting to the 420m<sup>2</sup> tennis court.

The application also includes 3.6 metre high open cyclone fencing along the northern side boundaries, a 2.4 metre wall and 3.6 metre high fencing along the eastern side boundary, and a combination of cyclone fencing and retractable nylon curtains set in 3 metres from the southern property boundary.

**BACKGROUND:**

Nil

**SUBJECT LAND & LOCALITY:****Site Description:**

**Location reference:** 8 THOMAS AV ST MORRIS SA 5068

**Title ref.:**

CT 5722/371

**Plan Parcel:**

D52499 AL3

**Council:**

THE CITY OF NORWOOD PAYNEHAM AND ST PETERS

The subject land is located on the eastern side of Thomas Avenue, and contains a detached dwelling, outbuildings and small shrubs and ground covers.

The subject land has a frontage width of 18.3 metres, a depth of 65.5 metres and an area of 1193m<sup>2</sup>.

The land slopes approximately 800mm from the front to the rear boundary.

**Locality**

The locality contains predominantly single storey detached dwellings on large allotments, set within landscaped settings and consistent large setbacks to create a high degree of residential amenity. There is limited infill development within the locality, limited to a pair of detached dwellings located adjacent the subject land at 10A and 10B Thomas Avenue. It is bound by Third Avenue to the north, and Magill Road to the south.

There are no tennis courts within the locality. With allotment sizes typically ranging from 600m<sup>2</sup> to 900m<sup>2</sup> within the locality, they are generally not large enough to accommodate a tennis court. The subject land is unusually large, due to additional depth which appears to have been acquired historically from the allotment at 7 Gardiner Avenue to the rear.

**CONSENT TYPE REQUIRED:**

Planning Consent

**CATEGORY OF DEVELOPMENT:**

- **PER ELEMENT:**

Other - Residential - Tennis Court Lighting:	Code Assessed - Performance Assessed
Fence – Fences and walls:	Code Assessed - Performance Assessed
  
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
  
- **REASON**  
P&D Code

**PUBLIC NOTIFICATION**

- **REASON**

Boundary structures exceed 3.2 metres in height, and exceeds 8 metres in length and is not considered minor due to the length and height. In addition, the tennis court lighting/poles are not considered a minor form of development.

• **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Wishes To Be Heard	In Support
Paul	Pizzolato	2 Thomas Avenue, St Morris 5068	No	Yes
Paul	Silvestri	57 Edmund Avenue, Unley 5061	No	Yes (with concerns)
Leonard	Condo	5 Second Street, Magill 5072	Yes	Yes (with concerns)
Christos	Kalatzis	10a Thomas Avenue, St Morris 5068	Yes	No
Julie	Pennetta	10a Thomas Avenue, St Morris 5068	Yes	No

Representations are marked as **Attachment 5**.

• **SUMMARY**

Five representations were received during the notification process, including three in support (two with concerns) and two opposed to the proposal.

In summary, the concerns raised by representors are:

- Light Spill
- Amenity
  - Light spill
  - Visual impact
  - Noise
- Siting of tennis court
- Dwelling extension not identified on the submitted plans
- Potential future development on adjoining land should be considered
- Existing boundary fencing height
- Negative impacts to property value
- Stormwater

The applicant has engaged Ms Theresa James from URPS Planning Consultants to provide a response to the representations, which is marked as **Attachment 6**.

**AGENCY REFERRALS**

No agency referrals were required pursuant to Schedule 9 of the *Planning, Development and Infrastructure (General) Regulations 2017*

**INTERNAL REFERRALS**

No internal referrals were undertaken

**PLANNING ASSESSMENT**

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in **Appendix 1**. Due to the nature of the proposed development being somewhat unusual, the Planning Portal has nominated the Development Application as an “*all other code assessed*” type of application, such that all policies contained in the P&D Code are listed as relevant. For brevity, the list of policies contained in Appendix 1 has been condensed, to remove those policies which are clearly irrelevant to the application in practical sense.

## Quantitative Provisions

The installation of a tennis court in a residential environment does not constitute development. As a result the policies contained in the P&D Code which provide quantitative criteria in relation to landscaping and impervious surfaces are not applicable to the application. The assessment of the application is therefore limited to the lights, supporting structures and fencing. The P&D Code does not contain quantitative criteria in respect of those considerations.

## Land Use

The application does not seek to change the use of the land, with the tennis court intended to form part of the private open space of the dwelling located on the site. The tennis court is intended for the use and enjoyment of the occupants of the dwelling.

## Building Height

Performance Outcome (PO) 4.1 of the Established Neighbourhood Zone states:

*Buildings contribute to the prevailing character of the neighbourhood and complements the height of nearby buildings.*

The Designated Performance Feature (DPF) for PO 4.1 is a maximum height of two building levels. This DPF is clearly aimed at buildings which contain levels, such as dwellings and outbuildings; not buildings like fences and light poles. Therefore, it is considered to have limited direct applicability to the proposal.

That said, it is relevant to consider that two storey dwellings are envisaged in the locality. In this context, the proposed 7 metre high light poles are considered to align with Performance Outcome 4.1. A two storey dwelling is typically 7 metres or more in height and obviously much larger in overall scale than the proposed light poles.

The Planning and Design code does not provide any specific policy with regard to the height of fences, other than the policy referenced in the section below.

## Setbacks, Design & Appearance

The proposed tennis court fencing is set back 36.6 metres from the front (western) property boundary. Given the substantial setback, the tennis court or light posts are not readily visible to the streetscape.

The fencing extends along the northern property boundary behind the dwelling for a length of 29 metres, and along the length of the rear boundary (17.6 metres). This includes a section of brickwork 3.6 metres long and 2.4 metres high. The fencing continues along the southern side of the site, set in 3 metres from the southern boundary and incorporates a retractable nylon curtain.

The application includes 4 light posts in total, of which 2 are evenly distributed along the northern boundary, and two evenly distributed, set in 3 metres from the southern boundary.

The light posts are proposed to be 7 metres tall, with a diameter of 80mm and painted black. The cyclone fencing is also proposed to be finished in black.

There is a levels variation of 220mm across the tennis court area, with no detail as to how this change in levels will be managed to create a flat court surface. It is likely that some form of minor retaining would be required under existing fencing.

The Planning and Design Code offers little in the way of policy guidance for fencing, within the "Design in Urban Areas" section of the General Development Policies, PO 9.1 being most relevant and stating:

*Fences, walls and retaining walls are of sufficient height to maintain privacy and security without unreasonably impacting the visual amenity and adjoining land's access to sunlight or the amenity of public places.*

As the purpose of the proposed tennis court fencing is not for privacy or security (rather, it is to keep tennis balls inside the property), PO 9.1 is not directly relevant. That said, the principles of maintaining reasonable visual amenity and access to sunlight should still be applied.

The proposed cyclone fencing has a high degree of transparency, and is located on the northern and eastern boundaries of the subject land, while being set off the southern boundary and as a result is not anticipated to unreasonably impact the neighbouring visual amenity, or access to sunlight, in line with PO 9.1.

Within the "Interface between Land Uses" section of the General Development Policies, PO 6.1 states:

*External lighting is positioned and designed to not cause unreasonable light spill impact on adjacent sensitive receivers (or lawfully approved sensitive receivers).*

The installation of the two tennis light poles at a height of 7 metres on the northern boundary has the potential to impact on the two adjacent residential properties at 10A Thomas Avenue and 9A Gardiner Avenue. The other two proposed light poles are set back 3.5 - 3.6 metres from the southern boundary and are less likely to impact on the two adjacent properties at 6 Thomas Avenue and 5 Gardener Avenue.

The applicant has provided a light overspill diagram (**Attachment 1 – Page 76**) which displays calculated LUX levels on adjacent properties, An Obtrusive Compliance Report (**Attachment 1 Page 77**) has also been provided, detailing the extent of compliance with Australian Standard 4282:2019, Control of the obtrusive effects of outdoor lighting.

This standard allows a maximum of 10 LUX measured at the face of adjacent dwellings, or if there are no adjoining dwellings within 10 metres of the boundary, measured at the 10 metre point, during pre-curfew hours (6:00am to 11:00pm). The proposed lighting is consistent with this Standard, and therefore considered to be consistent with PO6.1, for pre-curfew hours. The extent of light spill is not consistent with the Standard for curfew hours (11:00pm to 6:00am) however, as the maximum allowable lux level is 2 lux and values of 10 lux and 6 lux have been calculated for the dwellings at 10a Thomas Avenue and 9A Gardiner Avenue respectively. Accordingly, it is recommended that a condition be imposed, requiring the lights to only be operated between the hours of 6:00am and 11:00pm.

## CONCLUSION

The proposed tennis court fencing has a high degree of transparency, and the light poles have a thin profile, such that the visual impacts associated with the proposal are considered reasonable. The tennis court lighting complies with Australian Standard 4282:2019 during pre-curfew hours. As such the tennis court fencing and light posts are considered to have a minimal impact to adjacent residential amenity, and the lights to be unobtrusive when in use. The application for the installation of tennis court lighting and fencing is considered to satisfy the requirements of the Planning and Design Code and therefore warrants consent.

## RECOMMENDATION

Grant Planning Consent

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 21005366, by Daniel Labella is granted Planning Consent subject to the following conditions:

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

- Site Plan & Elevations (Page SD 01 /01) dated March 2021 received as part of Development Application



- Obtrusive Lighting Compliance Report by Legacy Lighting Dated 27/04/2021

#### Planning Consent

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

1. The tennis court lights shall not be operated between the hours of 11pm and 6am on any day.
2. The lights shall be installed and operated and maintained in accordance with Australian Standard 4282:2019, Control of the obtrusive effects of outdoor lighting.

#### ADVISORY NOTES

1. The Applicant is reminded of its responsibilities under the *Environment Protection Act 1993*, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.
2. The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.
3. The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of 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.
4. 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.
5. This Planning Consent will lapse within 24 months of the date of this notice unless full Development Approval has been obtained.
6. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

#### General Notes

1. No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.
2. Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.
3. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
  - a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or

- b. if an appeal is commenced—
    - i. until the appeal is dismissed, struck out or withdrawn; or
    - ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).
- 

*Mr Condo addressed the Council Assessment Panel from 7:21pm until 7:24pm  
Ms James addressed the Council Assessment Panel from 7:25pm until 7:28pm*

## **MOVED**

### *Grant Planning Consent*

*It is recommended that the Council Assessment Panel resolve that:*

- 1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and*
- 2. Development Application Number 21005366, by Daniel Labella is granted Planning Consent subject to the following conditions:*

*The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).*

- Site Plan & Elevations (Page SD 01 /01) dated March 2021 received as part of Development Application*
- Obtrusive Lighting Compliance Report by Legacy Lighting Dated 27/04/2021*

### *Planning Consent*

*The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).*

- 1. The tennis court lights shall not be operated between the hours of 10:30pm and 6:00am on any day.*
- 2. The lights shall be installed and operated and maintained in accordance with Australian Standard 4282:2019, Control of the obtrusive effects of outdoor lighting.*

## **ADVISORY NOTES**

- 1. The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.*
- 2. The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.*
- 3. The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of 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.*

4. *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.*
5. *This Planning Consent will lapse within 24 months of the date of this notice unless full Development Approval has been obtained.*
6. *The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.*

#### General Notes

1. *No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.*
2. *Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.*
3. *A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—*
  - a. *until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or*
  - b. *if an appeal is commenced—*
    - i. *until the appeal is dismissed, struck out or withdrawn; or*
    - ii. *until the questions raised by the appeal have been finally determined (other than any question as to costs).*

Seconded and Carried

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**2. STAFF REPORTS**

**2.3 DEVELOPMENT APPLICATION 155/C038/2020 & 155/247/2020 – MR M RAJAGOPAL –  
2 SOMMERS AVENUE, FIRLE**

<b>DEVELOPMENT APPLICATION:</b>	<b>155/C038/2020 155/247/2020</b>
<b>APPLICANT:</b>	<b>Mr M Rajagopal Adelaide Designer Homes</b>
<b>SUBJECT SITE:</b>	<b>2 Sommers Avenue, Firle (Certificate of Title - Volume: 5851 Folio: 682)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Community Title Land Division (creating four community lots) (155/C038/20) and the Construction of four, two-storey abutting group dwellings, fencing, landscaping and associated retaining walls (155/247/20).</b>
<b>ZONE:</b>	<b>Residential Zone – Medium Density Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 21 March 2019)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

**Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on two Development Applications. The first (DA 155/C038/20) is for a Community Title Land Division (creating four community lots). The second (DA 155/247/20) is for the Construction of four, two-storey abutting group dwellings, fencing and landscaping.

Staff do not have delegated authority to determine the land division application as the site areas proposed do not satisfy the minimum requirements of the zone, and do not have delegated authority to determine the built form/land use Application (DA 155/247/20), as it was subject to Category 2 public notification and representations were received from persons opposed to the application.

As the Panel will be aware, it is necessary for the land division Application to be determined prior to determination of the built form / land use Application.

On this basis, there are two (2) recommendations at the end of this report – one for the proposed community division and one for the proposed built form/land use. The Panel must determine each Application in the order presented.

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

**Subject Land Attributes**

Shape:	regular
Frontage width:	18.29 metres
Depth:	43.79-44.6 metres
Area:	850m <sup>2</sup>
Topography:	fall from south to north across the site (approximately 200-300mm) fall from front to back of site (approximately 600-700mm)
Existing Structures:	Detached dwelling and outbuilding
Existing Vegetation:	small shrubs and lawn areas

The subject land is located on the western side of Sommers Avenue and contains a detached dwelling and outbuilding. Vehicular access is via a single width crossover at the northern end of the property frontage.

There is limited existing landscaping, with most of the site containing grassed areas, with some small shrubs. The site slopes from south to north, and from east to west.

The site is adjacent a Council drainage reserve for Third Creek along its northern side boundary, which contains a number of significant trees, with Tree Protection Zones and Structural Root Zones which extend into the subject site. The site is also impacted by flooding, being located within a 1 in 10 year flood zone.

A private laneway abuts the rear property boundary, which is approximately 2.3 metres wide. The laneway is too narrow to be trafficable, and is fenced at both ends preventing public access.

### Locality Attributes

Land uses: residential  
Building heights (storeys): single-storey

Both sides of Sommers Avenue are characterised by residential land uses, predominantly in the form of low density single-storey detached dwellings with some newer infill dwellings found at the northern and southern ends of Sommers Avenue at 1 & 1A and 9A and 9B.

The locality is considered to have a high level of amenity, resulting from the predominately low density residential land uses and associated landscaped front yards with generous setbacks. Sommers Avenue is a no-through road, with the road terminating at the boundary with the Church of Jesus Christ Latter Day Saints, located at 15 Sommers Avenue Firle.

A plan of the subject land and its surrounds is marked as **Attachment 1**.

### Proposal in Detail

The Applicant seeks consent to undertake a Community Title Land Division (creating four community lots) and the construction of four, two-storey abutting group dwellings, fencing and landscaping.

The group dwellings have three different designs/layouts, with dwellings 2 and 3 mirroring each other. They all share a common driveway from Sommers Avenue to provide access to garaging for dwellings and visitor parking in the form of 'stacked' parking spaces.

All dwellings have a living/dining/kitchen area on the ground floor, with two bedrooms, a bathroom and balcony on the upper floor.

The two-storey group dwellings have a of traditional roof form which include eaves and a 22.5 degree roof pitch (Colour NEXSTEEL Off White), while including some contemporary elements including horizontal windows and boxed out highlight detailing (painted NEXTEEL Monolith). The dwellings are to be constructed of brick at ground level (PGH Mercury), and texture coated hebel walls on the upper floor (painted in Dulux Lexicon).

New fencing and retaining is proposed along the southern side and rear boundaries of the allotment up to a combined height of 2.5 metres in colorbond Monument, while open fencing is proposed along the primary frontage and northern boundary adjacent the Council drainage reserve.

Landscaping is proposed, including small tree species (Crepe Myrtle), shrubs (Lilly Pilly, Silver bush and Yacca) and ground covers (Dwarf Mirror Plant, Scarlet Runner).

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

**TABLE 1 (part a): DEVELOPMENT DATA:**

Consideration	D1	D2	D3	D4	Development Plan Merit Assessment Quantitative Guideline
<b>Frontage Width</b>			18.3m		18m min for Group Dwellings
<b>Site Area</b>	150m <sup>2</sup>	123m <sup>2</sup>	128m <sup>2</sup>	147m <sup>2</sup>	200m <sup>2</sup> for Group Dwellings
<b>Site Width</b>	11.9	9m	9m	9.5	N/A
<b>Site Depth</b>	13.5m	14m	14.4m	14.4m	N/A
<b>External Wall Height*</b>	5.8m (max height)	5.8m (max height)	5.8m (max height)	5.8m (max height)	N/A
<b>Maximum Overall Height (to roof apex)*</b>	7.5m	7.5m	7.5m	7.5m	two-storey
<b>Floor Area (total)</b>	111.3m <sup>2</sup>	101.6m <sup>2</sup>	101.6m <sup>2</sup>	110m <sup>2</sup>	N/A
<b>Floor Area (footprint)</b>	80.7m <sup>2</sup>	80.4m <sup>2</sup>	80.4m <sup>2</sup>	83.3m <sup>2</sup>	N/A
<b>Site Coverage</b>	53.8%	65.4%	62.8%	56.6%	70%
<b>Private Open Space (POS)</b>	30.8m <sup>2</sup>	39m <sup>2</sup>	39m <sup>2</sup>	36m <sup>2</sup>	35m <sup>2</sup> per dwelling
<b>Street Setback</b>	3.8-4.5	N/A	N/A	N/A	4m
<b>Northern side setback (ground level)</b>	6.7	5.7	6	6.7	2.5m
<b>Northern side setback (Upper level)</b>	6.3	5.5	5.8	6.5	4.5m
<b>Southern side setback (Ground level)</b>	1-3.3	2.6	2.6	1-2.7	2.5m
<b>Southern side setback (Upper level)</b>	3.3	3	3	2.8	4.5m
<b>Western Setback (Ground level)</b>	N/A	N/A	N/A	0.8-4.1	2.5m
<b>Western Setback (Upper level)</b>	N/A	N/A	N/A	2.8-4.9	4.5m
<b>Occupant Car Parking Provision</b>	2 spaces	2 spaces	2 spaces	2 spaces	2 spaces per dwelling.
<b>Visitor Car Parking Provision</b>			1 space total		1 space for every 2 dwellings

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

Plans and details of the proposed Community Title Land division and built form application are contained in **Attachment 2**, Pages 2-30.

## Notification

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

Two (2) representations were received in response to notification, copies of which are contained in **Attachment 6**, Pages 93-95. Both the representors are opposed to the proposed development. Key issues raised by the representors are, in summary:

- Overdevelopment of site (too many dwellings)
- Carparking concerns (parking in street)
- Internal dimension of garages
- Inadequacy of vehicle parking (to street network)

None of the representors expressed a desire to be heard by the panel.

The Applicant has responded to the representations received and a copy of their response is contained in **Attachment 6**, Page 96.

## State Agency Consultation

No State Agency referral required pursuant to Schedule 8 of the *Development Regulations 2008*.

## Discussion

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

The key issues, specific to these Development Applications, are discussed in detail below.

### Land Use and Density

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

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

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

#### Residential Zone Desired Character Statement

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

City Wide Objectives: 1, 2, 7, 8, 10, 26, 55-57  
City Wide PDC's: 1-4, 80, 82

The Residential Zone Desired Character Statement encourages denser dwelling forms, stating: *"in locations where there are large allotments or where the amalgamation of allotments has occurred, there may be opportunity to develop low-rise (one or two-storey) group dwellings, row dwellings and residential flat buildings"*.

This is reiterated in the Desired Character Statement for the Medium Density Policy Area which states (in part):

*"Whilst detached and semi-detached dwellings will continue to be developed within the Medium Density Policy Area, more flexible development parameters for other forms of housing (including group dwellings, row dwellings and residential flat buildings) are included and will provide additional opportunities for increasing residential densities in these locations"*

As such, the proposed land division is considered appropriate from the perspective of accommodating a land use which is anticipated within the Residential Zone.

The proposed group dwellings are consistent with the desire for 'other forms of dwellings' which 'provide additional opportunities for increasing residential densities'.

Medium Density Policy Area Principle of Development Control 5 sets out the minimum site area and frontage requirements for new dwellings in the Policy Area and in relation to group dwellings, seeks a minimum of 200m<sup>2</sup> average site area exclusive of common areas and an 18 metre frontage.

The subject land has a frontage of 18.3 metres, consistent with the requirement for group dwellings and residential flat buildings. The proposed allotments all range in area from 123m<sup>2</sup> (Lot 2) to 150m<sup>2</sup> (Lot 1) with an average site area of 137m<sup>2</sup>, a significant departure from the requirements of Principle 5 for group dwellings.

On the other hand, Principle of Development Control 5 states that there is no minimum site area per dwelling for dwellings in a residential flat building configuration. The proposed dwellings are technically group dwellings, as the applicant has advised that each dwelling is intended to be constructed individually and abutting one another. If the dwellings were proposed to be constructed sharing a common footing, they would be regarded as being a residential flat building. Therefore, it is considered more appropriate to apply the density policy for a residential flat building than group dwellings, which are typically freestanding dwellings and therefore require larger sites.

Medium Density Policy Area Principle of Development Control 6 states that dwellings contained within a residential flat building with two (2) bedrooms should have a minimum floor area per dwelling of 70m<sup>2</sup>, while no internal floor area requirement is provided for group dwellings. The proposal accords with this requirement, with dwellings 1-4 proposing a minimum 101.6m<sup>2</sup> internal floor area.

Within the Medium Density Policy Area, the desired character statement states:

*While a minimum site area has not been allocated for dwellings within a residential flat building, a minimum floor area requirement for dwellings has been included and will, along with other policies relating to private open space, communal space, car parking and the design of the built form, ensure an acceptable level of amenity for occupants, as well residents in the locality.*

The same approach can be applied to the proposed group dwellings, whereby it is important to consider whether the proposed group dwellings are able to achieve the range of other quantitative and qualitative provisions of the Development Plan, relating to matters such as private open space, setbacks, site coverage, height, car parking etc. This will assist in concluding whether, on balance, the allotments of the size proposed are able to be supported and is discussed under the relevant headings of this report.

From a land use perspective, dwellings in the form of group dwellings are considered to be acceptable.

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

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

#### Medium Density PA Desired Character Statement

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

#### Residential Zone Desired Character Statement

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

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

Guidance on the desired height of residential development can be found within the Residential Zone Desired Character Statement, which states (in part):

*"Development will include a range of range of residential development of up to two (2) storeys in height.."*

The proposed two-storey buildings are consistent with the maximum height stated in the Desired Character Statement of the Policy Area.



With respect to the style of the proposed group dwellings, the Desired Character Statement for the Residential Zone states:

*“The existing character of the zone is varied and is derived from a number of factors, including built form, allotment size, road widths and natural features such as vegetation, topography and waterways. Although it is expected that residential densities will increase over time, resulting in more dense forms of development and smaller site and allotment sizes, it is intended that the overall character of the zone will maintain a ‘suburban’ feel with a high level of amenity. This will be achieved by generally maintaining a rhythm of buildings comprising one and two storeys, set back from the street so that front gardens can be established and also by requiring ‘space’ to be established between buildings.”*

and;

*“A variety of facade treatments will be permitted in the zone, allowing for individual preferences, however overall proportions of buildings as they present to the street, will be balanced and in accordance with good architectural practice, so as to provide a pleasant streetscape.”*

and;

*“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.”*

The Medium Density Policy Area anticipates a variety of facade treatments with overall balanced building proportions that provide for a good level of visual interest and articulation when viewed in the streetscape.

The finishes and architectural detailing to the group dwellings are considered to provide adequate visual interest consistent with the Desired Character Statement and City Wide Principle of Development Control 30. The proposed variation in building materials complement the existing residential urban character of the immediate area as called for by City Wide Principle of Development Control 29.

On balance, the proposed development is considered to be acceptable from a bulk, scale and streetscape perspective.

#### Setbacks and Site Coverage

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

Medium Density PA PDC's: 7

City Wide PDC's: 50, 202, 203, 208 & 273

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

Principles 202 and 203 apply to group dwellings 2, 3 and 4. All habitable areas of the dwellings 2 and 3 achieve the 2.5m criteria, while dwelling 4 has ground level habitable areas and garaging setbacks 1 metre from the southern and western property boundaries. None of the dwellings achieve the 4.5 metre setback criteria, with dwelling setbacks from the southern boundary ranging from 2.8 to 3.3 metres, and the western boundary 2.8-4.9 metres.

The failure of the proposal to satisfy setback requirements from the southern boundary has a minimal impact on the adjacent properties. This is due to the presence of boundary structures in the form of outbuildings and carports on the adjacent side boundary of 4 Sommers Avenue, which limits the visual impact of a lesser side setback than that prescribed by Principles 202 and 203, both from within the dwelling and from private open space areas.

The departure from the rear (western) boundary setbacks presents a minimal impact to occupants of dwellings at 132 and 134 Gage Street, whereby the laneway separating the properties provides an effective 'buffer' of 2.3 metres, giving the impression of a larger setback when viewed from the private open space areas of these properties.

In terms of site coverage, Principle of Development Control 7 of the Medium Density Policy Area states that the site coverage for all dwelling types (other than detached and semi-detached dwellings) should be designed with a maximum site coverage (inclusive of ancillary structures) of 70%. The proposal is consistent with Principle 7, with the proposed dwellings having a site coverage of between 53.8% and 65.4%, excluding common areas.

Overshadowing/Overlooking

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

City Wide PDCs: 11, 31, 71, 72, 195, 196, 235 & 236

City Wide Principle of Development Control 11 states:

*"Buildings should be designed so as not to unreasonably overlook or overshadow indoor or outdoor living areas of adjacent dwellings."*

and City Wide Principle of Development Control 71 states;

*"Development should maintain solar access, for a minimum of 3 hours between 9am and 3pm on 21 June, to:*

- (a) any existing solar collectors (such as solar hot water systems and photovoltaic cells) on adjoining properties; or*
- (b) an area of at least 10m<sup>2</sup> on the north facing roof of the existing building/s, in the event that there are no existing solar panels and/or photovoltaic cells on the adjoining property;*

*and in any case development should not increase the overshadowed area by more than 20 percent in cases where overshadowing already exceeds these requirements."*

The applicant has provided a set of overshadow diagrams for 9am, 12pm and 3pm for 21 June, during the winter solstice. These overshadowing diagrams demonstrate that:

- Part of the rear private open space areas of 130 and 132 Gage Street and most of the rear yard of 4 Sommers Avenue are overshadowed during the morning period (9am). This includes partial overshadowing of solar panels on the roof of 4 Sommers Avenue.
- Carports and boundary structures of 4 Sommers Avenue are overshadowed during the midday period (12pm) however the main roof of the dwelling and existing solar photovoltaic panels are not impacted by overshadowing.
- Carport and boundary structures including portions of the front yard of 4 Sommers Avenue are overshadowed during the afternoon period (3pm). Existing solar photovoltaic panels are not impacted by overshadowing.

Existing living areas of the adjacent dwelling at 4 Sommers Avenue are already overshadowed by the presence of extensive boundary structures along the northern boundary of the allotment, which would restrict direct sunlight into the northern windows of this dwelling.

The overshadow diagrams demonstrate that Principles 11 and 71 are satisfied by the proposed development, in that the development maintains solar access to roof areas, and does not unreasonably overshadow indoor or outdoor areas of adjacent properties.

In terms of privacy, City Wide Principle of Development Control 235 states:

*Except where buildings of three or more storeys are contemplated within the Urban Corridor Zone and the District Centre (Norwood) Zone, in all other circumstances upper level windows, balconies, terraces and decks should:*

- (a) *have a sill height of not less than 1.7 metres above the finished floor level ;or*
- (b) *be treated with permanently fixed obscured treatment (such as glazing or adhesive film) in the part of the window below 1.7 metres above the finished floor level ;or*
- (c) *be permanently screened to a height of not less than 1.7 metres above the finished floor level, through the use of external screening devices, such as planter boxes and angled louvres*

Each of the dwellings has a balcony facing north which overlooks the adjacent Council reserve. Consideration has been given to potential views into the rear yards of properties facing Arnold Avenue, however given the substantial distance to these properties (22.2-27.8 metres) from the upper level balconies, and the extent of vegetation within the reserve, the potential for overlooking is minimal.

The dwellings feature windows which vary between 1.4 and 1.5 metres to the eastern, southern and western elevations which has the potential to overlook adjacent properties private open space areas. As such it is recommended that if the Panel determines to approve the development, conditions of consent be imposed requiring the provision of this detail to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval. In this light, suggested conditioning has been applied to the application.

#### Private open space

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

City Wide PDC's: 222-224, 225, 226, 227, 229, 230

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

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

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

All of the proposed dwellings have site areas of less than 250m<sup>2</sup> and should therefore provide a minimum area of private open space of 35 square metres.

City Wide Principle 222 states:

*“Private open space (land available for the exclusive use of residents of each dwelling) may comprise one or more of the following forms:*

- (a) *a ground level courtyard, garden, yard, decking or patio space, or other private open space that:*
  - (i) *is screened to achieve privacy from adjoining properties and public areas by a suitable fence of at least 1.8 metres in height. The space should not be located between the primary street frontage and the main face of an existing or proposed building unless high, solid front fences form part of the existing streetscape or the desired character of the locality; and*
  - (ii) *has a minimum dimension of 2.5 metres and a minimum area of 10 square metres;*
- (b) *a roof top outdoor private open space, with a minimum dimension of 2.5 metres provided the area is equal to or greater than 10 square metres; or*
- (c) *a balcony, terrace, or other upper level outdoor areas (other than a roof top outdoor area), with a minimum dimension of 2 metres, provided the area of each is equal to or greater than 8 square metres.”*

All but one of the dwellings has private open space areas which exceed the requirements of Principle 225 (b), with the exception of Dwelling 1, which has 30.8m<sup>2</sup> of private open space. All dwellings incorporate a combination of ground floor areas and balconies to achieve the requirements of Principle 225, however because the upper balcony of Dwelling 1 is less than the 8m<sup>2</sup> requirement of Principle 222(c), it does not

count towards its open space requirement. If this area was included, this dwelling would also satisfy the requirements of Principle 225.

City Wide Principle of Development Control 224(f) and (g) states:

*“Private open space should be located and designed:*

*(f) where possible, to have a northerly aspect to provide for comfortable year-round use;*

*(g) to not be significantly shaded during winter by the associated dwelling or adjacent development;”*

In this respect, the balconies of each dwelling maintain a northern access throughout the day, while the rear private open space areas are overshadowed during the winter solstice due to their location on the southern boundary, shaded by the proposed built form.

On balance, the proposed development is considered to provide acceptable Private Open Space areas.

#### Car parking/access/manoeuvring

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

City Wide Objectives:

38

City Wide PDC's:

98, 101, 104, 118, 120, 122, 181, 198, 200 & 219

#### Tables NPSP/8

City Wide Principle of Development Control 120 states that development should include on-site car parking in accordance with the rates prescribed in Table NPSP/8.

Table NPSP/8 states that two (2) occupant car parking spaces should be provided for each two (2) and three (3) bedroom dwelling, of which at least one (1) space should be covered. In addition, one (1) visitor space should be provided for every two (2) dwellings. The proposed dwellings provide a covered and uncovered occupant vehicle space per dwelling, satisfying this requirement.

In addition, one (1) visitor parking space is provided at the rear of the allotment to be shared amongst the four proposed dwellings. Therefore, there is an overall shortfall of one (1) visitor space associated with the development.

The shortfall of one on-site visitor space is not considered fatal to the application, particularly as there is more on-street parking adjacent the site which is not directly adjacent to other dwellings, due to the drainage reserve. As a result, if there was over-spill of parking demand onto the street as a result of the visitor parking shortfall, it would be unlikely to impact on the amenity of residents beyond the subject land.

City Wide Principle of Development Control 200 states (amongst other things) that on-site visitor parking spaces for residential flat buildings should be located and designed to be clearly defined as visitor spaces not specifically associated with any particular dwelling. The location of the proposed visitor space at the rear of the site and behind dwelling 4 is not consistent with this policy and is a negative aspect of the proposal. If the Panel determines to grant consent to the application, it is recommended that a condition be imposed, requiring signage to be provided within the first 10 metres of the common driveway area measured from Sommers Avenue, directing visitors to parking at the rear of the site.

City Wide Principle of Development Control 189 provides guidelines for the configuration of driveway and manoeuvring areas for battle-axe style allotments, so as to achieve safe and convenient access arrangements. In relation to developments involving more than two (2) dwellings utilising a common driveway, Principle 189 states that the driveway should have a 6 metre x 6 metre paved carriageway at the front of the property, to enable safe and convenient access/egress for vehicles turning into and out of the site simultaneously. Principle 189 also states that the paved carriageway width should be no less than 5.0 metres in width, with an additional 1.0 metre of landscaping, resulting in a total width of paved carriageway and landscaping of 6.0 metres.

The application provides a 6X6 metre handle at the front of the site, and maintains a width of at least 6 metres, except for a section approximately 12 metres long adjacent to Dwellings 2 and 3, where it is reduced to between 4.4 and 4.8 metres.

As there are passing opportunities either side of this narrowed section, this inconsistency with Principle 189 is considered acceptable.

With respect to traffic generation, the increase in traffic in Sommers Avenue resulting from an additional three dwellings can be reasonably anticipated in light of the policy context whereby medium density development is encouraged.

The applicant has engaged Phil Weaver & Associates to prepare a traffic report on the proposal, a copy of which is contained in **Attachment 3**, Pages 34-44.

Finished floor levels/flooding/retaining

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

City Wide PDC's: 24, 53-58, 79, 149, 160, 164, 167-171

City Wide Principle 58 States:

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

The subject land has a fall from south to north across the site ranging from .190-.270 metres and a fall from the front to the back of site ranging between .590-.670 metres, with the dwellings falling towards the rear of the site. Dwellings 1 and 2 have a FFL of 99.7 (700mm above natural ground level), while dwellings 3 and 4 have a FFL of 99.2 (200mm-600m above natural ground level).

This requires retaining walls up to up to 700mm along the northern and western boundaries, and 800mm high along the southern boundary according to the drainage plan, however reviewing adjacent spot levels between 2 and 4 Sommers Avenue indicates that retaining walls up to 300mm are more likely required along the southern boundary.

The Applicant has indicated that 1.8 metre high colorbond fencing will be provided to the western and southern boundaries of the site, while open fencing will be utilised along the northern boundary to alleviate flooding concerns. When retaining walls from the drainage plan is included, the proposal results in combined fencing and retaining of up to 2.6 metres along the southern boundary, and 2.5 metres along the western boundary, departing from the requirements of Principle 58. This will have a minimal impact on the private laneway adjacent the western boundary of the site, and is not considered to have an unreasonable impact on the occupiers to the south given the limited length of the retaining at its highest point along the southern boundary (prior to the transition between levels of dwellings 2 and 3) and the location of existing structures along this boundary.

City Wide Principle 171 states:

*The finished ground floor level of all habitable spaces should not be less than 300 millimetres above the 1 in 100 year Average Recurrence Interval floodplain.*

The site is located within a 1 in 100 and 1 in 20 year floodplain according to Councils GIS software, and as such the application was referred for Flood advice.

Flood advice was provided by Tonkins for a 1 into 2 land division proposal in October 2012 (**Attachment 4**, Pages 78-88) which concluded that the site does not form part of the critical flow path.

More recent advice was procured, which provided detail on minimum floor levels for the allotment, due to concerns raised with the potential for filling of the site due to adjacent regulated trees (discussed later within the report), which is contained in **Attachment 4**, pages 89-91. A table confirming the dwellings satisfy these requirements is provided below:

	Minimum Level	Proposed Level
Dwelling 1	99.7	99.7
Dwelling 2	99.3	99.7
Dwelling 3	99.0	99.2
Dwelling 4	98.8	99.2

City Wide Principle of Development Control 160 states:

*“A development which includes:*

- (a) three or more dwellings;*
- (b) the replacement of one dwelling with three or more dwellings on one site, or on separate sites resulting from the land division of the original site; or*
- (c) in the case of a non-residential development, an impervious surface area that is greater than the pre-development state;*

*should incorporate an on-site stormwater detention system (either above or below ground) to ensure that stormwater discharged from the site and/or combined sites does not exceed the capacity of the existing or planned 1 in 5 year Average Recurrence Interval stormwater system and increase the risk of flooding to downstream properties or add any significant pollutant load to the downstream stormwater system.”*

The Applicant has not provided a stormwater management plan demonstrating compliance with Principle 160. Should the panel elect to grant Planning Consent to the Applications, it is recommended a condition be imposed requiring the provision of a stormwater management plan and a site works plan confirming floor levels to be provided to the satisfaction of the Council, prior to the issuing of Building Rules Consent.

On this basis, the application is considered to reasonably satisfy Development Plan requirements related to floor levels, flooding and retaining.

A site survey plan and site works and drainage plan are contained within **Attachment 2**, page 4 and page 30 respectively.

A copy of the flood advice from Tonkins can be found in **Attachment 4**, pages 78-90, with further detail related to recommended levels found as **Attachment 4**, page 91.

#### Waste Collection

The following Development Plan provisions provide guidance with respect to waste collection, storage and disposal:

City Wide Objectives:	23 & 42
City Wide PDC's:	141, 284, 285 & 286

City Wide Principle of Development Control 141 states:

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

The Applicant has provided detail demonstrating that each dwelling will utilise the standard residential collection service. Bin location areas are detailed on the site plans which locate 2 bins within the rear and side yards of each dwelling. Should a three bin system be implemented in line with most residential properties (general waste, green waste and recycling), it is considered that there is still sufficient space to locate the additional bin in these areas. In addition, the site plans displaying the bin placement on the Council verge in front of the subject land. This plan provides 120mm spacing in-between bins which is less than the recommended 300m spacing, however in any event there is considered sufficient space for the placement of 8 bins on the property verge.

On this basis, the waste collection is considered to satisfy Principle 141.

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

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

City Wide Objectives:	24, 120
City Wide PDC's:	76, 220, 221, 288, 412, 413, 414, 415, 416

City Wide Principle of Development Control 413, 415 and 416 state respectively:

*“Development should be undertaken with the minimum adverse affect on the health of a significant tree.”*

and;

*“Development involving ground work activities such as excavation, filling, and sealing of surrounding surfaces (whether such work takes place on the site of the tree or otherwise), should only be undertaken where the aesthetic appearance, health and integrity of the significant tree, including its root system, will not be adversely affected.”*

and;

*“Land should not be divided or developed where the division or development would be likely to result in a substantial tree damaging activity occurring to a significant tree.”*

There are three significant regulated trees located within the Third Creek Council reserve abutting the northern boundary of the subject land. These trees form notable visual elements to the landscape of the local area, being highly visible within the locality. These trees are accurately plotted on the site survey plan (**Attachment 2**, page 4) which includes measurements of each tree. A plan is also provided detailing theoretical structural root zones (SRZ) and tree protection zones (TPZ) within Duncan McGregor’s report marked as **Attachment 3**, page 72.

The applicant has provided a report by Duncan McGregor from Tree Vision which details the implications of the proposal in proximity to the three regulated trees. This report briefly assesses the current health of the trees, the application of Australian Standard 4970-2009, *Protection of Trees on Development Sites* and assess the arboricultural implications of the proposed development. The report also includes a Tree Protection Plan for the construction phase of the development as well as a list of recommendations to be undertaken during the pre-construction phase, construction phase and post construction phase.

On review, the assumptions within the report appears to be inconsistent with the drainage plan proposed. In particular, the report assumes no fill occurring on the development site, stating *“in this instance there is no intention to alter the ground levels”*.

In addition, the report does not contain any detail/methodology surrounding the retaining wall construction, including excavation works for piers/footings.

Due to concerns over the extent of encroachment of built form, driveway areas (and resulting compaction), the extent of fill, and the construction of retaining walls inside the structural root zone (SRZ) and tree protection zone (TPZ) areas of the regulated trees, the application was referred to Mr Dean Nicolle, a consulting Botanist.

To summarise, Mr Nicolle advised that the development could be implemented in its current design and would be unlikely to adversely impact the regulated trees provided:

- *The proposed driveway access and parking areas are open-sealed (i.e. brick paved and not concrete or bitumen-sealed).*
- *Any site levelling that is required along the northern part of the development site involves the addition of soil fill and not the removal (excavation) of natural soil.*
- *The stormwater pipe drainage to the adjacent creek is installed using a soil vacuum (not mechanically or hand excavated) where within the creek reserve, with any roots greater than 100 mm in diameter retained, and pipework realigned to retain any such roots.*
- *No other works or construction activity are required in the creek reserve to the north of the development allotment.*
- *Any footings for retaining walls and/or fencing along the northern boundary of the development site be of pier/post type (no linear excavations). Any piers/post holes required within the SRZ of any tree should be excavated using a soil vacuum (not mechanically or hand excavated), with any roots greater than 100 mm in diameter retained, and holes adjusted if necessary to retain any such roots.*

*The depth and type of fill to be placed on the subject site (if any) is unlikely to have any impact on the three regulated trees, provided the soil is non-toxic and not heavily compacted.*

While the applicant's Arborists and Mr Nicolle differ in the methodology behind their recommendation, both agree that the development can be undertaken in the manner proposed, with both providing similar recommendations which limit excavation and compaction within close proximity to the regulated trees.

A series of conditions have been included in the staff recommendation (conditions 3 – 6), which adopt recommendations from both expert reports and have been reviewed by Councils Arborist. These include the construction methodology for the driveway (which maintains permeability and reduces heavy compaction) and excavation methodology for infrastructure installation in close proximity to the regulated trees.

These conditions also require the implementation of the driveway prior to other works commencing on site, so as to remove the requirement of a physical Tree Protection Zone to be implemented, which could restrict the construction of dwellings 2, 3 and 4.

On this basis, both the land division and built form Applications are considered to satisfy Principles 413, 415 and 416.

The proposed development includes a landscaping scheme that includes small tree species (Crepe Myrtle), shrubs (Lilly Pilly, Silver bush and Yacca) and ground covers (Dwarf Mirror Plant, Scarlet Runner) as well as grasses.

The proposed landscape scheme and schedule is considered to provide for a reasonably good level of amenity for future occupants of the dwellings, as specified by City Wide Principle of Development Control 221(a).

As detailed in the "Car parking/access/manoeuvring" section of the report, City Wide Principle of Development Control 189 states that the paved carriageway width should be no less than 5.0 metres in width, with 1.0 metre of landscaping, resulting in a total width of paved carriageway and landscaping of 6.0 metres. The proposed development provides landscaping on the northern side of the driveway at a width of 650 – 900mm, in addition to providing landscaping in front of dwellings (southern side of driveway) which is considered to generally accord with Principle 189 with regard to landscaping.

Landscaped areas are also included in front of dwelling 1, while rear grasses are provided within rear landscaped areas.

On balance, the proposed development is considered to provide a sufficient level of landscaping.

The landscaping plan is contained in **Attachment 2** page 29.

### Environmental Sustainability

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

City Wide Objectives:	23, 42
City Wide PDC's:	67-72, 147, 148, 151, 159, 160

Each of the dwellings is provided an alfresco area, which maintains a southern outlook. Upper level balconies compensate for this, which have a northern outlook over the Council reserve to provide northern light to main bedrooms. Internally the living rooms of each dwelling front onto the driveway area, and have good northern solar access.

The application includes permeable paving to the community driveway to allow surface runoff to move into bordering garden beds, which assists to offset the impact of the extensive hard surface areas.

City Wide Principle of Development Control 159 prescribes that new dwellings should be provided with a 2,000 litre rain water tank in order to maximise the use of stormwater collected from roof areas. The drainage plan by TMK Consulting Engineers (**Attachment 2** page 30) displays 3,000 litre rainwater tanks to be provided for each dwelling, with 2000 litres acting as a detention tank and the remaining 1000 litres used for retention, satisfying Principle 159.

In general terms, the environmental performance of the dwelling is considered to be reasonable.



## Summary

The subject land is constrained by the presence of significant trees adjacent the northern boundary, and its susceptibility to flooding. The proposed division creates allotments for the construction of group dwellings which fail to satisfy the minimum site area requirements of the Medium Density Policy Area, which is intended to accommodate a greater range of dwelling types at a higher density than the general Residential Zone.

The group dwellings have a built form consistent with that of a residential flat building which the Development Plan does not specify a minimum site area but does seek to provide a minimum internal floor area, by which the application satisfies.

The proposed built form of the two-storey group dwellings is consistent with Principle 7 of the Medium Density Policy Area and from a design response, the architectural approach is considered to be reasonably compatible and complementary in relation to other residential development within the locality.

The proposed development fails to meet the minimum quantitative provisions of the Development Plan with respect to visitor car parking, the width of the carriageway along the length of the community driveway, the maximum height of combined fencing and retaining walls and fails to meet setback requirements for portions of the dwellings at ground floor and upper floor.

The development minimises the potential for impact on the adjacent regulated trees located within the adjacent Council reserve and overcomes flood concerns by adopting appropriate finished floor levels.

In terms of the qualitative provisions of the Development Plan, the applications provide good solar orientation of the internal living areas and the private open space areas for dwellings, with a reasonable level of landscaping which assists to offset the central paved driveway and provide a high residential amenity, despite the compact allotment size. While the extent of hard paved surfaces is considered to be a negative aspect of the proposal, with this form of development at the density allowed within the Medium Density Policy Area, it is largely unavoidable.

The proposed development is considered to reasonably satisfy Development Plan provisions related to the construction of group dwellings and demonstrates that the size of the allotments proposed as part of the land division are appropriate. On balance, it is considered that the proposal is not seriously at variance with the Development Plan and the development sufficiently accords with the Development Plan to merit consent.

## RECOMMENDATION 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 No 155/C038/20 by Mr M Rajagopal to undertake a Community land division (creating four community lots) at 2 Sommers Avenue, Firlie.

### Relevant Plans

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

- Community Title Plan of Division (Reference Number 12036P1.1 Dated 03/11/20) prepared by Steed Surveyors.

### 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. (S A Water H0101546)

SA Water advises on receipt of the developer details and site specifications an investigation will be carried out to determine if the connections to your development will be standard or non standard fees.

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

2. Payment of \$23,283.00 into the Planning and Development Fund (3 allotment/s @ \$7,761.00 /allotment). Payment may be made by credit card via the internet at [www.edala.sa.gov.au](http://www.edala.sa.gov.au) or by phone (7109 7018), by cheque payable to the Department of Planning, Transport and Infrastructure 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.

#### Council Conditions

Nil

#### Council 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 is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.  
  
All works on Council owned land required as part of this development are likely to be at the Applicant's cost.
5. This Development Plan Consent will lapse within 24 months of the date of this notice unless full Development Approval has been obtained.
6. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

#### **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 No 155/247/20 by Adelaide Designer Homes Pty Ltd for the Construction of four, two-storey abutting group dwellings, fencing, landscaping and associated retaining walls, subject to the following conditions:

### Relevant Plans

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

- Plans and elevations (Job Number 12620) Revision B dated 27/01/2021 prepared by Adelaide Designer Homes.
- Landscaping Plan (Job Number 12623) Revision B dated 27/01/2021 prepared by Adelaide Designer Homes.
- Drainage Plan by TMK Consulting Engineers (Drawing No. C1 1905290) dated February 2021

### Council Conditions

1. A sign with a minimum area of 0.2m<sup>2</sup> shall be installed within the first 10 metres of the common driveway area measured from Sommers Avenue, directing visitors to parking at the rear of the site, to the reasonable satisfaction of the Assessment Manager.
2. With the exclusion of upper floor windows facing north, or windows of dwelling 1 facing east, all portions of the upper windows less than 1.7 metres above the floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from within the room (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).
3. The proposed driveway, access and parking areas shall be constructed utilising an above existing grade non-compacting permeable paving solution, as detailed on Page 16 of the Preliminary Arboricultural Report and Arboricultural Impact Assessment, undertaken by Duncan McGregor with details submitted to the reasonable satisfaction of Councils Arborist, prior to the issuing of Development Approval.
4. The new driveway (including any retaining walls required to support the driveway) must be completed prior to dwelling construction works commencing, or ground protection measures implemented as detailed in section 7 and appendix E of the Preliminary Arboricultural Report and Arboricultural Impact Assessment, undertaken by Duncan McGregor.
5. Any footings for retaining walls and/or fencing along the northern boundary of the development site be of pier/post type (no linear excavations). Any piers/post holes required within the SRZ of any tree should be excavated using a soil vacuum (not mechanically or hand excavated), with any roots greater than 100 mm in diameter retained, and holes adjusted if necessary to retain any such roots.
6. The stormwater pipe drainage to the adjacent creek is installed using a soil vacuum (not mechanically or hand excavated) where within the creek reserve, with any roots greater than 100 mm in diameter retained, and pipework realigned to retain any such roots.
7. 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.
8. A Stormwater Management Plan shall be provided for the development. Calculations are required to demonstrate detention storage meets the minimum requirements of Council. The detention requirements for the site are to detain the post development 1 in 100 year ARI storm event, with discharge being at the pre development 1 in 5 year ARI rate. The Stormwater Management Plan is to conform to the Council's Urban Services requirements, prior to the granting of Development Approval.
9. 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.

### Council 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 24 months of the date of this notice unless full Development Approval has been obtained.
7. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

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Ms Slater addressed the Council Assessment Panel from 7:48pm until 7:55pm

### **MOTION 1 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/C038/20 by Mr M Rajagopal to undertake a Community land division (creating four community lots) at 2 Sommers Avenue, Firle.*

### Relevant Plans

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

- *Community Title Plan of Division (Reference Number 12036P1.1 Dated 03/11/20) prepared by Steed Surveyors.*

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. (S A Water H0101546)*

*SA Water advises on receipt of the developer details and site specifications an investigation will be carried out to determine if the connections to your development will be standard or non standard fees.*

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

2. *Payment of \$23,283.00 into the Planning and Development Fund (3 allotment/s @ \$7,761.00 /allotment). Payment may be made by credit card via the internet at [www.edala.sa.gov.au](http://www.edala.sa.gov.au) or by phone (7109 7018), by cheque payable to the Department of Planning, Transport and Infrastructure 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.*

Council Conditions

*Nil*

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

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

5. *This Development Plan Consent will lapse within 24 months of the date of this notice unless full Development Approval has been obtained.*

6. *The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.*

*Seconded and Carried*

**MOTION 2  
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 155/247/20 by Adelaide Designer Homes Pty Ltd for the Construction of four, two-storey abutting group dwellings, fencing, landscaping and associated retaining walls, subject to the following conditions:*

*Relevant Plans*

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

- Plans and elevations (Job Number 12620) Revision B dated 27/01/2021 prepared by Adelaide Designer Homes, other than with respect to the finished floor levels shown on the site plans.*
- Landscaping Plan (Job Number 12623) Revision B dated 27/01/2021 prepared by Adelaide Designer Homes.*
- Drainage Plan by TMK Consulting Engineers (Drawing No. C1 1905290) dated February 2021*

*Council Conditions*

- 1. A sign with a minimum area of 0.2m<sup>2</sup> shall be installed within the first 10 metres of the common driveway area measured from Sommers Avenue, directing visitors to parking at the rear of the site, to the reasonable satisfaction of the Assessment Manager.*
- 2. With the exclusion of upper floor windows facing north, or windows of dwelling 1 facing east, all portions of the upper windows less than 1.7 metres above the floor level shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from within the room (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).*
- 3. The proposed driveway, access and parking areas shall be constructed utilising an above existing grade non-compacting permeable paving solution, as detailed on Page 16 of the Preliminary Arboricultural Report and Arboricultural Impact Assessment, undertaken by Duncan McGregor with details submitted to the reasonable satisfaction of Councils Arborist, prior to the issuing of Development Approval.*
- 4. The new driveway (including any retaining walls required to support the driveway) must be completed prior to dwelling construction works commencing, or ground protection measures implemented as detailed in section 7 and appendix E of the Preliminary Arboricultural Report and Arboricultural Impact Assessment, undertaken by Duncan McGregor.*
- 5. Any footings for retaining walls and/or fencing along the northern boundary of the development site be of pier/post type (no linear excavations). Any piers/post holes required within the SRZ of any tree should be excavated using a soil vacuum (not mechanically or hand excavated), with any roots greater than 100 mm in diameter retained, and holes adjusted if necessary to retain any such roots.*
- 6. The stormwater pipe drainage to the adjacent creek is installed using a soil vacuum (not mechanically or hand excavated) where within the creek reserve, with any roots greater than 100 mm in diameter retained, and pipework realigned to retain any such roots.*
- 7. 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.*

8. *A Stormwater Management Plan shall be provided for the development. Calculations are required to demonstrate detention storage meets the minimum requirements of Council. The detention requirements for the site are to detain the post development 1 in 100 year ARI storm event, with discharge being at the pre development 1 in 5 year ARI rate. The Stormwater Management Plan is to conform to the Council's Urban Services requirements, prior to the granting of Development Approval.*
9. *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.*

#### Council 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.*
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*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 24 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*

**3. OTHER BUSINESS**

Nil

**4. CONFIDENTIAL REPORTS**

Nil

**5. CLOSURE**

*The Presiding Member declared the meeting closed at 8:35pm*

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**Phill Smith**  
**ACTING PRESIDING MEMBER**

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**Mark Thomson**  
**MANAGER DEVELOPMENT ASSESSMENT**