

Council Assessment Panel Minutes

19 May 2025

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.*

City of Norwood Payneham & St Peters
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City of
Norwood
Payneham
& St Peters

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VENUE Council Chambers, Norwood Town Hall

HOUR 6.30pm

PRESENT

Panel Members Mr Stephen Smith
Mr Ross Bateup
Mr Julian Rutt
Mr Paul Mickan
Cr Kester Moorhouse

Staff Geoff Parsons, Manager, Development & Regulatory Services
Kieran Fairbrother, Senior Urban Planner
Ned Feary, Senior Urban Planner
Tala Aslat, Administration Officer
Daniella Hadgis, Administration Officer

APOLOGIES Mr Mark Adcock
Cr Christel Mex

ABSENT

1. **COMMENCEMENT AND WELCOME**

2. **APOLOGIES**

3. **CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT
PANEL HELD ON 17 MARCH 2025**

Moved by Mr Rutt and Seconded by Mr Bateup
CARRIED

4. **DECLARATION OF INTERESTS**

5. DEVELOPMENT APPLICATIONS – PDI ACT

**5.1 DEVELOPMENT NUMBER ID ID25003913 – MR JOHN AND MS HALEY MILLER –
69 HIGH STREET KENSINGTON**

DEVELOPMENT NO.:	25003913
APPLICANT:	John Miller and Haley Miller
ADDRESS:	69 HIGH ST KENSINGTON SA 5068
NATURE OF DEVELOPMENT:	Demolition of a dwelling (Local Heritage Place)
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Historic Area • Heritage Adjacency • Hazards (Flooding - General) • Local Heritage Place • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Site Area (Minimum site area is 400 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	17 Feb 2025
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2025.3 13/2/2025
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Kieran Fairbrother, Senior Urban Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Structural Engineer, Imparta Engineers (third-party)

CONTENTS:

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

DETAILED DESCRIPTION OF PROPOSAL:

This application is for the demolition of a Local Heritage Place and ancillary structures, on the grounds that the building is structurally unsound and is unable to be redeemed. This application does not propose any replacement building; nor is it required to in order for the demolition proposal to be considered and determined.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 69 HIGH ST KENSINGTON SA 5068

Title ref.: CT 6120/310	Plan Parcel: F139023 AL43	Council: THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Shape:	regular
Frontage Width:	approximately 5.98 metres
Area:	approximately 173m ²
Topography:	relatively flat
Existing structures:	a single storey Victorian building with gable roof (LHP) built to the front boundary, and a later rear addition
Existing vegetation:	nil

Locality

The locality is considered to comprise the area extending 100m northwest and southeast of the subject land along High Street, and includes the first few properties with frontages to Bridge Street and Maesbury Street in both directions from High Street.

This locality is characterised predominantly by single-storey residential dwellings, with a significant proportion of those being State or Local Heritage Places or Representative Buildings (see **Attachment 3**). A couple of non-residential uses exist in the locality, most notably the preschool immediately next door and behind the subject land. Nonetheless, the locality enjoys a very high level of amenity and continues to exhibit a relatively intact part of Adelaide's history through its architecture and road network.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Demolition: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**

Proposal involves the demolition of a Local Heritage Place

- **LIST OF REPRESENTATIONS**

Nine valid representations were received during the public notification period.

First Name	Surname	Address	Position	Wishes to be heard?
Peter	Duffy	43 High Street KENSINGTON	Opposed	Yes
Adam	Slater	46 Bridge Street KENSINGTON	Support, with concerns	Yes
Ethan	Knight	1/31 Dudley Road MARRYATVILLE	Support, with concerns	No
Joseph	Hamra	44 Stanley Street LEABROOK	Opposed	No
Matthew	Hardy	42 High Street KENSINGTON	Opposed	No
Susan	Parham	54 High Street KENSINGTON	Opposed	No
Rory	Lister	67A High Street KENSINGTON	Support, with concerns	Yes
Kensington Residents' Association		42 Regent Street KENSINGTON	Opposed	Yes
Sandy	Wilkinson	112 Osmond Terrace NORWOOD	Opposed	Yes

- **SUMMARY**

The representors' concerns can be summarised as follows:

- General opposition to the demolition of the Local Heritage Place and the loss of a mid-1840s building in Kensington;
- Concern that the building is not completely beyond salvation and reparation works could occur in lieu of demolition. This includes a suggestion that chemical resin injection underpinning could be used to salvage the building;
- Concerns that the neglect of a building over many years could lead to its eventual demolition;
- How security of the adjacent preschool site will be maintained during demolition;

Some representors also suggested that the current proposal should not be approved without a satisfactory replacement building also being proposed that would fit into this historic area. The Panel should note that a replacement building does not need to be proposed for this demolition application to be considered and determined.

INTERNAL REFERRALS

- Structural Engineer (Independent, third party – *Imparta Engineers*)

Imparta Engineers undertook their own assessment of the condition of the building and are of the view that it is highly likely that both the southwestern (front) and northwestern (side) walls would need to be wholly

reconstructed to salvage this building. Any attempt to retain and realign these walls through underpinning and other structural remediation is likely to be unsuccessful; notwithstanding that whole dwelling underpinning may not be possible because of site constraints.

- Heritage Advisor

Council's Heritage Advisor was not asked to comment on the merits of the proposed demolition, because that relies on the expertise of a structural engineer. Instead, the Heritage Advisor was asked to comment on the effect that reconstructing the front and side walls would have on the heritage value of the building. They are of the view that once these walls are demolished the building no longer has any heritage value and should have its listing removed, even if these walls were to be reconstructed.

PLANNING ASSESSMENT

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

Demolition

Performance Outcome 6.1 of the Local Heritage Place Overlay states:

Local Heritage Places are not demolished, destroyed or removed in total or in part unless:

- (a) The portion of the Local Heritage Place to be demolished, destroyed or removed is excluded from the extent of listing that is of heritage value*
or
- (b) The structural integrity or condition of the Local Heritage Place represents an unacceptable risk to public or private safety and is irredeemably beyond repair.*

This application seeks to demolish the whole of the Local Heritage Place and therefore criterion (a) in PO 6.1 is not applicable. Thus, the success or otherwise of the application rests on whether criterion (b) can be satisfied.

By way of background, on 10 February 2025 Council's Senior Building Officer and a consulting engineer attended the site out of concern that the building may pose a risk to public safety. As a result, the Council chose to cordon off the footpath area immediately in front of the building in case the front wall of the building collapsed. The footpath remains closed off in the area in front of the subject building.

In support of their application, the applicant provided a Structural Engineer's Report completed by *OB Engineering (Attachment 1)*. A qualified structural engineer from *OB Engineering* attended the site on 8 February 2025 and undertook a visual inspection for the purposes of their report – no fixtures or fittings were removed as part of their inspection. *OB Engineering* also had consideration to two earlier structural engineering reports (dated 2012 and 2013).

In their report, *OB Engineering* said the following about the condition of the building:

- The building is founded on reactive clayey soils, which are subject to expansion and contraction due to moisture changes throughout the year. Conditions on both the subject land and on neighbouring land are conducive to facilitating significant moisture changes throughout the year.
- The building 'is of full masonry construction without articulation joints, likely built on strip footings', and is therefore vulnerable to differential movements and consequent cracking.
- Cracking was observed in many areas, both internally and externally, most of which could be classified as 'slight to severe' (between Category 2 and 4) in accordance with Table C1 of AS2870 *Residential slabs and footings*.
- Severe rotation of the southwest street-facing wall was observed. Using a digital spirit level, the rotation of the eastern end of this wall was measured to be 59mm/m (177mm total). 'The rotation of the wall is considered severe, and the wall may collapse at any time...'
- The gable end above this wall was not rotated to the same degree, which may be because of restraint provided by the roof structure.
- The northwestern side wall has also rotated and separated from some internal fixtures. Using a digital spirit level, the rotation was measured to be 34mm/m near to the front of the building and 26mm/m near to the rear of the building.
- Internal cracking was repaired 10 years ago, according to the building owner, and has redeveloped since, which indicates the northwestern side wall is actively rotating.

In conclusion, *OB Engineering* suggested that the rotation of the southern and western walls 'is beyond the point where underpinning will be effective'. They did intimate that partial demolition and reconstruction of the failed external walls might be an option but should be subject to an economic feasibility assessment – they did not comment on the feasibility of such works, only that they would be extensive and not economically feasible. Consequently, *OB Engineering* opined that the building should be demolished.

The Council engaged an independent structural engineer (*Imparta Engineers*) to undertake an inspection of the building and to assess its structural condition. More specifically, *Imparta Engineers* were asked to consider what, if any, reparation works might be available to redeem the building (consistent with the wording of Performance Outcome 6.1(b), above).

Imparta Engineers agreed with *OB Engineering* in respect of the soil profile of the land, the construction methodology of the building and consequently the likely explanation for the observed differential movement.

Imparta Engineers said the following about the condition of the building:

- Cracking was observed throughout the building similar to that of *OB Engineering*.
- The cracking to the front southwestern wall and the side northwestern wall was classified as being Category 4 or beyond (severe, 15 -25mm wide) per Table 1 of AS2870.
- The front southwestern wall was measured with a digital spirit level as being between 2.7° and 3.3° out of vertical alignment.
- The side northwestern wall was measured with a digital spirit level as being between 0.8° and 2.8° out of vertical alignment, increasing towards the front of the building.

With respect to potential reparation works, *Imparta Engineers* opined that local repair work (e.g. removing wall plaster, repairing cracked mortar and replacing cracked bricks) would be 'difficult and hazardous to undertake' and the extent and feasibility of such works is difficult to quantify based on a visual inspection alone – this might only be ascertainable once local repair works have commenced. Instead, *Imparta Engineers* suggested that local repair of the front and side walls of most concern is unlikely to be successful 'without reconstructing [these walls] to a large degree (if not fully)'.

Imparta Engineers consulted with specialist underpinning contractor during their assessment to determine the

feasibility of underpinning the dwelling and realigning the existing walls. This contractor held a view that if underpinning was to be attempted then the front and side walls would need to be reconstructed in full notwithstanding. Further, because of access issues around the dwelling, it may not be possible to completely underpin the building.

Imparta Engineers held the view that, on the balance of probabilities, retention of the existing building through the underpinning of the dwelling and the realignment of the front and side walls would be unsuccessful. Contrarily, they held the view that the most appropriate remedial option would be the full reconstruction of the

front and side walls (see Figure 3 in **Attachment 7**). In such an event, these walls would likely need to be

founded on new footings or deep underpins; and this would likely lead to different instability issues because of the different foundation conditions throughout the whole of the building. In such circumstances, underpinning of the whole dwelling may be necessary, but this may not be feasible due to site constraints.

Performance Outcome 6.1(b) (above) requires satisfaction of two elements:

1. That the structural integrity or condition of the building represents an unacceptable risk to public or private safety; and
2. That the structural integrity or condition of the building is such that it is irredeemably beyond repair.

The condition of the building has been established by both *OB Engineers* and *Imparta Engineers* as being structurally unsound, particularly in relation to the front southwestern wall and the side northwestern wall. This wall has significantly rotated out of vertical alignment and is separating from the gable roof structure, as evidenced in photos by both engineers. Council's Senior Building Officer and separate consulting engineer evidenced a concern that the front wall of the building may collapse by cordoning off the footpath in this area. Accordingly, the first part of Performance Outcome 6.1(b) has been satisfied because the building does evidently pose an unacceptable risk to public and private safety (although the house is currently uninhabited).

Thus, the question to be answered is whether the building is "irredeemably beyond repair". The word "irredeemable" was considered by the Environment, Resources and Development Court in *Klemich v City of Norwood Payneham & St Peters*¹ where, at [35], the Court said:

Choice of this word is not considered to be ideal for the concept that I understand is sought to be achieved. Dictionary definitions include references to not redeemable, beyond redemption, incapable of being brought back or paid off; and redeemable being capable of being redeemed; and to redeem to include to make up for, to obtain the restoration of or to pay off, to bring the item back to original condition or its presence. Hence, in a planning sense, I find that it is intended to include the restoration, repair and rehabilitation of existing original building fabric of heritage value, but not to include its full replacement with new materials, nor necessarily include the term or works comprising 'rectification'.

This case involved the proposed demolition of a Local Heritage Place, and the question considered was whether the building was 'so structurally unsound as to be unsafe and irredeemable' – wording taken from the Development Plan in force at the time which is akin to the wording in Performance Outcome 6.1(b) of the Local Heritage Place Overlay (above).

In that case, the engineering evidence accepted by the Court indicated that significant portions of the original external walls, which were of particular heritage importance, would need to be removed to a height of 1 metre or up to 1.8 metres and wholly reconstructed and underset. On that basis, the Court concluded that the whole local heritage place was considered to be irredeemable. In other words, it was the Court's view that

¹ [2002] SAERDC 10.

demolishing significant original external sections of the building and then reconstructing those sections with new materials does not constitute redemption of the building.

The engineering opinion provided for consideration of this application – by *OB Engineering* and *Imparta Engineers* – both suggest that the front southwestern wall and the side northwestern wall cannot be redeemed through local repair work. Instead, if any salvaging was to be attempted, it would require the demolition and reconstruction of these walls in their entirety, as well as the complete underpinning of the dwelling (which comes with its own uncertainties).

Once these two walls are demolished, the heritage value of the place will be significantly diminished (if not completely). Any replacement walls will not constitute original building fabric (no matter how convincing a replication attempt may be) and therefore will have no heritage value. Council's Heritage Advisor agrees with this view, stating that 'from a purely heritage perspective that means the building would no longer be the same Local Heritage Place, so the listing should be removed' (see **Attachment 7**).

Accordingly, consistent with the reasoning in *Klemich*, the Local Heritage Place is considered to be irredeemably beyond repair and its demolition is justified by virtue of satisfaction of Performance Outcome 6.1 of the Local Heritage Place Overlay.

Question of Seriously at Variance

Having considered the proposal against the relevant provisions of the Planning & Design Code (version 2025.3, dated 13/02/2025), the proposal is not considered to be seriously at variance with the provisions of the Planning & Design Code because:

- Demolition of a Local Heritage Place is anticipated in certain circumstances.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. The proposed development is not considered seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*.
2. Development Application Number 25003913, by John Miller and Haley Miller is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

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

ADVISORY NOTES

Planning Consent

Advisory Note 1

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 2

Appeal Rights - General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.

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

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), or works that require the closure of the footpath and / or road to undertake works on the development site, 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.

Advisory Note 10

If excavating, it is recommended you contact Before You Dig Australia (BYDA) (www.byda.com.au) to keep people safe and help protect underground infrastructure.

Mr Bryson addressed the Council Assessment Panel from 6:35pm until 6:40pm
Mr Duffy addressed the Council Assessment Panel from 6:42pm until 6:45pm
Mr Slater addressed the Council Assessment Panel from 6:46pm until 6:48pm
Mr Wilkinson addressed the Council Assessment Panel from 6:49pm until 6:55pm
Mr Kuchel addressed the Council Assessment Panel from 6:56pm until 7:04pm
Mr Miller addressed the Council Assessment Panel from 7:05pm until 7:07pm also returned for more questions from the Panel at 7:50pm until 7:55pm

Moved by Mr Rutt

1. *The proposed development is not considered seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016.*
2. *Development Application Number 25003913, by John Miller and Hayley Miller is deferred for further information regarding the following matters:*
 - *Costing estimates for repair work to make the building safe and compliant with the current building code (to the extent necessary for this building).*
 - *Specialist engineering advice regarding restoration options and integrity of such, while maintaining the heritage values of the place.*
3. *Should the agreement of the Applicant to place the Application on hold be revoked, the Assessment Manager is delegated to refuse DA 25003913.*

Seconded by Mr Bateup

CARRIED

6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT
7. REVIEW OF ASSESSMENT MANAGER DECISIONS

8. ERD COURT APPEALS

8.1 CONFIDENTIAL MATTER

Moved by Mr Mickan

That pursuant to Regulation 13(2)(a)(viii) and (ix) and Regulation 13(2)(b) of the Planning, Development & Infrastructure (General) Regulations 2017, together with Clause 8.9 of the Council Assessment Panel Meeting Procedures, the Council Assessment Panel orders that the public, with the exception of Council's Manager, Development & Regulatory Services, Senior Urban Planners and Administration Officers, be excluded from the meeting.

Seconded by Mr Moorhouse
CARRIED

Moved by Mr Rutt

That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 8.9 of the Council Assessment Panel Meeting Procedures, the discussion, decision and documentation shall remain confidential, other than where required to be released in the management of the Environment Resources and Development Court Appeal process, or as otherwise required at the discretion of the Assessment Manager.

Seconded by Mr Bateup
CARRIED

8. ERD COURT APPEALS

8.2 CONFIDENTIAL MATTER

Moved by Mickan

That pursuant to Regulation 13(2)(a)(viii) and (ix) and Regulation 13(2)(b) of the Planning, Development & Infrastructure (General) Regulations 2017, together with Clause 8.9 of the Council Assessment Panel Meeting Procedures, the Council Assessment Panel orders that the public, with the exception of Council's Manager, Development & Regulatory Services, Senior Urban Planners and Administration Officers, be excluded from the meeting.

Seconded by Mr Bateup
CARRIED

Moved by Mr Mickan

That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 8.9 of the Council Assessment Panel Meeting Procedures, the discussion, decision and documentation shall remain confidential, other than where required to be released in the management of the Environment Resources and Development Court Appeal process, or as otherwise required at the discretion of the Assessment Manager.

Seconded by Mr Bateup
CARRIED

9. OTHER BUSINESS

The June CAP is likely to be rescheduled to 23 June 2025. Mr Parsons will keep the Panel informed.

10. CONFIDENTIAL REPORTS

11. CLOSURE

The Presiding Member declared the meeting closed at 8:49pm