

Council Assessment Panel Minutes

19 September 2022

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 Mark Adcock
Mr Ross Bateup
Ms Jenny Newman

Panel Members

Staff Mark Thomson, Consultant Planner
Geoff Parsons, Manager Development Assessment
Kieran Fairbrother, Senior Urban Planner
Tala Aslat, Planning Assistant

APOLOGIES Mr Terry Mosel

ABSENT

Mr Thomson advised that Mr Mosel in an apology and sought nomination for an Acting Presiding Member.

MOVED

That Mr Adcock be Acting Presiding Member

Seconded and Carried

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL
HELD ON 15 AUGUST 2022**

Seconded and Carried

2. STAFF REPORTS

2.1 DEVELOPMENT NUMBER 22023834 - SHALINI SHAH ON BEHALF OF DESIGNINC ADELAIDE PTY LTD – 11 MARIAN ROAD, PAYNEHAM SOUTH

DEVELOPMENT NO.:	22023834
APPLICANT:	Shalini Shah on Behalf of DesignInc Adelaide Pty Ltd
ADDRESS:	11 MARIAN RD PAYNEHAM SOUTH SA 5070
NATURE OF DEVELOPMENT:	Change of Land Use to Educational Establishment/Place of Worship involving Alterations and Additions to an Existing Domestic Outbuilding for Temporary Use as a General Learning Area and New Storage Sheds
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy
LODGEMENT DATE:	17 Jul 2022
RELEVANT AUTHORITY:	Assessment panel
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Mark Thomson Assessment Manager
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

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DETAILED DESCRIPTION OF PROPOSAL:

St Joseph's School are seeking to convert the rear portion of the residential property at 11 Marian Road, Payneham for use as part of the school property. A dwelling has recently been approved for construction on the front portion of the property and is to be fenced to create its own exclusive site. No land division is proposed.

More specifically, the conversion of the rear portion for use as part of the school includes:

- Internal and external modifications to an existing outbuilding located on the eastern side boundary, for use as a General Learning Area (GLA);
- Construction of two new storage sheds abutting the rear boundary of the site of the new dwelling on the front portion of the property, for use by the Parish and School.

The floor area of the existing outbuilding to be used as GLA is approximately 77m². Proposed external modifications comprise garage roller doors on each end being fixed closed and encapsulated with new wall cladding. Internally, an incomplete wall is proposed to be removed and replaced with a new wall encapsulating columns. This wall would separate the GLA from the eastern side property boundary by 1 metre, creating an internal services corridor in between.

The proposed new sheds are 33m² each and abutting one another. The sheds are to have a 3.1m wall height and 4.0m overall height to the ridge of gabled roofs. The sheds are to be clad in profiled colorbond cladding.

The proposed GLA is proposed to be used for a period of up to 2 years while other new GLA's are being constructed elsewhere on-campus. In this respect, at its meeting held on 16 May 2022, the Panel granted consent to the construction of a two storey school building at 3-5 Tarcoma Avenue. It is intended that the temporary GLA building will be demolished after construction of that building has been completed.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 11 MARIAN RD PAYNEHAM SOUTH SA 5070

Title ref.: CT
5172/518

Plan Parcel: F100602
AL8

Council: THE CITY OF NORWOOD PAYNEHAM AND
ST PETERS

The subject land is a residential property which has been purchased by the School. Until recently it contained a dwelling fronting Marian Road and outbuildings and swimming pool at the rear. The dwelling has recently been demolished and approval has been granted for a replacement dwelling.

Locality

As well as the School, the locality surrounding the subject site contains predominantly residential development of varied dwelling types including one and two storey residential flat buildings and group dwellings, as well as one and two storey detached dwellings.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Shed: Code Assessed - Performance Assessed
Shed

Educational establishment: Code Assessed - Performance Assessed
Place of worship: Code Assessed - Performance Assessed
Other - Community - Alterations and additions: Code Assessed - Performance Assessed
Change of use: Code Assessed - Performance Assessed

- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed

- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
education establishment

- **LIST OF REPRESENTATIONS**

One representation was received from David and Lis Brittan of 10 Marian Road, Payneham, located on the opposite side of Marian Road to the subject land. Mr and Mrs Brittan are opposed to the application and wish to be heard by the Panel.

- **SUMMARY**

Mr and Mrs Brittan's concerns are summarised below:

- The recent dwelling demolition has left the site barren and unattractive, devoid of vegetation
- Demolition contractors trespassed on and damaged nearby property
- Request that a stone wall be constructed on the front boundary of the property
- Request that departing students and staff only egress the site from the existing driveway adjacent the church;
- Lights are currently left on in the sheds
- Continued expansion of the school will increase traffic impacts

In responding to the representations, the applicant has advised:

- It is foreshadowed that replacement vegetation will be planted in association with the separately approved new dwelling fronting Marian Road. Front fencing will also be considered
- The proposed development does not increase the number of students or staff at the school, therefore there will be no increase in traffic
- In response to noise concerns, the operating hours will be during school hours, the GLA building will have no openings facing residential properties and plant and equipment will be shielded

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

Nil

PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

Land Use and Intensity

Performance Outcome 1.1 of the General Neighbourhood Zone seeks “*Predominantly residential development with complementary non-residential uses that support an active, convenient, and walkable neighbourhood.*” The associated Designated Performance Feature (DPF 1.1) lists *educational establishment* as one of the desired land uses.

Performance Outcome 1.2 of the General Neighbourhood Zone seek “*non-residential development located and designed to improve community accessibility to services, primarily in the form of:*

- a) *small scale commercial uses such as offices, shops and consulting rooms;*
- b) *community services such as educational establishments, community centres, places of worship, pre-schools, and other health and welfare services;*
- c) *services and facilities ancillary to the function or operation of supported accommodation or retirement facilities; and*
- d) *open space and recreation facilities.*

The proposed use of the rear of 11 Marian Road as part of the St Joseph School educational establishment is therefore an anticipated land use within the General Neighbourhood Zone.

Performance Outcome 1.5 seeks to manage the impacts associated with the expansion of educational establishments, stating:

“*Expansion of existing community services such as educational establishments, community facilities and pre-schools in a manner which complements the scale of development envisaged by the desired outcome for the neighbourhood.*”

The associated Designated Performance Feature (DPF 1.5) states:

“*Alteration of or addition to existing educational establishments, community facilities or pre-schools where all the following are satisfied:*

- a) *set back at least 3m from any boundary shared with a residential land use;*
- b) *building height not exceeding 1 building level;*
- c) *the total floor area of the building not exceeding 150% of the total floor area prior to the addition/alteration;*
- d) *off-street vehicular parking exists or will be provided in accordance with the rate(s) specified in Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements or Table 2 - Off-Street Car Parking Requirements in Designated Areas to the nearest whole number.*”

The specific impacts of the height, setbacks and car parking associated with the proposal are addressed under the relevant headings below.

Building Height

As outlined above, DPF 1.5 includes a height criteria of 1 building level for expansions of educational establishments; representing one way of achieving the associated performance outcome of complementing the scale of development envisaged by the desired outcome for the neighbourhood.

The outbuilding which is proposed to be used as a GLA is an existing single level building and no change to the height of the building is proposed.

Setbacks, Design & Appearance

Performance Outcome 1.3 seeks “*Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood.*” There is no associated designated performance feature. Further guidance on the siting of buildings is provided in the following policies.

Performance Outcome 3.1 states “*Building footprints allow sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.*” The associated designated performance feature seeks a maximum site coverage of 60%. The proposed sheds would increase the site coverage to 25%, based on the site of the proposed development (ie. the rear portion of the allotment).

Performance Outcome 1.5 provides a side setback policy for expansions of educational establishments, with the associated designated performance feature specifying a setback of 3 metres for an alteration of or addition to an existing educational establishment from a boundary shared with a residential use. Although the proposal would result in an educational establishment building being located closer than 3m to a boundary shared with a residential use, the outbuilding which is proposed to be used as a GLA already exists. Therefore, the proposal is not considered to offend the performance outcome.

The proposed sheds are set back from all allotment boundaries, including 3 metres from the boundary of the residential property to the east.

On balance, the proposed building is considered to be sited in accordance with the above policies regarding site coverage and boundary setbacks.

Traffic Impact, Access and Parking

The proposed temporary use of the outbuilding as a GLA is not expected to result in an increase in car parking demand or traffic generation, as it is intended to accommodate students which are displaced from other areas of the school during building work for the recently approved two storey school building at 5 Tarcoma Avenue.

Interface Factors

Noise Emissions

Performance Outcome 4.1 states “*Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).*”

The outbuilding which is proposed to be used only has a usable floor area of 77m² and is therefore a relatively low intensity use compared to the much larger school buildings within the school. Its use is proposed to be confined to school hours. The building has no openings other than those facing west towards the established school property and an internal 1m wide void creates further separation of any noise generated inside the building and the neighbouring residential property. Given these circumstances, the proposal is not considered likely to unreasonably impact on the amenity of the occupiers of the adjoining residential property.

CONCLUSION

Educational establishments are an envisaged land use within the General Neighbourhood Zone. The proposed temporary use of an existing outbuilding as a general learning area by the adjacent school is therefore considered consistent with the Code from a land use perspective.

Aside from the construction of modest size storage sheds sited 3m from the nearest allotment boundary, no building work is proposed and as such the proposal will not result in built form impacts.

The proposal is not expected to result in traffic or parking impacts, as the use of the outbuilding is intended to accommodate existing students due to building work occurring elsewhere within the school.

Given the relatively small size of the building, the intensity of the use would be low and the design of the building is such that no unreasonable noise impacts to neighbouring properties are expected.

RECOMMENDATION

It is recommended that the Council Assessment Panel/SCAP 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 22023834, by Shalini Shah on Behalf of DesignInc Adelaide Pty Ltd is granted Planning Consent subject to the following reasons/conditions/reserved matters:

CONDITIONS

Planning Consent

1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.
2. Use and occupation of the subject site as part of the educational establishment shall not occur outside of school hours Monday to Friday.
3. All external lighting shall be shielded and directed so as not to be obtrusive to adjacent residential properties to the reasonable satisfaction of the Council.

ADVISORY NOTES

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. This consent or approval will lapse at the expiration of 2 years from its operative date, subject to the below or subject to an extension having been granted by the relevant authority.
4. Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).
5. 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 Brittan addressed the Council Assessment Panel from 7:07pm until 7.11pm

Mr Channon from Future Urban addressed the Council Assessment Panel from 7:12pm until 7:14pm

MOVED

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 22023834, by Shalini Shah on Behalf of DesignInc Adelaide Pty Ltd is granted Planning Consent subject to the following reasons/conditions/reserved matters:

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ADVISORY NOTES

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5. 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

2. STAFF REPORTS

2.2 DEVELOPMENT NUMBER 22021405 – NICK PEACOCK C-/ FUTURE URBAN PTY LTD – 5 FOSTER STREET, NORWOOD

DEVELOPMENT NO.:	22021405
APPLICANT:	Nick Peacock C-/ Future Urban Pty Ltd
ADDRESS:	5 FOSTER ST NORWOOD SA 5067
NATURE OF DEVELOPMENT:	Demolition of a dwelling
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Historic Area • Heritage Adjacency • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <p>Minimum Site Area (Minimum site area is 300 sqm)</p> <p>Maximum Building Height (Levels) (Maximum building height is 2 levels)</p>
LODGEMENT DATE:	28 Jun 2022
RELEVANT AUTHORITY:	Assessment panel
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

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ATTACHMENT 4:	Representations	ATTACHMENT 9:	Agreed Facts Statement

DETAILED DESCRIPTION OF PROPOSAL:

The proposal is to demolish a dwelling in the form of a 1920's bungalow in its entirety.

BACKGROUND:

Development Application 155/D017/21 was lodged in March 2021 for Torrens Title land division (1 into 2), the demolition of an existing dwelling and the construction of two detached dwellings. As it was lodged prior to the commencement of operation of the Planning & Design Code (the Code), the relevant instrument against which it was assessed was the Norwood Payneham & St Peters (City) Development Plan.

The Panel considered the Development Application at its meeting held on Monday 18 October 2021 and determined to refuse the Application for the following reasons:

1. *The existing dwelling proposed for demolition makes a positive contribution to the Foster Street streetscape and whilst it has some structural deficiencies, the extent of rehabilitation work required to address the damage is reasonable, such that demolition is not justified.*
2. *The proposed land division is of an insufficient width to allow for the construction of dwellings which adequately satisfy the provisions of the Development Plan.*
3. *The proposed dwellings are not acceptable infill dwellings within a Residential Historic (Conservation) Zone.*

Following the refusal of the Application by the Panel, the applicant lodged an Appeal with the ERD Court, which was subsequently directed into the pending track at the request of the appellant, to provide an opportunity to seek to resolve the issues of contention and to gain the Panel's support of the proposal.

The Panel considered a compromise proposal (the first compromise) at its meeting held on 19 December 2021. The first compromise proposal involved the provision of further information and amendments to the design of the replacement development. The Panel resolved to not accept the compromise, referring to the reasons for refusal of the initial application.

The Panel considered a second compromise proposal (the second compromise) at its meeting held on 21 February 2022. This compromise included the provision of additional information and further amendments to the design of the replacement development. The Panel resolved to not accept the compromise, and provided the following reasons:

- a) *Contrary to Norwood 4 Policy Area Objective 1, the proposal does not enhance the historic character of the Norwood 4 Policy Area.*
- b) *Contrary to Norwood 4 Policy Area Principle of Development Control 3, the proposal involves the demolition of an existing buildings originally constructed prior to 1940 which contributes to the desired character of the Zone and the Policy Area.*
- c) *Contrary to the Residential Historic (Conservation) Zone Desired Character Statement, the development will not preserve and enhance the historic character and ambience of localities by providing for a range of high-quality residential accommodation which reinforces the historic character and residential amenity of the policy area.*
- d) *Contrary to the Residential Historic (Conservation) Zone Desired Character Statement, the development will not preserve and enhance the historic character and ambience of localities by providing for a range of high-quality residential accommodation which reinforces the historic character and residential amenity of the policy area.*
- e) *Contrary to the Residential Historic (Conservation) Zone Desired Character Statement, the development will not reinforce the existing streetscape and historic building stock, the new dwellings will not be of a complementary nature and will compete and stand out against the historic elements for streetscape prominence.*

- f) *Contrary to Residential Historic (Conservation) Zone Principles of Development Control 3 and 7(d), the existing dwelling which contributes to the historic character and desired character of the zone is not proposed to be retained and conserved/rehabilitated.*
- g) *Contrary to Residential Historic (Conservation) Zone Principle of Development Control 7(a), the proposed dwellings are not at a density which is reflective of the historic development patterns of the locality.*
- h) *Contrary to Residential Historic (Conservation) Zone Principle of Development Control 16, the proposed dwellings do not demonstrate a compatible visual relationship with the buildings that contribute to the historic character of the relevant policy area through consideration of the following:*
 - i. *bulk and scale;*
 - ii. *width of site frontage, front and side boundary setback patterns, wall height and window placement;*
 - iii. *the form and level of visual interest present in a building (as determined by the height of eaves, the length and size of unbroken walling, treatment of openings and depths of reveals, roof form and pitch, external colour and texture of materials used, as well as detailing, landscaping and fencing); and*
 - iv. *design elements such as verandahs, balconies and eaves.*
- i) *Contrary to Residential Historic (Conservation) Zone Principle of Development Control 19, the height of the proposed new buildings is not consistent with the prevailing building heights.*

The Panel considered a third compromise proposal (the third compromise) at its meeting held on 21 March 2022. This compromise included the provision of additional information and further amendments to the design of the replacement development. The Panel resolved to not accept the compromise, and provided the following reasons:

- a) *Contrary to Norwood 4 Policy Area Objective 1, the proposal does not enhance the historic character of the Norwood 4 Policy Area.*
- b) *Contrary to Norwood 4 Policy Area Principle of Development Control 3, the proposal involves the demolition of an existing buildings originally constructed prior to 1940 which contributes to the desired character of the Zone and the Policy Area.*
- c) *Contrary to the Residential Historic (Conservation) Zone Desired Character Statement, the development will not preserve and enhance the historic character and ambience of localities by providing for a range of high-quality residential accommodation which reinforces the historic character and residential amenity of the policy area.*
- d) *Contrary to the Residential Historic (Conservation) Zone Desired Character Statement, the development will not reinforce the existing streetscape and historic building stock, the new dwellings will not be of a complementary nature and will compete and stand out against the historic elements for streetscape prominence.*
- e) *Contrary to Residential Historic (Conservation) Zone Principles of Development Control 3 and 7(d), the existing dwelling which contributes to the historic character and desired character of the zone is not proposed to be retained and conserved/rehabilitated.*
- f) *Contrary to Residential Historic (Conservation) Zone Principle of Development Control 7(a), the proposed dwellings are not at a density which is reflective of the historic development patterns of the locality.*
- g) *Contrary to Residential Historic (Conservation) Zone Principle of Development Control 16, the proposed dwellings do not demonstrate a compatible visual relationship with the buildings that contribute to the historic character of the relevant policy area through consideration of the following:*

- i. *bulk and scale;*
 - ii. *width of site frontage, front and side boundary setback patterns, wall height and window placement;*
 - iii. *the form and level of visual interest present in a building (as determined by the height of eaves, the length and size of unbroken walling, treatment of openings and depths of reveals, roof form and pitch, external colour and texture of materials used, as well as detailing, landscaping and fencing); and*
 - iv. *design elements such as verandahs, balconies and eaves.*
- h) *Contrary to Residential Historic (Conservation) Zone Principle of Development Control 19, the height of the proposed new buildings is not consistent with the prevailing building heights.*

In August 2022, a hearing was conducted in the ERD Court in relation to the appeal. Experts in the fields of Planning, Heritage and Engineering appeared for both parties to the appeal. The Commissioner ultimately reserved judgment.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 5 FOSTER ST NORWOOD SA 5067

Title ref.: CT
5826/105

Plan Parcel: F139515
AL35

Council: THE CITY OF NORWOOD PAYNEHAM AND
ST PETERS

The subject land is located on the western side of Foster Street, Norwood. It contains a single-storey inter-war (1920's) bungalow set back from the street and a low masonry front fence. A small rear (western) lean-to addition is attached to the rear of the dwelling, which contains basic laundry facilities. There is an existing 850mm high better block retaining wall which runs along the southern side boundary of the allotment.

Vehicular access is provided via a crossover on Foster Street at the southern end of the frontage. Both the front and rear yards are predominantly lawned areas, with the rear yard area also containing a mix of plants and shrubs along the rear fence line. None of the vegetation on the land is regulated. A single well-established street tree is located on the verge in front of the property, at the northern end of the frontage.

Locality

The subject land is located approximately half way along the north-south section of Foster Street, between Magill Road to the north and 15 Foster Street to the south. Foster Street is characterised by historic dwelling stock, comprising a mix of inter-war Bungalows, and Victorian era villa and cottages. Some examples of replacement dwellings also exist in Foster Street – eg. 2 Foster Street (a mid-twentieth century conventional hipped tiled roof dwelling), adjacent at 6 Foster Street (a contemporary part-two storey detached dwelling) and adjoining the subject land to the south at 7 Foster Street (three mid-twentieth century single storey row dwellings).

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Demolition: Code Assessed - Performance Assessed

- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed

- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
demolition of a building in the historic area overlay

- **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Position	Wishes To Be Heard
Thuan	Doan	4 George Street, Norwood	Opposed	NO
Constantina	Hatwell	15 Queen Street, Norwood	Opposed	NO
Alexander	Kelly	4 George Street, Norwood	Opposed	NO
Stephen	Marks	Po Box 4845, Kent Town	Support	NO

- **SUMMARY**

Three representors are opposed to the proposed demolition and one representor is supportive. No reason was given for the support. The following is a summary of the reasons given by those representors opposed to the demolition.

- Demolition of the dwelling would negatively impact on the heritage character of the area
- The dwelling is in good structural condition
- The dwelling has many original features and is representative of the Norwood area

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

The previous development application which sought demolition of the dwelling (DA 155/D017/21) was referred to the Council's Heritage Advisor, David Brown, for advice on the heritage value of the dwelling, as well as the suitability of the replacement development which formed part of that application. Pertinent excerpts of his advice are provided below.

- *The three remaining sandstone fronted Bungalows at Nos 1, 3 and 5 Foster Street clearly demonstrate a consistent cluster of historic development. Along with the Bungalow style maisonettes at No 13 and 15, and the house at No 2A George Street they tell a relatively clear story about the history and development of Foster Street and this part of Norwood.*
- *The Local Heritage Place listed property at No 9-11 Foster Street is the only original building on the western side of Foster Street that is not an Interwar Bungalow*
- *No 5 Foster Street, as an individual building, was twice considered worthy of listing as a Contributory Item (now known as Representative Items), and its condition has not degraded significantly since these two heritage surveys were carried out.*

- *The building is a simple Californian Bungalow with a typical asymmetrical front verandah, central door with sidelight window, and two matching feature windows on the front façade. All the common Bungalow stylistic elements are present in the house, with the vertically battened main gable, the tapered masonry pillars to the front verandah, the small pane upper sashes to the windows, the simple unadorned chimney, and the pudding faced sandstone to the front façade.*
- *The house is a good example of a simple, quality, Interwar Californian Bungalow in the Norwood area as infill dwellings. The house is not special or significant enough to be a Local Heritage Place, as are some other Bungalows in Norwood, but clearly was a quality built new dwelling constructed as part of the post WW1 expansion and infill of the suburb, and along with its own aesthetic merit, forms part of the general streetscape of similar quality buildings of the era.*

PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

There are no zone level policies contained in the Code which are directly relevant to the proposed demolition. Instead, the relevant policies are contained within the Historic Area Overlay, as set out below. Where appropriate relevant terms have been underlined.

DO 1: *Historic themes and characteristics are reinforced through conservation and contextually responsive development, design and adaptive reuse that responds to existing coherent patterns of land division, site configuration, streetscapes, building siting and built scale, form and features as exhibited in the Historic Area and expressed in the Historic Area Statement.*

PO 7.1: *Buildings and structures, or features thereof, that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:*

- a) the front elevation of the building has been substantially altered and cannot be reasonably restored in a manner consistent with the building's original style; or*
- b) the structural integrity or safe condition of the original building is beyond reasonable repair.*

PO 7.3: *Buildings or elements of buildings that do not conform with the values described in the Historic Area Statement may be demolished.*

The Historic Area Statement includes a table which describes the built form characteristics that provide a legible connection to the historic development of the locality. In relation to architectural styles, detailing and built form features the table states:

Late 19th Century small-scale maisonettes and single and double-fronted cottages (mainly in Moulden, Clara, Bonney, Vernon and Foster Streets), early 20th Century villas (mainly in George and Queen Streets, the western side of Moulden Street and the western end of Prosser Avenue) and some later period bungalows, including Tudor-style bungalows mainly in the eastern part of Prosser Avenue but also in George Street).

The applicant has suggested that the above statement seeks to recognise the importance of a select type of bungalow; specifically later period bungalows. The applicant goes on to say that Californian bungalows such as the subject dwelling, are earlier forms of bungalows and are therefore not recognised in the statement. However, when the statement is read in its entirety, it is logical that the term 'later period' is intended to differentiate the period of bungalows in general from the period of the preceding dwelling types in the statement. In other words, bungalows were constructed in a later period than the cottages and villas. The term 'some' in the statement reflects the fact that bungalows are less prevalent than the cottages and villas within the area generally.

It therefore follows that bungalows conform with the values and demonstrate historic characteristics described in the Historic Area Statement. According to the advice received from Mr Brown, the subject bungalow is a good example of a simple, quality, Interwar Californian Bungalow in the Norwood area.

The relevant test as to whether or demolition should be consented to are whether the front elevation has been substantially altered and cannot be reasonably restored in a manner consistent with the building's original style and whether the structural integrity or safe condition of the original building is beyond reasonable repair. Satisfying either test is sufficient to justify demolition.

The front elevation of the subject dwelling has not been substantially altered. Therefore, the remaining test is whether the structural integrity or safe condition of the original building is beyond reasonable repair.

Beyond Reasonable Repair

The condition of the building and the cost of repairs has been exhaustively considered in the previous development application (DA 155/D017/21) and the subsequent appeal to the ERD Court. However, in that case, the relevant consideration under the Development Plan was that *existing buildings originally constructed prior to 1940 which contribute to the desired character of the Zone and the Policy Area should not be demolished*. Unlike the policy within the Code, there was no specific reference to the relevance of the condition of the building or the reasonableness of repair work.

Performance Outcome 7.1(b) seeks the retention of relevant buildings unless the structural integrity or safe condition of the original building is beyond reasonable repair.

Both the Council's Engineer and the applicant's Engineer agree that the structural integrity of the dwelling is compromised. It has sustained cracking damage to its external and internal walls as a result of footing movement, including the failure of a footing in the north eastern corner, largely due to the reactive clay soil foundation on which it has been constructed.

That said, the two Engineers disagree on the extent to which the building is structurally compromised. Council's Engineer considers that the building is not unsafe, however has recommended various repair and management works. Based on advice from a Quantity Surveyor engaged by the Council, the cost of those works was estimated to be in the order of \$285,000.

During the ERD Court appeal, costings were undertaken by the applicant's Quantity Surveyor to undertake works to the building in order to (a) make good to a standard of a well maintained dwelling of the era and (b) make good to a standard of a modern dwelling. The estimates were \$487,000 and \$649,000 respectively. Those estimates were reviewed by the Council's Engineer, who advised that some of the works itemised in the estimate may not be required and that the true cost is more likely to be approximately \$400,000 to achieve the standard of a well maintained dwelling of the era and \$600,000 to achieve the standard of a modern dwelling.

When considering the question of reasonableness of repair, Performance Outcome 7.1(b) relates to repairs to structural integrity and safe condition. It does not contemplate the reasonableness of works to upgrade a building to the standard of a modern dwelling. It does not even contemplate the reasonableness of works to achieve the standard of a well maintained dwelling of the era.

The initial costings by the Council's Quantity Surveyor of \$285,000 based on the Council's Engineers scope of works is considered to most accurately represent the cost of achieving structural integrity. However, even if the applicant's Quantity Surveyor's estimate to achieve the standard of a well maintained dwelling of the era was used, the maximum cost would be \$485,000.

The applicant has advised that the property was purchased in February 2021 for \$1.025 million. Following the cost of repair work, the total amount spent on the property would be between \$1.3 million and \$1.5 million based on figures considered reasonable as set out above, or between \$1.4m and \$1.6m using figures suggested by the Applicant.

The applicant has advised that the adjoining property at 3 Foster Street which contains a renovated bungalow, sold in April 2021 for \$1.3 million.

If in addition to the repair works, another \$250,000 was spent on renovating and extending the dwelling at 5 Foster Street, the total amount spent on the property would be between \$1.55 million and \$1.75 million based on figures considered reasonable as set out above, or between \$1.65m and \$1.85m using figures suggested by the Applicant.

The applicant has suggested that this demonstrates that repairing the dwelling at 5 Foster Street would overcapitalise the dwelling and therefore not reasonable.

However, this simplistic equation does not take into account that property prices in Norwood have increased by 35% in the past 12 months (according to supply, demand and performance data for houses, Realestate.com.au). Based on this, the property at 3 Foster Street could potentially be able to be sold for \$1.75m currently.

The other thing to consider is that efficiencies could be gained in repairing and renovating/extending the dwelling concurrently. It is artificial to consider that all renovation/extension costs would be entirely above and beyond repair costs.

CONCLUSION

The Historic Area Overlay seeks the retention of a range of dwelling types, including bungalows. The suggestion of the applicant that only a subset of bungalows is sought to be retained is respectfully considered a misreading of the policy.

Being a good example of a dwelling type which is sought to be retained, demolition should only be consented to where the façade has been significantly modified (which is not the case) or the structural integrity or safe condition of the building is beyond reasonable repair.

The building is cracking in a manner consistent with most dwellings of its type and age, other than a corner which requires reconstruction due to a failed footing. The extent of works to address the much less severe cracking in the remainder of the dwelling is not agreed between the Engineers, in part leading to different cost estimates. In addition, the standard and extent of repair works and the associated cost is not agreed. Based on all the information, it is considered the cost is likely to be approximately \$285,000 to achieve structural integrity, but could be as much as \$485,000.

Whether these costs are reasonable is a weighing up exercise with the importance of the dwelling to the historic character of the area. If the dwelling was to be demolished and a replacement building constructed to the standard expected in a Historic Area Overlay, the cost to construct an equivalent size house would likely be similar to the cost of repairing the existing dwelling, yet the contribution that the original dwelling makes to the historic character would be lost.

On balance, the proposed demolition is not considered to sufficiently accord with the relevant policies of the Planning & Design Code and therefore does not merit consent.

RECOMMENDATION

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 22021405, by Nick Peacock C-/ Future Urban Pty Ltd is refused Planning Consent for the following reasons:

Reasons for Refusal

1. The proposed demolition does not sufficiently accord with the relevant provisions of the Planning & Design Code. In particular, it is inconsistent with Historic Overlay Performance Outcome 7.1, as the dwelling demonstrates the historic characteristics as expressed in the Historic Area Statement and:
 - a. the front elevation of the building has not been substantially altered; and
 - b. the structural integrity of the building is not beyond reasonable repair.

MOVED

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 22021405, by Nick Peacock C-/ Future Urban Pty Ltd is refused Planning Consent for the following reasons:

Reasons for Refusal

1. The proposed demolition does not sufficiently accord with the relevant provisions of the Planning & Design Code. In particular, it is inconsistent with Historic Overlay Performance Outcome 7.1, as the dwelling demonstrates the historic characteristics as expressed in the Historic Area Statement and:
 - a. the front elevation of the building has not been substantially altered; and
 - b. the structural integrity of the building is not beyond reasonable repair.

Seconded and Carried

3. **OTHER BUSINESS**
Welcoming Geoff Parsons, Manager Development Assessment
4. **CONFIDENTIAL REPORTS**
Nil
5. **CLOSURE**

The Acting Presiding Member declared the meeting closed at 7:32pm

Mark Adcock
ACTING PRESIDING MEMBER

Mark Thomson
CONSULTANT PLANNER
ASSESSMENT MANAGER DELEGATE