

Council Assessment Panel Minutes

16 October 2023

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

Panel Members Mr Mark Adcock
Mr Ross Bateup
Ms Jenny Newman
Cr Christel Mex

Staff Geoff Parsons, Manager Development Assessment
Kieran Fairbrother, Senior Urban Planner
Ned Feary, Senior Urban Planner
Tala Aslat, Planning Assistant

Staff

APOLOGIES Mr Terry Mosel

ABSENT

1. COMMENCEMENT AND WELCOME

2. APOLOGIES

Mr Parsons advised that Mr Mosel is an apology and sought nominations for an Acting Presiding Member

Moved by Ms Newman
Mr Adcock be Acting Presiding Member

Seconded by Mr Bateup
CARRIED

3. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL HELD ON 18 SEPTEMBER 2023

Moved by Mr Bateup and Seconded by Ms Newman
CARRIED

4. DECLARATION OF INTERESTS

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 22033399 – ALISON BROOKMAN & STEPHEN BROOKMAN –
23 HARRIS STREET, NORWOOD

DEVELOPMENT NO.:	22033399
APPLICANT:	Alison Brookman Stephen Brookman
ADDRESS:	23 HARRIS ST NORWOOD SA 5067
NATURE OF DEVELOPMENT:	Construction of a two-storey detached dwelling with a roof-top garden, and construction of a swimming pool
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) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Frontage (Minimum frontage for a detached dwelling is 9m; semi-detached dwelling is 8m; row dwelling is 6m; group dwelling is 18m; residential flat building is 18m) • Minimum Site Area (Minimum site area for a detached dwelling is 300 sqm; semi-detached dwelling is 300 sqm; row dwelling is 300 sqm; group dwelling is 300 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	7 Oct 2022
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood Payneham & St. Peters
PLANNING & DESIGN CODE VERSION:	7 Oct 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Kieran Fairbrother Senior Urban Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

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ATTACHMENT 3:	Zoning Map	ATTACHMENT 7:	Applicant's Responses

DETAILED DESCRIPTION OF PROPOSAL:

This application seeks to construct a two-storey detached dwelling on an existing, small 152m² allotment, together with a roof-top garden and a swimming pool. The proposal involves the partial demolition of an existing four-car garage that currently straddles both the north and west boundaries of the site, retaining these walls but removing the south and east elevations to facilitate the construction of the proposed dwelling on the eastern boundary. Thus, the proposed dwelling is to be constructed across both side boundaries and the rear boundary.

BACKGROUND:

This application was first submitted more than 12 months ago, and in that time extensive discussions have taken place between the Applicant and Council staff which has resulted in the proposal that is currently before the Panel for assessment. The original submission and all subsequent correspondence are contained in **Attachment 7** for the Panel's benefit, to assist in providing context to the recommendation set out at the end of this Report.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 23 HARRIS ST NORWOOD SA 5067

Title ref.: CT 5395/185 **Plan Parcel:** F139337 AL57 **Council:** THE CITY OF NORWOOD PAYNEHAM AND ST PETERS

Shape:	regular
Frontage width:	12.50 metres
Area:	approx. 152m ²
Topography:	relatively flat
Existing Structures:	a freestanding four-car garage (outbuilding), disassociated with any other nearby dwelling/building
Existing Vegetation:	nil

Locality

The locality can broadly be described as the area comprising George Street, Harris Street and a small portion of Wall Street that are bound by Beulah Road to the north and Webbe Street to the south. For the Panel's benefit, this is represented in **Attachment 2**.

This locality contains a mix of single- and two-storey dwellings and two commercial car parks. With respect to Harris Street specifically, a two-storey car park dominates the south side of the streetscape, whereas the north side of the streetscape contains a mix of single- and two-storey dwellings of various forms.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Swimming pool, spa pool or associated
safety features: Code Assessed - Performance Assessed
Detached dwelling: Code Assessed - Performance Assessed
Partial demolition of a building or structure: Accepted
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
Boundary walls exceed the relevant height and length in Table 5 of the Established Neighbourhood Zone
- **LIST OF REPRESENTATIONS**

First Name	Family Name	Address	Position	Wishes to be heard?
Oren	Klemich	2C Macklin St, Parkside	Support	No
Elizabeth	Slatter	37 George St, Norwood	Opposed	Yes
Deborah	Skelly	2/31 George St, Norwood	Opposed	No

- **SUMMARY**

The one representor in support of the application simply stated that this is “a good design which suits the allotment”. The concerns raised by the two representors in opposition to the proposal can be summarised as follows:

- Potential overlooking opportunities from the roof-top garden;
- Visual outlook issues caused by the eastern boundary wall;
- Insufficient setbacks from boundaries;
- An overdevelopment of the site.

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

Desired Outcome 1 of the Established Neighbourhood Zone states:

“A neighbourhood that includes a range of housing types, with new buildings sympathetic to the predominant built form character and development patterns.”

Performance Outcome 1.1 of the Established Neighbourhood Zone states:

“Predominantly residential development with complementary non-residential activities compatible with the established development pattern of the neighbourhood.”

The corresponding Designated Performance Feature (DPF 1.1) specifically seeks dwellings as an envisaged land use within the Established Neighbourhood Zone, and therefore the proposed land use is acceptable.

Building Height

Performance Outcome 4.1 of the Established Neighbourhood Zone states:

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

A maximum building Technical and Numeric Variation applies to this site of 2 building levels, which is expressed in the corresponding Designated Performance Feature (DPF 4.1).

Part 8 of the Planning & Design Code defines “building level” as:

“Means that portion of a building which is situated between the top of any floor and the top of the next floor above it, and if there is no floor above it, that portion between the top of the floor and the ceiling above it. It does not include any mezzanine or any building level having a floor than is located 1.5m or more below finished ground level.”

With respect to this proposal, the roof-top garden is not covered by any roof or ceiling and therefore does not constitute a building level for the purposes of this definition. Thus, the proposal is for a two-storey dwelling which accords with the TNV applicable to this site and therefore satisfies Performance Outcome 4.1 (above).

Side and Rear Setbacks, Visual Impact, Overshadowing & Overlooking

Performance Outcome 3.1 of the Established Neighbourhood Zone states:

“Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.”

The corresponding Designated Performance Feature (DPF) of the above PO states that site coverages should not exceed 50%. It is wise to consider this DPF in the context of the minimum site areas also sought by DPF 2.1 of the Zone, which in respect of a detached dwelling is 300m². Hence, generally speaking, a 300m² allotment could support a dwelling footprint of 150m².

In this case, however, the proposed dwelling is to be sited on an existing allotment of only 152m² – approximately half of the desired site area for this Zone – and has a site coverage of 132m², or 86.8%. While this is far beyond what DPF 3.1 of the Zone seeks, it is a modest footprint that would be acceptable in principle on most other surrounding allotments. For context, both adjoining sites with frontages to Harris Street have site areas over 300m² and an approximate site coverage of 50% or above.

Performance Outcome 3.1 requires building footprints to be “consistent” with surrounding development, and this proposal achieves that. Considerations regarding visual impact and access to light and ventilation are discussed further below.

Performance Outcome 7.1 of the Established Neighbourhood Zone states:

“Dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties.”

Performance Outcome 8.1 of the Established Neighbourhood Zone states:

“Buildings are set back from side boundaries to provide:

- (a) Separation between buildings in a way that complements the established character of the locality*
- (b) Access to natural light and ventilation for neighbours”*

Performance Outcome 9.1 of the Established Neighbourhood Zone states:

“Buildings are set back from rear boundaries to provide:

- (a) Separation between buildings in a way that complements the established character of the locality*
- (b) Access to natural light and ventilation for neighbours*
- (c) Private open space*
- (d) Space for landscaping and vegetation.”*

The proposed dwelling features development along all of the west, north and east boundaries of the site. More specifically, this comprises:

- A 7.2m high wall along the western boundary for a length of 10.1m;
- A 7.2m high wall along the northern boundary for a length of 6.4m, followed by a 6m-long wall ranging in height from 2.4m to 2.2m;
- Boundary walling along the eastern boundary that is 2.3m at its lowest and 9.1m at its highest (where it accommodates an internal lift).

It is relevant to note that the site currently contains an outbuilding that has 3m high walls built along both the western and northern boundary for lengths of 8.1m and 9.7m, respectively. The applicant seeks to retain and add to these walls for their dwelling construction.

The abovementioned Performance Outcomes essentially seek similar outcomes: that boundary development, or development close to a boundary, provides sufficient separation between buildings to complement the character of the locality and not unreasonably impact neighbours by way of visual impact or overshadowing. Each of the neighbouring sites to this development will be dealt with in turn.

21 Harris Street (western neighbour)

The dwelling at 21 Harris Street has a setback of approximately 2.7m from the shared side boundary and has one window facing this boundary. This window faces onto the existing garage boundary wall on the subject land and is adjacent to a mature, deciduous tree on that site and therefore enjoys limited solar access and visual outlook. The addition of a second storey wall on this boundary is not considered to unreasonably exacerbate this issue and it is worth noting that this neighbour did not submit a representation during public notification.

With respect to this boundary in particular, the proposal sufficiently accords with Performance Outcome 7.1 (above).

35 George Street (northern neighbour)

The dwelling at 35 George Street is setback approximately 7.5m north of the shared boundary, separated from the boundary by a driveway and landscaping. Further, a large outbuilding is located in the southwest corner of 35 George Street, that extends for a length of approximately 6.6m along the shared boundary with the subject land. The proposed second storey boundary wall on the subject land does not extend laterally any further than this outbuilding and so its visual impacts are not considered to be unreasonable – the relationship between the development and this outbuilding is demonstrated on the north elevation of **Attachment 1**. The balance of the proposed dwelling is setback 2.7m from the rear boundary providing area for private open space at ground level. A privacy screen for the upper level will be attached to the dwelling, and setback 0.5m from the rear boundary. These are not considered to pose any unreasonable visual outlook issues to the northern neighbour because they are adjacent to the driveway and the occupants are unlikely to have any direct views onto this development from proximate private open space or internal windows.

Due to the subject land being south of 35 George Street, the proposed development will not impact solar access or ventilation to this site and thus no overshadowing impacts will arise. Again, it is worth highlighting that this neighbour did not submit a representation during public notification.

With respect to this boundary in particular, the proposal sufficiently accords with Performance Outcome 9.1 (above).

37 George Street (eastern neighbour)

The rear verandah attached to the dwelling at 37 George Street is setback approximately 9.5m east from the shared side boundary. This setback area forms the rear yard and private open space of 37 George Street, and so the occupants of this dwelling will have a direct outlook onto the proposed development; and their concerns about such are expressed in their representation in **Attachment 5**.

The east elevation of the proposed dwelling incorporates a mix of solid walling (in 'Evening Haze' colour or similar), a Colorbond cladding feature wall (in 'Deep Ocean' colour or similar) and privacy screens. This variation in materials and colours has arisen as a result of extensive discussions between the Applicant and council staff (see **Attachment 7**) as a means of trying to minimise, as much as possible, the impact of the development on 37 George Street. The result is a reduction in

the originally-proposed monochromatic, monotonous two-storey boundary walling, and increased articulation and setbacks throughout the elevation. Notwithstanding these changes, it is likely that this development will pose an unreasonable outlook for the eastern neighbour.

Performance Outcome 7.1 of the Zone, however, seeks for boundary walls to be “limited in height and length to manage visual and overshadowing impacts on adjoining properties” (my emphasis).

Further, Performance Outcome 20.3 of the Design in Urban Areas module states:

“The visual mass of larger buildings is reduced when viewed from adjoining allotments or public streets.”

As earlier mentioned, the subject land is only 152m² and so the reasonable development of the land for a modest two- or three-bedroom dwelling is likely going to necessitate some form of boundary development. The proposed dwelling contains only two bedrooms (although a redesign could incorporate a third), a single garage, a small plunge pool, a rooftop garden for private open space and otherwise modest living and bathroom areas. It is fair to say the dwelling is modest in proportions and is not an overdevelopment of the site.

The Applicant has made favourable changes to their design to reduce the visual impact on the eastern neighbour. Further, it is reasonable to expect this visual impact to be largely the same, albeit slightly reduced, if the dwelling was removed entirely from the eastern boundary and setback, say, 900mm. In this context, the proposed boundary walls might be considered to be limited in height and length to *manage* visual impacts on 37 George Street despite not completely removing those impacts.

With respect to overshadowing, Performance Outcome 3.2 of the Interface Between Land Uses module states:

“Overshadowing of the primary area of private open space... of adjacent residential land uses in... a neighbourhood-type zone is minimised to maintain access to direct winter sunlight”.

The corresponding Designated Performance Feature states:

“Development maintains 2 hours of direct sunlight between 9.00am and 3.00pm on 21 June to adjacent residential land uses in a neighbourhood-type zone in accordance with the following:

(a) For ground level private open space, the smaller of the following:

i. Half the existing ground level open space

Or

ii. 35m² of the existing ground level open space (with at least one of the area’s dimensions measuring 2.5m)

The Applicant has provided shadow diagrams that demonstrate the impact of the development on the private open space of 37 George Street on 21 June. These diagrams show that at 12.00pm the proposed development does not result in any additional overshadowing into the rear yard of 37 George Street. At 3.00pm, the proposed development imposes an additional, approximate 16.6m² of overshadowing into their ground level open space, leaving approximately 32m² of ground level open space not shadowed. Thus, it is reasonable to deduce that between 12.00pm and 3.00pm at least 35m² of existing ground level open space at 37 George Street will maintain 2 hours of direct winter sunlight, satisfying the abovementioned Designated Performance Feature and consequently, in this case, satisfying Performance Outcome 3.2 above.

In this context, and with respect to 37 George Street in particular, the proposal is considered to sufficiently accord with Performance Outcomes 7.1 and 8.1 of the Zone.

To briefly summarise all of the above, the proposed dwelling will have two storey walls along the western, northern and eastern boundaries. The impacts posed by these walls to the western and northern neighbours are acceptable. The impacts posed by the eastern boundary development to 37 George Street, however, will be noticeable by the occupants of that site, but those impacts are considered acceptable given the constraints of the subject land and the design elements of the elevation.

With respect to the rooftop garden, and concerns about overlooking raised by one representor, Performance Outcome 10.2 of the Interface Between Land Uses module states:

“Development mitigates direct overlooking from balconies to habitable rooms and private open space of adjoining residential uses in neighbourhood type zones.”

The corresponding Designated Performance Feature states that except where a balcony faces a public road or reserve:

“all sides of balconies or terraces on upper building levels are permanently obscured by screening with a maximum 25% transparency/openings fixed to a minimum height of:

- (i) 1.5m above finished floor level where the balcony is located at least 15 metres from the nearest habitable window of a dwelling on adjacent land*

Or

- (ii) 1.7m above finished floor level in all other cases.”*

Although the rooftop garden is not a balcony per se, it can be considered a terrace and therefore this is the most relevant policy in respect of overlooking concerns.

To address overlooking concerns, and to break up the visual bulk of the building, the application proposes pool fence style fencing along the perimeter of the rooftop garden behind which will be translucent polycarbonate screens. The fencing and polycarbonate screens will extend to 1.7m above the floor level of the rooftop garden. The plans do not specify the level of transparency/obscurity of the polycarbonate screens, so Condition 2 contained within the recommendation at the end of this report has been worded to ensure that these screens have a maximum 25% transparency in accordance with DPF 10.2 above.

This condition also applies to the front second level balcony which would otherwise provide views into the rear yard of 37 George Street. Notwithstanding, the east elevation in **Attachment 1** does demonstrate floor-to-ceiling screens with a maximum transparency of 25% and so even in the absence of this condition this aspect of the development satisfies Performance Outcome 10.2 (above).

Performance Outcome 10.1 of the Interface Between Land Uses module states:

“Development mitigates direct overlooking from upper-level windows to habitable rooms and private open spaces of adjoining residential uses in neighbourhood-type zones.”

The proposed dwelling incorporates upper-level windows on the north and east elevations for the living and dining area. Rather than use obscure glazing, the Applicant has opted to install a 5.7m x 2.7m long perforated metal privacy screen external to these windows as a means of mitigating direct overlooking into neighbouring windows and private open space. This screen is 2m tall, extending from 500mm below the second storey internal floor level to 1.5m above.

The Applicant has provided 3D sightline images that show the extent of views able to be obtained of neighbouring properties from different points within the second level living space (see **Attachment 1**). These demonstrate that any views into neighbouring properties are very minimal and will not unduly compromise the privacy that the northern and eastern neighbour expect to enjoy. Accordingly, this screen is considered sufficient for satisfying Performance Outcome 10.1 above, and Condition 2 reiterates the requirement to permanently maintain the screen at a maximum 25% transparency.

Front setback, Design & Appearance

Performance Outcome 5.1 of the Established Neighbourhood Zone states:

“Buildings are set back from primary street boundaries consistent with the existing streetscape.”

The adjoining dwelling at 21 Harris Street has a front setback of approximately 1.5m and 37 George Street has a side setback to Harris Street of approximately 1m. Other dwellings along Harris Street have varying front setbacks but all are relatively close to the front boundary. The proposed dwelling will have a front setback of 1.5m to the ground level and 1m to the projecting upper floor, which is considered consistent with the existing streetscape.

Performance Outcome 10.1 of the Established Neighbourhood Zone states:

“Garages and carports are designed and sited to be discrete and not dominate the appearance of the associated dwelling when viewed from the street.”

The garage will be setback 5.5m from the street and 3.5m behind the closest street-facing wall of the dwelling which includes the second storey above, resulting in a barely visible garage in the streetscape in accordance with this Performance Outcome.

Performance Outcome 10.2 of the Established Neighbourhood Zone states:

“The appearance of development as viewed from public roads is sympathetic to the wall height, roof forms and roof pitches of the predominant housing stock in the locality.”

The predominant housing stock in the locality is one of single- and two-storey dwellings with hipped roofs of a traditionally low pitch, along with some villas that incorporate gable ends. The proposed dwelling does not incorporate a pitched roof, but instead the rooftop garden, which is inconsistent with the predominant housing stock. Slightly west of the subject land are five two-storey row dwellings that have two storey walls, as does the proposed dwelling. But this does not represent the predominant housing stock in the locality, which is one of mainly single storey dwellings. Accordingly, it cannot be said that the proposed development is “sympathetic to the wall height, roof forms and roof pitches of the predominant housing stock in the locality”. However, it is compatible with surrounding development (for reasons outlined above and below) and will make a positive contribution to the streetscape, as explained below. Accordingly, the failure of the proposal to meet this Performance Outcome should not condemn the application.

Desired Outcome 1 of the Design in Urban Areas module states:

“Development is:

- (a) *Contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality*
- (b) *Durable – fit for purpose, adaptable and long lasting*
- (c) *...*
- (d) *Sustainable – by integrating sustainable techniques in to the design and siting of development and landscaping.”*

Performance Outcome 17.1 of the Design in Urban Areas module states:

“Dwellings incorporate windows facing primary street frontages to encourage passive surveillance and make a positive contribution to the streetscape.”

Performance Outcome 17.2 of the Design in Urban Areas module states:

“Dwellings incorporate entry doors within street frontages to address the street and provide a legible entry point for visitors.”

Performance Outcome 20.2 of the Design in Urban Areas module states:

“Dwelling elevations facing public streets and common driveways make a positive contribution to the streetscape...”

The proposed dwelling incorporates the following features into its façade, which together will make a positive contribution to the streetscape in accordance with the above Performance Outcomes:

- A visible, legible entry way;
- A complementary mix of colours and materials throughout the elevation, including the use of corten steel for a feature window on the second level;
- Articulation both within and between building levels, including the slight cantilevering of the second level above the ground level and the use of a balcony to break up the visual bulk of the building; and
- A good level of fenestration, including windows on both building levels that provide opportunities for passive surveillance.

Additionally, the implementation of soft landscaping at both ground level and on the rooftop garden will help soften the appearance and bulk of the building and provide visual interest to the public realm.

Private Open Space and Soft Landscaping

Performance Outcome 21.1 of the Design in Urban Areas module states:

“Dwellings are provided with suitable sized areas of usable private open space to meet the needs of occupants.”

The corresponding Designated Performance Feature suggests that a minimum 24m² of private open space is sufficient for a dwelling on a site with an area of 300m² or less.

The proposed dwelling incorporates private open space in three separate areas. At ground level, there is a small courtyard and plunge pool in the rear yard of approximately 15.5m². There is also a

small 4m² balcony area on the second level and the 89.5m² rooftop garden above (58m² excluding areas of soft landscaping). With approximately 77m² of usable private open space available to the occupants of this dwelling, the proposal adequately satisfies PO 21.1 above.

Performance Outcome 22.1 of the Design in Urban Areas module states:

“Soft landscaping is incorporated into development to:
(a) Minimise heat absorption and reflection
(b) Contribute shade and shelter
(c) Provide for stormwater infiltration and biodiversity
(d) Enhance the appearance of land and streetscapes.”

The corresponding Designated Performance Feature suggests that sites under 150m² should be 10% comprised of soft landscaping and sites between 150-200m² should be 15% comprised of soft landscaping. Accordingly, an amount of soft landscaping over 10% of the site area is considered sufficient for this site given its constraints. Notwithstanding, the proposal includes 29m² of soft landscaping on the rooftop garden and a further 17.5m² at ground level (of which 14.5m² is between the dwelling and the front boundary), totalling 30.6% of the site. This exceeds the expectations of DPF 22.1 and is considered to therefore meet the Performance Outcome (above).

Access and Parking

Performance Outcome 23.3 of the Design in Urban Areas module states:

“Driveways and access points are located and designed to facilitate safe access and egress while maximising land available for street tree planting, domestic waste collection, landscaped street frontages and on-street parking.”

The subject land is currently serviced by a 9.6m wide crossover, part of which will be reused by the proposed development. The portion of this crossover that is not going to be required by the development is noted on the Site Plan (**Attachment 1**) as being reinstated to upright kerb & gutter. This kerb reinstatement will provide room for an additional on-street car parking space (in an area where on-street car parking is in high demand), street tree planting and room for domestic waste collection to take place to service this dwelling. Accordingly, Condition 5 set out in the recommendation below requires the Applicant to undertake this work prior to occupation of the dwelling.

In respect of car parking requirements, Performance Outcome 5.1 of the Transport, Access and Parking module states:

“Sufficient on-site vehicle parking... places are provided to meet the needs of the development...”

The corresponding Designated Performance Features suggests that a dwelling with 2 or more bedrooms should be provided with 2 car parking spaces, 1 of which is to be covered.

The proposed dwelling will provide 2 car parking spaces, in the form of a single garage and a 5.5m driveway. Both of these car parking spaces meet the minimum dimensions set out in Performance Outcomes 23.1 and 23.2 of the Design in Urban Areas module (see **Appendix 1**). Consequently, the proposed development satisfies the Code's expectations in respect of off-street car parking spaces, as well as providing an additional car parking space to the public realm.

Interface Issues

Performance Outcome 4.3 of the Interface Between Land Uses module states:

“Fixed plant and equipment in the form of pumps and/or filtration systems for a swimming pool or spa are positioned and/or housed to not cause unreasonable noise nuisance to adjacent sensitive receivers (or lawfully approved sensitive receivers).”

The application documentation does not show the location of the swimming pool pump and equipment and so an assessment against this Performance Outcome cannot be done. Consequently, Condition 6 (below) has been recommended to ensure the suitable enclosure of the swimming pool equipment takes effect so as to protect the amenity of adjacent sensitive receivers.

CONCLUSION

The proposed dwelling represents a well-balanced response to the development of a small parcel of land in an established neighbourhood. Existing site constraints prevent the more-sought-after 3- to 4-bedroom dwelling from being constructed on this site, whereas the Applicant’s 2-bedroom dwelling is a more modest and appropriate response. The good level of articulation and mix of materials and colours provide visual interest to benefit the Harris Street streetscape. The eastern boundary wall has been modified to mitigate visual impacts on the adjacent neighbour through changes in materials, colours and setbacks, whereas both the northern and western neighbours suffer no additional unreasonable visual outlook impacts as a result of the two-storey boundary development. Sufficient car parking spaces have been provided on site to cater for the needs of the occupants, and an additional, valuable on-street car parking space will be provided within close proximity to The Parade. Finally, the rooftop garden provides opportunity for additional soft landscaping and will assist in improving the environmental performance of the building while providing the occupants with some additional private open space.

Overall, the proposed development sufficiently satisfies the provisions of the Planning and Design Code to warrant support. There will be some inevitable visual impacts caused to the eastern neighbour by virtue of its close proximity to their private open space, but the relevant policy (PO 7.1 of the Zone) talks about boundary walls being *managed* to limit their impact. As evidenced in **Attachment 7**, the various iterations that this proposal has gone through to get to the point it is at now sufficiently demonstrates the management of this issue. Any further mitigation of these impacts would require a wholesale redesign of the dwelling, which is not considered necessary when the proposal as a whole is balanced against the provisions of the Planning & Design Code. It is considered worthy of 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 22033399, by Alison Brookman and Stephen Brookman is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

Condition 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 (if any).

Condition 2

All balustrades/screens around the rooftop garden and second level front balcony, with the exception of the southern elevation, shall be permanently treated with a maximum 25% transparency to a height of 1700mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person occupying the balcony, to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained in good condition at all times.

Similarly, the second level privacy screen on the east and north elevations shall be permanently treated with a maximum 25% transparency, prior to occupation of the building, in a manner that restricts views being obtained by a person within the building, to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained in good condition at all times.

Condition 3

All areas nominated as landscaping or garden areas on the approved plans shall be planted with a suitable mix and density of trees, shrubs and groundcovers within the next available planting season after the occupation of the premises to the reasonable satisfaction of the Assessment Manager and such plants, as well as any existing plants which are shown to be retained, shall be nurtured and maintained in good health and condition at all times, with any diseased or dying plants being replaced, to the reasonable satisfaction of the Council or its delegate.

Condition 4

Either:

1. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.
2. Where provided for by any relevant off-set scheme established under section 197 of the Planning, Development and Infrastructure Act 2016 (as at the date of lodgement of the application), payment of an amount calculated in accordance with the off-set scheme may be made in lieu of planting/retaining 1 or more trees as set out in the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). Payment must be made prior to the issue of development approval.

Condition 5

The portion of the existing crossover invert on Harris Street that is made redundant as a result of this development shall be reinstated to upright kerb & gutter in accordance with Council specifications prior to occupation of the dwelling, and to the reasonable satisfaction of the Assessment Manager or its delegate.

Condition 6

That the associated swimming pool filter pump be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries.

Condition 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.

Condition 8

The approved development must include rainwater tank storage which is:

1. connected to at least 60% of the roof area;
2. connected to either a toilet, laundry cold water outlets or hot water service;
3. with a minimum retention capacity of 1000 litres;
4. with a minimum detention capacity of 1000 litres; and
5. includes a 20-25 mm diameter slow release orifice at the bottom of the detention component of the tank

within 12 months of occupation of the dwelling(s).

ADVISORY NOTES

Planning Consent

Advisory Note 1

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.

Advisory Note 2

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 3

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.

Advisory Note 4

To assist in the interpretation of the Urban Tree Canopy condition noted above, where payment into a relevant off-set scheme is not possible or chosen, tree(s) must be planted in accordance with the requirements set out below. Further guidance and information can be obtained by visiting the Landscaping and Development webpage on the Council's website (https://www.npsp.sa.gov.au/planning_and_development/landscaping-and-development) or contacting the Council's Planning Department on (08) 8366 4555.

Lot Size Per Dwelling (m2) // Tree Size and Number Required

<450 // 1 small tree

450-800 // 1 medium tree or 2 small trees

>800 // 1 large tree or 2 medium trees or 4 small trees

Tree Size// Mature Height (minimum) // Mature Spread (minimum) // Soil Area Around Tree Within Development Site (minimum)

Small // 4m // 2m // 10m² and min. dimension of 1.5m

Medium // 6m // 4m // 30m² and min. dimension of 2m

Large // 12m // 8m // 60m² and min. dimension of 4m

Advisory Note 5

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.

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.

Advisory Note 6

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.

Advisory Note 7

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 8

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 pursuant to the *Local Government Act 1999* prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 9

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.

Advisory Note 10

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

Mr Vincent addressed the Council Assessment Panel from 7:06pm until 7:12pm

Mr & Mrs Brookman addressed the Council Assessment Panel from 7:19 until 7:23pm

Moved by Mr Bateup

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 22033399, by Alison Brookman and Stephen Brookman is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

Condition 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 (if any).

Condition 2

All balustrades/screens around the rooftop garden and second level front balcony, with the exception of the southern elevation, shall be permanently treated with a maximum 25% transparency to a height of 1700mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person occupying the balcony, to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained in good condition at all times.

Similarly, the second level privacy screen on the east and north elevations shall be permanently treated with a maximum 25% transparency, prior to occupation of the building, in a manner that restricts views being obtained by a person within the building, to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained in good condition at all times.

Condition 3

All areas nominated as landscaping or garden areas on the approved plans shall be planted with a suitable mix and density of trees, shrubs and groundcovers within the next available planting season after the occupation of the premises to the reasonable satisfaction of the Assessment Manager and such plants, as well as any existing plants which are shown to be retained, shall be nurtured and maintained in good health and condition at all times, with any diseased or dying plants being replaced, to the reasonable satisfaction of the Council or its delegate.

Condition 4

Either:

1. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.
2. Where provided for by any relevant off-set scheme established under section 197 of the Planning, Development and Infrastructure Act 2016 (as at the date of lodgement of the application), payment of an amount calculated in accordance with the off-set scheme may be made in lieu of planting/retaining 1 or more trees as set out in the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). Payment must be made prior to the issue of development approval.

Condition 5

The portion of the existing crossover invert on Harris Street that is made redundant as a result of this development shall be reinstated to upright kerb & gutter in accordance with Council specifications prior to occupation of the dwelling, and to the reasonable satisfaction of the Assessment Manager or its delegate.

Condition 6

That the associated swimming pool filter pump be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries.

Condition 7

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Condition 8

The approved development must include rainwater tank storage which is:

- 1. connected to at least 60% of the roof area;*
- 2. connected to either a toilet, laundry cold water outlets or hot water service;*
- 3. with a minimum retention capacity of 1000 litres;*
- 4. with a minimum detention capacity of 1000 litres; and*
- 5. includes a 20-25 mm diameter slow release orifice at the bottom of the detention component of the tank*

within 12 months of occupation of the dwelling(s).

ADVISORY NOTES

Planning Consent

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If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 3

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.

Advisory Note 4

To assist in the interpretation of the Urban Tree Canopy condition noted above, where payment into a relevant off-set scheme is not possible or chosen, tree(s) must be planted in accordance with the requirements set out below. Further guidance and information can be obtained by visiting the Landscaping and Development webpage on the Council's website (https://www.npsp.sa.gov.au/planning_and_development/landscaping-and-development) or contacting the Council's Planning Department on (08) 8366 4555.

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Tree Size// Mature Height (minimum) // Mature Spread (minimum) // Soil Area Around Tree Within Development Site (minimum)

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Medium // 6m // 4m // 30m² and min. dimension of 2m

Large // 12m // 8m // 60m² and min. dimension of 4m

Advisory Note 5

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.

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.

Advisory Note 6

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.

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Advisory Note 9

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.

Advisory Note 10

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 by Ms Newman
CARRIED

5.2 DEVELOPMENT NUMBER 23014875 – ANDREW CAMPBELL LLOYD & ALANA CAMPBELL LLOYD – 120 RUNDLE STREET, KENT TOWN

DEVELOPMENT NO.:	23014875
APPLICANT:	Andrew Campbell Lloyd Alana Campbell Lloyd
ADDRESS:	120 RUNDLE ST KENT TOWN SA 5067
NATURE OF DEVELOPMENT:	Two-level alterations and additions to an existing Local Heritage Place (comprising the expansion of existing dwelling and new consulting rooms)
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Business Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Future Road Widening • Historic Area • Heritage Adjacency • Hazards (Flooding - General) • Local Heritage Place • Prescribed Wells Area • Regulated and Significant Tree • Traffic Generating Development • Urban Transport Routes <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	8 June 2023
RELEVANT AUTHORITY:	Assessment panel
PLANNING & DESIGN CODE VERSION:	8 June 2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Mark Thomson Consultant Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Heritage Advisor Traffic Engineer

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 5:	Representations
ATTACHMENT 1:	Application Documents	ATTACHMENT 6:	Response to Representations
ATTACHMENT 2:	Subject Land Map	ATTACHMENT 7:	Internal Referral Advice
ATTACHMENT 3:	Zoning Map		
ATTACHMENT 4:	Representation Map		

DETAILED DESCRIPTION OF PROPOSAL:

The existing building is currently used as consulting rooms at ground level and a dwelling at upper level, pursuant to the Development Approval granted in 2022.

The proposal comprises the construction of a two level addition to the rear of the existing building, replacing an existing single level lean-to.

At ground level, only 8m² of the proposed addition is associated with the existing consulting rooms. After taking into account the demolition of the lean-to and increased usable space resulting from relocating the stairs, the proposal results in a small reduction in consulting room floor area of 4m². No change to the number of consulting rooms is proposed; this is to remain at 1 consulting room.

Also proposed at ground level is a garage, mud room, entry and stairs; all of which is associated with the dwelling.

At the upper level, the proposed addition comprises a stair landing, and master bedroom suite. In total (ground and upper level combined), the addition increases the dwelling floor area by approximately 120m².

Changes to the front elevation of the building include the demolition of the western upper level windows, and replacing them with a pair of French doors, and the replacement of the cast iron balcony balustrade with a new balustrade reusing the cast iron elements.

Aside from two car parking spaces proposed within the garage to be associated with the dwelling, two patient car parking spaces are proposed.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 120 RUNDLE ST KENT TOWN SA 5067

Title ref.: CT 5427/463 **Plan Parcel:** D46592 AL51 **Council:** THE CITY OF NORWOOD PAYNEHAM AND ST PETERS

The subject land is mostly rectangular with a width of 16.42m and depth of 24.06m, however a dog-leg part-way along the north-eastern side boundary increases the width of the front 13.2m of the allotment by 600mm, giving this section a width of 17.02m. The land is essentially flat in topography.

The existing building on the land is a Local Heritage Place. It appears to have had a range of uses. Council records include an approval to use the building as a coffee lounge and residence in 1984 and later the same year another approval to "use existing coffee lounge / residence as licensed restaurant / residence". No further development authorisations exist on Council records until 2022 when approval was given to change the use of the land from consulting rooms at both ground and first floor levels (5 practitioners total) to consulting rooms (1 practitioner) at ground level and a dwelling at first floor level.

The Development Approval which was granted in 2022 has been implemented, with the single consulting room being used by Dr Andrew Campbell-Lloyd, a plastic surgeon specialising in reconstruction, supported by one staff member and conducted within the hours of 9 AM to 4 PM Monday to Friday.

Four on-site car parking spaces exist at the rear of the subject land, shared amongst the consulting room and dwelling.

Locality

The locality of the subject land contains a mix of commercial and residential land uses, generally utilising historic buildings.

Adjoining the subject land to the south-west is a two level Local Heritage Place building containing office uses at ground level and dwellings at upper level.

Adjoining the subject land to the east and south is the site of a two level office building occupied by Kojo marketing agency at 31 Fullarton Road.

Adjacent the subject land on the opposite side of Rundle Street is a large two level office building occupied by Fairmont Homes on the corner of Fullarton Road and various other smaller office uses.

Many of the buildings in the locality are from the pre 1890s (Victorian) era, resulting in a strong historic built form theme.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Dwelling addition: Code Assessed - Performance Assessed
Consulting room: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
P&D Code
The proposal involves the construction of boundary walls that exceed 3.2m in height.

- **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Position on Application	Wishes to be Heard
George	Samaras	PO Box 7434, Halifax Street, Adelaide	Opposed	Yes

-

• SUMMARY

Mr Samaras' representation was prepared by a Planning Consultant, Mr Andrew Humby of Humby Consulting. Mr Humby raised concerns on behalf of Mr Samaras, which are summarised as follows:

- reduction in access to natural light and ventilation for the occupants of 31 Fullarton Road
- overshadowing of outdoor courtyard at 31 Fullarton Road
- overshadowing of west-facing windows on the lower level of the building
- detrimental visual impact on the occupants of 31 Fullarton Road
- impact of proposed building work on a Regulated Tree at 31 Fullarton Road
- adequacy of car parking (if additional consulting rooms are proposed)
- on-site manoeuvring (if additional consulting rooms are proposed)

The applicant has responded to the representation by Mr Samaras, including a written response prepared by Mr Phillip Brunning of Phillip Brunning & Associates, an Arborist report by Adelaide Tree Surgery and an amended set of plans which include an overshadowing analysis. Of particular note, Mr Brunning has advised:

- no additional consulting rooms are proposed. There will continue to be one practitioner
- shadowing will fall predominantly over the car parking area to the rear of the adjoining property
- the adjoining property to the south is not residential in nature
- Adelaide Tree Surgery have advised the proposal will not impact upon the Regulated Tree
- The on-site parking and manoeuvring arrangements have been amended and vehicles can leave in a forward direction
- Some flexibility in on-site parking provision is afforded in the code in situations such as an adaptive reuse of a heritage place, mixed-use developments and where on-street parking is available.

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

- Heritage Advisor
- Traffic Engineer

PLANNING ASSESSMENT

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

Land Use

The proposal does not involve any change to the use of the land, nor to the intensity of use of the land.

With respect to the consulting room, the proposal results in a small decrease in floor area and the same number of consulting rooms (one).

With respect to the dwelling, whilst the proposal increases the accommodation by adding a bedroom, it remains a single dwelling.

Both dwellings and consulting rooms are listed as desired land uses in Designated Performance Feature 1.1 of the Business Neighbourhood Zone.

Performance Outcomes 1.2 and 1.3 of the Business Neighbourhood Zone and their associated Designated Performance Features, seek to generally limit the floor area of commercial uses, including consulting rooms, to 250m². With the proposed slight reduction in floor area, the consulting room premises would have a floor area of 126m².

There is no density or size criteria for dwellings within the Business Neighbourhood Zone. Performance Outcome 1.1 seeks "*Housing and accommodation types appropriate to the locality*". The proposal does not alter the type of housing or accommodation on the land.

Building Height

Performance Outcome 3.1 of the Business Neighbourhood Zone states:

"Buildings are generally of low-rise construction, with taller buildings positioned towards the centre of the zone and away from any adjoining neighbourhood-type zone to positively contribute to the built form character of the locality."

The Code defines low-rise as up to two levels and consistent with this definition, Designated Performance Feature 3.1 contains a maximum height criteria of 2 levels. The proposal is consistent with this, with the addition containing two levels.

Performance Outcome 2.2 of the Historic Area Overlay states:

"Development is consistent with the prevailing building and wall heights in the historic area."

In relation to height, the Historic Area Statement identifies the attributes of the historic area as being "*generally up to two storeys*". The proposed two level addition is therefore consistent with the height policy of the Historic Area Overlay.

Boundary Walls and Overshadowing

The proposal includes an 8.8m long boundary wall on the north-eastern side boundary and a 7.1m long boundary wall on the south-eastern (rear) boundary. Both walls are 7.3m high.

Performance Outcome 3.4 of the Business Neighbourhood Zone states (my emphasis):

"Walls on boundaries are limited in height and length to manage visual and overshadowing impacts on adjoining residential properties."

Accordingly, the zone does not seek to manage visual or overshadowing impacts to neighbouring commercial properties resulting from boundary walls.

Similarly, Performance Outcomes 3.1 and 3.2 of the Interface Between Land Uses section of the General Development Policies only seek to manage overshadowing impacts to residential properties. They respectively state (my emphasis):

“Overshadowing of habitable room windows of adjacent residential land uses in:

- a) a neighbourhood-type zone is minimised to maintain access to direct winter sunlight*
- b) other zones is managed to enable access to direct winter sunlight.”*

and

“Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses in:

- a) a neighbourhood type zone is minimised to maintain access to direct winter sunlight*
- b) other zones is managed to enable access to direct winter sunlight.”*

Therefore, the concern raised by the owner of the adjoining property at 31 Fullarton Road, that the proposal will reduce sunlight access to a courtyard and office windows, is not supported by policy contained in the Code.

The representor’s Planning Consultant has opined that the boundary walls deviate from the “*intent*” of Performance Outcomes 3.6 and 3.7. These two policies relate to the setback of buildings from side and rear boundaries. These policies do not apply to boundary walls as there is a separate policy (PO 3.4) which expressly deals with boundary walls, as previously discussed.

The suggestion from the representor’s Planning Consultant seems to be that PO’s 3.6 and 3.7 ‘intend’ for all walls to be set back from side and rear boundaries, despite there being a separate policy which expressly allows for boundary walls (and in the case of boundary walls adjacent to commercial properties, does not seek to manage visual or overshadowing impacts of those walls). Respectfully, a more logical interpretation of the Code is that it contains policies to deal with the setback of buildings from side and rear boundaries but allows for some walls to be located on boundaries and the assessment of the impacts of such boundary walls should occur against that directly relevant policy.

Appearance and Heritage

Performance Outcome 2.1 of the Local Heritage Place Overlay states:

“Alterations and additions complement the subject building and are sited to be unobtrusive, not conceal or obstruct heritage elements and detailing, or dominate the Local Heritage Place or its setting.”

Also relevant is Performance Outcome 2.2 which states:

“Adaptive reuse and revitalisation of Local Heritage Places to support their retention in a manner that respects and references the original use of the Local Heritage Place.”

The application has been reviewed by the Council’s Heritage Advisor, David Brown, who in summary has advised:

- The proposed addition is an elegant simple design with good visual and physical separation from the original building.
- The addition is set at the rear, borrows from the form, and heights of the existing building, and does not have a major impact on the historic fabric of the Local Heritage Place.
- The change from slim sash windows on the front to slim French doors built in a style to match the old windows is understandable to allow access to the balcony. The changeover of this element will not have a detrimental impact on the heritage value of the building. The new balcony reuses the important historic cast iron, so is a good outcome.

- It is likely that the loss of the original stair, if it is in good condition, is not an ideal outcome, but it is debatable as to whether it would impact the heritage value of the place.
- Overall the proposed addition is an acceptable outcome in terms of the impact on the Local Heritage Place and the streetscape.

Performance Outcome 3.1 of the Historic Area Overlay has similar wording to PO 2.1 of the Local Heritage Place Overlay, stating:

“Alterations and additions complement the subject building, employ a contextual design approach and are sited to ensure they do not dominate the primary façade.”

Having regard to the comments of the Heritage Advisor, this policy is considered to be satisfied.

At the zone level, Performance Outcomes 2.1, 2.2 and 2.3 of the Business Neighbourhood Zone relate to built form and character and respectively state:

“Buildings are of a scale and design that complements surrounding built form, streetscapes and local character.”

“Development provides attractive landscaping to the primary street frontage.”

and

“Site coverage is limited to provide space for landscaping, open space and pervious areas.”

Surrounding built form is all two storey and is typically larger in floor area than the subject building. The scale resulting from the proposed addition is therefore complementary to surrounding built form, consistent with PO 2.1. Having regard to the comments of the Heritage Advisor, the style is also complementary.

With respect to PO 2.2, the proposal includes landscaping to the primary street façade, forward of the entry gate. This area is currently landscaped, however the plans show an increase in the amount of landscaping in this area. An existing landscape bed alongside the north-western side boundary is proposed to be removed to make way for two parallel parking spaces. As this is behind an existing gate, it has no significant impact on streetscape character and is not inconsistent with PO 2.2 which seeks landscaping of the primary street façade.

With respect to PO 2.3, the associated Designated Performance Feature (DPF 2.3) seeks a maximum site coverage of 60%. The proposal is consistent with this, with 52% site coverage.

Traffic Impact, Access and Parking

According to the rates in *Table 2 Off-Street Car Parking Requirements in Designated Areas*, the minimum number of spaces for all non-residential land uses is 3 spaces per 100m² of gross leasable floor area. This equates to 3.75 spaces for the consulting rooms component of the proposal.

Neither *Table 2 Off-Street Car Parking Requirements in Designated Areas*, nor *Table 1 - General Off-Street Car Parking Requirements*, contain a car parking rate applicable to the subject dwelling. The closest ‘fit’ is considered to be the rate provided for the residential component of a multi-storey building, despite the fact that the Business Neighbourhood Zone is not listed as an applicable zone for that rate. In particular, the rate specified is 1 space for a 2 bedroom dwelling and 1.25 spaces for a 3 or more bedroom dwelling and in both instances an additional 0.25 spaces per dwelling is specified for visitor parking.

The existing dwelling has 2 rooms capable of use as bedrooms, resulting in a parking demand of 1.25 spaces. With the proposal adding a third bedroom, the resulting parking demand would be 1.5 spaces.

Therefore, the proposal increases the total parking demand from 5 spaces to 5.25 spaces.

Although there are formally only 4 on-site car parking spaces currently available, there is capacity for more parking (likely 2 more spaces) on site subject to some modifications to landscaping etc. The proposed building addition results in the maximum on-site parking potential of the site being 4 spaces.

Performance Outcome 5.1 of the Transport, Access and Parking section of the General Development Policies states:

“Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:

- a) availability of on-street car parking*
- b) shared use of other parking areas*
- c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared*
- d) the adaptive reuse of a State or Local Heritage Place.”*

Of the factors listed in PO 5.1, factors a), c) and d) are considered relevant, as explained below:

- on-street parking is available on Rundle Street, other than between 7am and 9am when it is used as a bike lane;
- the fact that the practitioner of the consulting rooms is also the resident of the dwelling reduces parking demand by 1 space; and
- although the current application does not propose an adaptive reuse of the building (such re-use is already occurring) it does seek to revitalise and ensure the long-term viability of the Local Heritage Place. A slight dispensation to car parking demand in this context is considered consistent with the intent of PO 5.1(d).

Accordingly, despite the proposal resulting in a theoretical shortfall of 1.25 on-site car parking spaces when applying the most relevant parking rates in the Code, the shortfall is considered to be justified on multiple grounds.

Some concern was initially raised by the Council's Traffic Engineer, that the constrained on-site manoeuvring arrangements may cause vehicles to reverse out of the site. This was particularly concerning due to the close proximity of the access driveway to the intersection of Rundle Street and Fullarton Road.

In response to this concern, the application was amended by reducing the depth of the garage, thereby increasing the area at the rear of the site for patient vehicles to perform a 3-point-turn to leave the site in a forward direction. With this amendment, it has been demonstrated that a B85 vehicle can perform the manoeuvre, however a B99 vehicle cannot.

According to the relevant Australian Standard:

“Design dimensions based on the B99 vehicle are required at all locations where failure of a vehicle to be able to physically fit into the facility would occasion intolerable congestion and possible hazard. Such locations shall include all access driveways, ramps and circulation roadways, unless there are special circumstances of severe space limitation coupled with relatively low traffic volumes in which case the B85 vehicle dimensions may be used.”

Given the space limitations of the compact allotment and the low traffic volumes associated with the single consulting room, it is considered reasonable to use the B85 dimensions in this instance. Initially the Council’s Traffic Engineer advised that a comment from the Department for Infrastructure and Transport would be required, however subsequently advised that it would not be required.

In order to minimise the prospect of patients attempting to reverse out of the site, the gate between the ‘public driveway’ and the ‘private driveway’ will need to be open during business hours. The Council’s Traffic Engineer has queried whether a formal arrangement will be in place for this to occur. A condition of consent is recommended to reinforce this requirement.

The Council’s Traffic Engineer has advised that vegetation within the sight line triangles as per AS2890.1 Figure 3.3, should be below eye height (1.15m), to maximise sight lines to pedestrians crossing the driveway. It is recommended that this be a condition of consent.

Additionally, the Traffic Engineer advised that the garden bed shown on the western side of the two car parking spaces will interfere with access to the two cars. As such, a condition is recommended requiring this landscaping to be replaced with hard paving. Although unfortunate, the loss of this narrow landscaping strip is not considered detrimental to the application as a whole.

Regulated Tree

As noted by the representor, a regulated *Cupressus sp* (Conifer) tree is located on the neighbouring property at 31 Fullarton Road, adjacent to the rear boundary of the subject land.

The report by Adelaide Tree Surgery advises that the proposal does not result in any major excavation works within the calculated 7.2m Tree Protection Zone (TPZ). The building addition is located outside of the TPZ, so the only excavation works are those associated with the paved driveway and car parking area.

Adelaide Tree Surgery have recommended the use of permeable pavers within the TPZ of the tree, to allow air and water to the tree root system.

CONCLUSION

The proposed development comprises an addition to the rear of a Local Heritage Place, increasing the size of the existing dwelling accommodation and consolidating/rationalising the layout of the existing consulting rooms.

With the addition located at the rear of the building, it has minimal streetscape impact and according to advice from the Council’s Heritage Advisor, has been designed so as to complement the existing building.

Visual and overshadowing impacts on the adjoining commercial property resulting from proposed boundary walls are a negative outcome of the proposal, however the Planning and Design Code only seeks to manage such impacts on residential properties.

On site car parking is strictly limited to 4 spaces as a result of the proposed addition. Having regard to the efficiency gained by the consulting room practitioner also being the resident of the site, the availability (albeit limited) of on-street parking and the positive heritage outcomes of the proposal, the amount of car parking is considered adequate.

On-site vehicle manoeuvring is constrained, however is acceptable in the context of the constraints of the small site and retaining the heritage listed building. The proposal is unlikely to impact on the adjacent Regulated Tree, subject to the use of permeable paving and careful construction of the car parking and driveway areas.

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 23014875, by Andrew Campbell Lloyd and Alana Campbell Lloyd is granted Planning Consent subject to the following conditions and notes:

CONDITIONS

Planning Consent

Condition 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 (if any).

Condition 2

The gate at the entrance to the driveway from Rundle Street and the gate between the section of driveway shown on the plans as 'public driveway' and the section shown as 'private driveway' shall be open at all times that the consulting rooms are open.

Condition 3

The landscaping strip shown on the plans on the western side of the two parallel patient car parking spaces shall be replaced with hard paving to allow for access to cars.

Condition 4

All vegetation within the sight line triangles at the driveway entrance, as per AS2890.1 Figure 3.3, should be below eye height (1.15m), to maximise sight lines to pedestrians crossing the driveway.

Condition 5

The following tree protection measures shall be implemented within the Tree Protection Zone of the Cupressus sp (Conifer) tree located on the adjacent property at 31 Fullarton Road, ie. within 7.2m of the base of the trunk of the tree:

There is to be no soil level changes below topsoil within the Tree Protection Zone;

- a. There is to be no mechanical excavation works undertaken within the Tree Protection Zone (TPZ) of the subject tree. All works are to be undertaken using non-destructive methods;
- b. Any excavation works that are required for the preparation and the construction phase within the Tree Protection Zone (TPZ) of the subject tree is to be undertaken the supervision of the Project Arborist or by a suitably qualified arborist (minimum level 4 in Arboriculture).
- c. If any larger tree roots with a diameter greater than 40 mm are discovered during the construction phase of the proposal, the Project Arborist needs to be contacted to inspect and assess and obtain council approval.
- d. If any tree roots are exposed, temporary protection measure may be required such as hessian sheeting as multiple layers and this should be secured and also maintained moist until tree roots are covered/remediated.
- e. The area of the Tree Protection Zone (TPZ) on the development site requires to be fenced during the construction phase. This fencing can be removed when paving of this area needs to be undertaken.
- f. Following are a list of activities that are not permitted within the Tree Protection Zone (TPZ) of the subject tree:
 - Storage of materials
 - Refuelling
 - Parking of Vehicles/plant
 - Dumping of waste
 - Placement/storage of fill
 - Soil level changes
 - Preparation of concrete products/chemicals
 - Mechanical excavation
 - Washing down of tools/equipment
 - Temporary or permanent installation of utilities and signs
- g. The profile for paving within the Tree Protection Zone (TPZ) is to be constructed without being detrimental to the trees health and condition
- h. When paving with a Tree Protection Zone (TPZ) of a tree, a permeable paver needs to be used along with a suitable base profile.
- i. Do not allow for changes of the soil to below the top soil when undertaking paving within the Tree Protection Zone (TPZ). Carefully remove/scraped away to the original soil surface (top soil).
- j. Paving Option Number 1
 - i. Paver 50 – 80mm (80mm paver is required to support vehicle loads) Joints filled with 2 - 5mm clean aggregate. Regular paving sand is not suitable.
 - ii. Bedding layer of 30 – 50mm deep bedding layer of washed uniformly graded aggregate between 5 – 7 mm.
 - iii. A base course layer 100 – 300mm deep and comprising 20 mm washed uniformly graded aggregate. A geotextile fabric may be required over the subbase, preventing different layers from mixing, blocking pore spaces.
- k. Paving Option Number 2
 - i. Paver 50 – 80mm (80mm paver is required to support vehicle loads) Joints filled with 2 - 5mm clean aggregate. Regular paving sand is not suitable.
 - ii. No bedding layers.
 - iii. A base course layer 100 – 300mm deep of SPACE structural soil (structurally permeable aerated compactable earth). These materials can be compacted and will still allow air and water exchange.
- l. Any services that maybe required to enter and exit the development area should avoid the TPZ and SRZ wherever possible however. If they must pass within the TPZ, non-

destructive methods such as Hydro vac® systems must be used and tree roots to remain intact.

ADVISORY NOTES

Planning Consent

Advisory Note 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.

Advisory Note 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.

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.

Advisory Note 3

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 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 pursuant to the *Local Government Act 1999* prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 5

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.

Advisory Note 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.

Advisory Note 7

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.

Advisory Note 8

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 9

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.

Mr Humby and Mr Samaras elected not to attend or address the meeting.

Mr Handsaker answered questions from the Council Assessment Panel from 7:58 until 8:00pm

Moved by Ms Mex

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 23014875, by Andrew Campbell Lloyd and Alana Campbell Lloyd is granted Planning Consent subject to the following conditions and notes:*

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- f. Following are a list of activities that are not permitted within the Tree Protection Zone (TPZ) of the subject tree:*
 - Storage of materials*
 - Refuelling*
 - Parking of Vehicles/plant*
 - Dumping of waste*
 - Placement/storage of fill*
 - Soil level changes*
 - Preparation of concrete products/chemicals*
 - Mechanical excavation*
 - Washing down of tools/equipment*
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 - iii. A base course layer 100 – 300mm deep and comprising 20 mm washed uniformly graded aggregate. A geotextile fabric may be required over the subbase, preventing different layers from mixing, blocking pore spaces.*

- k. Paving Option Number 2
- i. Paver 50 – 80mm (80mm paver is required to support vehicle loads) Joints filled with 2 - 5mm clean aggregate. Regular paving sand is not suitable.
 - ii. No bedding layers.
 - iii. A base course layer 100 – 300mm deep of SPACE structural soil (structurally permeable aerated compactable earth). These materials can be compacted and will still allow air and water exchange.
- l. Any services that maybe required to enter and exit the development area should avoid the TPZ and SRZ wherever possible however. If they must pass within the TPZ, non-destructive methods such as Hydro vac® systems must be used and tree roots to remain intact.

ADVISORY NOTES

Planning Consent

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Advisory Note 9

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.

***Seconded by Ms Newman
CARRIED***

5.3 DEVELOPMENT NUMBER 23023331 – PAUL GALLASCH – 133-139 MAGILL ROAD, STEPNEY

DEVELOPMENT NO.:	23023331
APPLICANT:	Paul Gallasch
ADDRESS:	133-139 MAGILL RD STEPNEY SA 5069
NATURE OF DEVELOPMENT:	Change of use from restaurant to bistro/bar
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Suburban Main Street <p>Overlays:</p> <ul style="list-style-type: none"> • Local Heritage Place • Local Heritage Place • Prescribed Wells Area • Regulated and Significant Tree • Traffic Generating Development • Urban Transport Routes • Airport Building Heights (Regulated) • Advertising Near Signalised Intersections • Future Road Widening • Heritage Adjacency • Hazards (Flooding - General) • Local Heritage Place <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	11 Aug 2023
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) - Version 2023.13 - 31/08/2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Edmund Feary Senior Urban Planner
REFERRALS STATUTORY:	None
REFERRALS NON-STATUTORY:	None

CONTENTS:

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

DETAILED DESCRIPTION OF PROPOSAL:

The proposal involves a change of use from the existing approved restaurant to a bistro/bar. The business intending to move in plans to offer simple meals and coffee, as well as beer and wine. It would be a “literary style” bar, and therefore intends to host regular book launches, talks, poetry readings and art classes.

BACKGROUND:

The site has an existing approval for a restaurant, which was approved for the inside of the shop under DA 155/220/2010, and varied to include the outdoor area under DA 155/394/2011. There was no condition limiting hours of operation applied to the authorisation for this Development Application. This restaurant also had a liquor licence which allowed for the service of alcohol until 1am, seven days a week.

While a bistro is substantially similar to a restaurant, case law suggests that a bar is a distinct kind of land use from cafés, restaurants and the like, and is not a kind of shop. Therefore, while an application for the bistro element would not be necessary, the bar element is considered distinct and requires a change of use. As a distinct land use, it is not exempted from Public Notification under Table 5, and notification has therefore occurred.

While this application initially proposed increasing the capacity but this is no longer being sought. The capacity of the venue would therefore remain 49 persons.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 133-139 MAGILL RD STEPNEY SA 5069

Title ref.: CT
5537/763

Plan Parcel:
F134759 AL8

Council: THE CITY OF NORWOOD PAYNEHAM
AND ST PETERS

- | | |
|----------------------|--|
| Shape: | irregular- the site includes one shopfront facing Magill Road (known as 137 Magill Road, Stepney) and a courtyard to the rear. The courtyard includes access to Ann Street on the eastern side. |
| Frontage width: | Approx. 6.6m |
| Depth: Approx. | 28.2m |
| Area: approx. | 300m ² |
| Topography: | relatively flat |
| Existing Structures: | single-storey shopfront facing Magill Road (Local Heritage Place) forming a continuous façade to the street, with verandahs overhanging the footpath. Structures around the rear courtyard are generally industrial in character including workshops and “outhouse” style toilets. |
| Existing Vegetation: | a series of small trees are present through the courtyard area. |

Locality

The locality for the proposed development extends along Magill Road approximately 50m in each direction, and down Ann Street by approximately 60m.

Along Magill Road, the building is one of a series of historic, continuous shopfronts, with verandahs overhanging the footpath. These are generally used for retail purposes of various kinds including cafés and homewares stores.

Along Ann Street, there are other commercial uses including offices and a café, before transitioning to a denser residential area which is currently under construction - that being the "Otto's" development.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Other - Commercial/Industrial - Bar: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code; Undefined land use

PUBLIC NOTIFICATION

- **REASON**
Undefined land use which is therefore not exempt from notification under Table 5 of the Suburban Main Street Zone.
- **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Position	Wishes to be heard?
Nabeel	Najjar	12 Treloar Avenue, Kensington Park	Opposed	No
Stuart	Williams	131 Frederick St, Evandale	Opposed	No

*This representor represents business interests near the site but has provided their home address

- **SUMMARY**

Concerns raised by the two representors are as follows:

1. There is insufficient vehicle parking provided; and,
2. There are already too many similar businesses in the area.

AGENCY REFERRALS

None

INTERNAL REFERRALS

None

PLANNING ASSESSMENT

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

Land Use

The existing approved use is as a restaurant and utilises the same footprint as the proposed bistro/bar. The approved restaurant which formerly occupied the site also operated with both daytime and nighttime trade.

Nonetheless, a bar is a distinct use which is notable for its higher intensity and greater focus on the consumption of alcohol. It is noted that the previously approved use had a liquor licence which allowed consumption until 1am every night of the week.

The Suburban Main Street Zone does envisage these kinds of activities. It is noted POs 1.1, 1.2 and 1.3 below state the following:

Retail, office, entertainment and recreation uses are supplemented by other businesses that provide a range of goods and services to the local community.

Land uses promote movement and activity during daylight and evening hours, including restaurants, educational, community and cultural facilities, and accommodation for visitors and residents.

Ground floor uses contribute to an active and vibrant main street.

The proposed use contributes to a vibrant main street, and it is notable in promoting both daytime and nighttime activity as envisaged in PO 1.2.

It is therefore considered that on a fundamental level, the use is appropriate in the Zone. Further detail on its impacts will be provided under the “Environmental Factors” section below.

Heritage

While the building is a Local Heritage Place, the proposed use is highly unlikely to have any detrimental impact on its heritage value. It is noted that the building is an historic shopfront and has been used for similar purposes for many years.

In addition, the heritage value of the building is unlikely to be negatively affected as:

- No structural alterations are proposed;
- The façade of the building will not be affected;
- The use is similar to that previously occupying the site;
- No changes (apart from different branding, which does not require approval) would be perceptible from outside the site.

Traffic Impact, Access and Parking

The site is in a Designated Area for vehicle parking, being in the Suburban Main Street Zone, and being situated along a high frequency public transport corridor.

The proposal would not alter the existing access arrangements, with no off-street parking available on site, nor would it increase the floor area in use.

In accordance with Table 2 of the Transport, Access and Parking module, all non-residential uses should provide the same amount of car parking for the same amount of floor area. Furthermore, existing shortfalls in car parking carry over to a new land use. As a result, there is considered to be no need for additional car parks to be provided to comply with the P&D Code.

One representor expressed concern that it would set a precedent for utilising a courtyard area as floor area to justify the removal of car parks. The courtyard is already approved for use for dining under DA 155/394/2011 and therefore it does not increase the floor area available. Moreover, it does not reduce the number of parking spaces available as suggested by the representor, and it is unlikely that the courtyard could act as a functional car park.

Furthermore, this ability to move between different uses without needing more car parking, despite the likelihood of this use increasing the real demand for spaces, was the exact intent of the designated area parking provisions. Therefore, while “precedent” is not strictly a concept in planning, to some extent it has already been set.

Environmental Factors

Noise

Performance Outcome 1.2 of the Interface Between Land Uses module of the general development policies states:

“Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.”

Performance Outcome 4.1 of the Interface Between Land Uses module of the general development policies states:

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

Performance Outcome 4.5 of the Interface Between Land Uses module of the general development policies states:

“Outdoor areas associated with licenses premises (such as beer gardens or dining areas) are designed and/or sited to not cause unreasonable noise impact on existing sensitive receivers (or lawfully approved sensitive receivers).”

Since the previous approval, the “Otto’s” development of a series of townhouses immediately behind this site, has commenced. This has brought sensitive receivers closer to the site. The nearest approved sensitive receiver is (or will be when its construction is finished) some 14m from the edge of the courtyard, but there is a two-storey building, constructed from rendered concrete blocks, between the dwellings and the courtyard.

It is noted that no representations were received which mentioned noise impacts in any way. Given the large building which sits between the courtyard and the sensitive receivers, it is considered that this is sufficient to minimise adverse noise impacts to ensure that they are not unreasonable as per the Performance Outcomes above.

Performance Outcome 4.6 of the Interface Between Land Uses module states:

“Development incorporating music achieves suitable acoustic amenity when measured at the boundary of an adjacent sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers.”

There is a corresponding Designated Performance Feature, which states:

Development incorporating music includes noise attenuation measures that will achieve the following noise levels:

Assessment location	Music noise level
<i>Externally at the nearest existing or envisaged noise sensitive location</i>	<i>Less than 8dB above the level of background noise ($L_{90,15min}$) in any octave band of the sound spectrum ($LOCT_{10,15} < LOCT_{90,15} + 8dB$)</i>

No acoustic report has been provided or asked for as part of this application which would be able to assess the proposal against this Designated Performance Feature and the test of “suitable acoustic amenity”.

The applicant was informed that the Assessment Manager would likely recommend a condition relating to live music or the like, given the lack of a noise assessment having demonstrated the premises’ suitability for this. No mention of the question of live music was made in the documents which were put to public notification. However the applicant has asked that either no such condition be applied, or a condition which allows some live music and spoken word (e.g. for poetry readings or stand up comedy).

Upon deeper consideration, it is considered unlikely that acoustic (i.e. unamplified) music inside the shop building would cause an unsuitable level of acoustic amenity for the sensitive receivers behind. It is also plausible that this standard can be achieved in the

courtyard, thought this is less certain. Nonetheless, it is considered that a blanket ban on live music is likely to be unnecessarily restrictive.

A generic condition is recommended which can provide flexibility, while ensuring that, if necessary, action can be taken.

“Any live or amplified music or spoken word (e.g. in the form of a poetry reading or comedy show) shall be maintained at a reasonable volume so as to ensure a suitable level of acoustic amenity for nearby sensitive receivers to the reasonable satisfaction of the Assessment Manager or their Delegate.”

A further generic condition relating to other noise is also recommended.

Capacity

The capacity of the premises is to be unchanged- 49 persons. This is considered to be reasonable for the size of the premises and is not considered to contribute to an unreasonable level of nuisance or the like. As the increased capacity that was originally proposed is what is provided for in the business description, which would be part of the stamped plans, a condition to clarify the capacity is recommended.

Hours of Operation

Performance Outcome 2.1 of the Interface Between Land Uses module of the general development policies states:

“Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its hours of operation having to regard to:

- a) the nature of the development*
- b) measures to mitigate off-site impacts*
- c) the extent to which the development is desired in the zone*
- d) measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.”*

It must be considered that the existing approval, albeit for a less intense use, had no restrictions on hours of operation. Nonetheless, it is considered that placing a restriction on hours of operation would be necessary to ensure that the use does not create a nuisance.

Given the greater potential for noise to emanate from the outdoor area, and thus the greater potential for amenity impacts, it is considered worthwhile to place greater restrictions on operating hours in the courtyard.

The hours which were provided and were listed during public notification were:

- Sun-Thurs: 7am until 11pm (Courtyard until 10pm)
- Fri – Sat: 7am until 1am (Courtyard until 12am)

Representors did not object to the hours proposed because they believe they would create a nuisance- rather, objections were based on market competition and car parking grounds, which are addressed separately.

To consider the points raised in the Performance Outcome above:

- a) The nature of development is more intense and disruptive than the existing use. However, the extent to which it is more disruptive is likely to be reasonably limited considering the existing liquor licence until 1am, and that the capacity would not increase. Therefore, the nature of development is not considered to be so disruptive as to require substantially reduced hours.
- b) Mitigation measures are more present inside the building than in the courtyard. Nonetheless, the large building between the courtyard and any sensitive receivers is likely to provide significant mitigation.
- c) The development is not specifically envisaged in the Zone, but it is not a use that is specifically envisaged in any zones. As noted in the *Land Use* section, the use is consistent with the Performance Outcomes of the Zone which relate to land use, meaning that a logical person could conclude it is reasonably anticipated in the Zone.
- d) No such measures are likely to be necessary.

Therefore, it is considered that the hours of operation provided for the public notification period are appropriate.

Competition

It is not the place of an assessment for Planning Consent to determine an application on the grounds of market competition. There is no policy in the Code in relation to this, and it would violate fundamental principles about Governmental control of the free market. While the number of cafés and eateries, and indeed the existing hotel, in the area has been noted by both representors, this is not considered to be a valid reason to refuse Planning Consent.

CONCLUSION

The application seeks a change of use from a restaurant to a bistro/bar, with the intending business planning to host events such as book launches, poetry readings and the like, as well as being a gathering place for the local community.

The use is of a kind envisaged by the Performance Outcomes of the Suburban Main Street Zone, though not specifically envisaged anywhere by the Code as it is not of a defined kind. This use does not increase the theoretical demand for vehicle parking, due to being in a Designated Area.

While no detailed noise assessment has been conducted, it is considered that the increase in noise from the existing approved use is not sufficiently substantial as to warrant further professional advice.

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

Development Application Number 23023331, by Paul Gallasch is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

Condition 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 (if any).

Condition 2

Noise emanating from the premises shall be maintained at a level that does not cause an unreasonable nuisance to occupiers of land in the locality, to the reasonable satisfaction of the Assessment Manager or their delegate.

Condition 3

The hours of operation of the premises shall be restricted to following times, noting the different times for outdoor and indoor areas to reduce noise impacts on neighbouring residents:

- Sun-Thurs: indoors 7am-11pm, outdoors 7am-10pm
- Fri - Sat: indoors 7am-1am, outdoors 7am-12am

Condition 4

All deliveries to the site and waste collection from the site shall be restricted to the following times:

- Monday-Saturday 7am-7pm

Condition 5

Any live or amplified music or spoken word (e.g. in the form of a poetry reading or comedy show) shall be maintained at a reasonable volume so as to ensure a suitable level of acoustic amenity for nearby sensitive receivers to the reasonable satisfaction of the Assessment Manager or their Delegate.

Condition 6

The approved capacity of the premises herein approved shall be 49 persons.

ADVISORY NOTES

Planning Consent

Advisory Note 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.

Advisory Note 2

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 3

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.

Advisory Note 4

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

Advisory Note 5

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.

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.

Advisory Note 6

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 7

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 pursuant to the *Local Government Act 1999* prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 8

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.

Advisory Note 9

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.

Moved by Ms Mex

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**Seconded by Mr Bateup
CARRIED**

6. **DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT**

7. **REVIEW OF ASSESSMENT MANAGER DECISIONS**

8. **ERD COURT APPEALS**

Mr Parsons advised the CAP members that the Payneham Tavern compromise has been accepted by the ERD Court and the request for joinder have been rejected, but they have the right to appeal.

9. **OTHER BUSINESS**

Nil

10. **CONFIDENTIAL REPORTS**

11. **CLOSURE**

The Acting Presiding Member declared the meeting closed at 8:11pm

Mark Adcock
ACTING PRESIDING MEMBER

Geoff Parsons
MANAGER DEVELOPMENT ASSESSMENT