

Council Assessment Panel Minutes

20 October 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 Mark Adcock
Mr Ross Bateup
Cr Kester Moorhouse
Mr Julian Rutt

Staff Kieran Fairbrother – Acting Manager, Development Assessment
Ned Feary – Senior Urban Planner
Daniella Hadgis – Administration Officer

APOLOGIES 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 15 SEPTEMBER 2025**

Moved by Mr Rutt and Seconded by Mr Adcock
CARRIED

4. **DECLARATION OF INTERESTS**

5. DEVELOPMENT APPLICATIONS – PDI ACT

**5.1 DEVELOPMENT NUMBER – ID 25015527 - HBC HOMES C/- FUTURE URBAN PTY LTD
- 7 STEPHEN TCE ST PETERS SA 5069**

DEVELOPMENT NO.:	25015527
APPLICANT:	HBC Homes C/- Future Urban Pty Ltd
ADDRESS:	7 STEPHEN TCE ST PETERS SA 5069
NATURE OF DEVELOPMENT:	Demolition of a detached dwelling (Representative Building) and associated ancillary structures
ZONING I NFORMATION:	Zones: • Established Neighbourhood Overlays: • Airport Building Heights (Regulated) • Future Road Widening • Historic Area • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Transport Routes • Urban Tree Canopy Technical Numeric Variations (TNVs): • Minimum Frontage (Minimum frontage for a detached dwelling is 18m) • Minimum Site Area (Minimum site area for a detached dwelling is 600 sqm) • Maximum Building Height (Levels) (Maximum building height is 1 level) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	3 Jun 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 2025.10 29/05/2025
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Edmund Feary - Senior Urban Planner
REFERRALS STATUTORY:	None
REFERRALS NON-STATUTORY:	Heritage Advisor Consultant Structural Engineer

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DETAILED DESCRIPTION OF PROPOSAL:

The proposal involves the demolition of the whole of the existing building on the site. The building is a Representative Building identified in The Avenues Historic Area Overlay (NPSP20). The building has been described by Council's Heritage Advisor as, "a sandstone fronted Victorian Italianate Villa with a bay window to the gable, bluestone side walls, and a later bullnose verandah." There is also a later addition to the rear. Data from the Valuer-General indicates that the building was constructed circa 1900.

The proposal also intends to demolish ancillary structures, which are generally not considered representative of the historic character which the Historic Area Overlay seeks to protect.

BACKGROUND:

The site was also subject to a separate application for the removal of a regulated tree, a Brush Cherry (*Syzygium paniculatum*). This separate application was approved by the Assessment Manager on 3 July 2025, noting that it did not require public notification. It is understood that the applicant intends to remove much of the vegetation on the site, but this was the only regulated tree among them.

As part of the subject application, the applicant provided a report prepared by Trevor John of Fyfe Engineers, a qualified and experienced structural engineer. His stated opinion in that report is that the building is "beyond reasonable repair", for reasons which will be elaborated upon in the Planning Assessment below.

Council engaged the services of a structural engineer to conduct a peer review of the report provided by the applicant, and John Bowley was duly engaged. He, along with the assessing planner, conducted an inspection of the site on 2 July 2025, and he provided his report shortly afterwards.

Public notification of the application occurred between 1 July and 21 July 2025, with two representations received. Both representations were opposed to the development and wished to be heard, thus requiring that the Panel makes the decision on the application.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 7 STEPHEN TCE ST PETERS SA 5069

Title ref.:	Plan Parcel:	Council:
CT 5218/327	F125083 AL1	THE CITY OF NORWOOD PAYNEHAM AND ST PETERS

Shape:	Mostly rectangular, but with a wider primary street front, and an angular change in boundary alignment slightly beyond the building line
Frontage width:	17.75m
Area:	669m ²
Topography:	Mostly flat
Existing structures:	Detached dwelling (Representative Building), outbuilding and verandah
Existing vegetation:	Grass in the front and rear yards, with a variety of small/medium trees and shrubs mostly along the fence lines

Locality

A locality is outlined in **Attachment 2**. It extends approximately 100m northwest along Stephen Tce, 120m southeast along the same, includes sites on the opposite side of Stephen Tce (but not further along the relevant avenues), and approximately 50m northeast along Second Lane.

The locality consists mostly of historic villas and cottages constructed around 1890-1910. The Historic Area Overlay identifies many of these as Representative Buildings, which can be seen in **Attachment 3**. Many of these dwellings are oriented to face Stephen Terrace, though access is predominantly from laneways. These laneways were traditionally “night-cart lanes”, and have since evolved for use by private motor vehicles, despite their narrow width (approximately 4.5m).

Land use in the locality is entirely residential, though there is an aged care facility on the northern end of the locality.

Many of these dwellings with frontages to Stephen Tce incorporate high fencing along this boundary as an acoustic barrier, but this is not universal, and several sites do have low/open fencing.

In general, the relatively high traffic volumes and high speeds along Stephen Tce diminish the otherwise high level of residential amenity in the locality.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Demolition: Code Assessed - Performance Assessed
Demolition
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code; No other pathway (Historic Area Overlay)

PUBLIC NOTIFICATION

- **REASON**
Demolition of a Representative Building
- **LIST OF REPRESENTATIONS**

First Name	Surname	Address	Position	Wishes to be Heard?
Sandy	Wilkinson		Opposed	Yes
St Peters Residents' Association		N/A	Opposed	Yes

- **SUMMARY**
Representations generally disputed the notion that the building was beyond reasonable repair, including suggestions for alternative methods of repair, which they believed to be more reasonable. These representations are provided in **Attachment 4**.

AGENCY REFERRALS

None

INTERNAL REFERRALS

- Heritage Advisor, David Brown

The application was referred to Council's Heritage Advisor to provide advice on both the contribution of the building to the Historic Area, and interpretation of the engineering advice, given his extensive experience in the management of restoration projects. His advice is provided in **Attachment 6**, which also includes consideration of points made by representors.

- Consultant Structural Engineer, John Bowley

In order to confirm the views outlined in the report provided by the applicant's structural engineer, Council sought the services of a structural engineer to conduct a peer review of the applicant's report. Council's Heritage Advisor noted that Mr Bowley had extensive experience in working with heritage buildings, and it was considered that his experience would bring a valuable perspective to the proposal. His advice is also provided in **Attachment 6**. Mr Bowley agrees with the assessment provided by Mr John for the applicant, that the building is beyond reasonable repair.

PLANNING ASSESSMENT

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

Question of Seriously at Variance

The proposed development comprises the demolition of the whole of a building and associated ancillary structures. It is located in the Established Neighbourhood Zone and the Historic Area Overlay. Development of this nature may be appropriate within the site, locality or in the subject Zone and Overlay, noting Performance Outcomes 7.1, 7.2 and 7.3 of the Historic Area Overlay. These policies envisage circumstances where development of this kind may or may not be appropriate within this Overlay.

Noting the information below, there is, at least, reasonable evidence to suggest that the criteria outlined in these Performance Outcomes may be satisfied.

Therefore, 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*.

Ancillary Structures and Later Addition

The assessment below relates only to original portion of the building (i.e. the front four rooms of the villa). The outbuildings and the later addition are not considered representative of the historic character of the area, and their demolition is acceptable as per Performance Outcome 7.3 of the Historic Area Overlay.

Structural Condition

The photographs provided in the application documentation show the unstable walls, both with respect to cracking and having formed a wave like form around the tie-rods. The engineering advice outlines the impact of reactive clay soils given the limited footings for the building, and that having had such a dry summer, soil movement has increased substantially.

While the weather had been very dry prior to the application being submitted, the inspection conducted by administration occurred after a period of rain, where soil moisture had increased, but cracks had shown no sign of closing. It is noted that while it had been wetter, soil moisture would not have increased so substantially as to achieve this outcome.

Notwithstanding this, section 7.5 of the applicant's engineering report considers the potential for greater soil moisture to improve the structural condition of the building. At 7.5.5, the opinion is provided that having had such significant damage occur, and with inadequate footings, the walls will not respond to increased soil moisture in such a manner as to "bring the building into any reasonable state of structural integrity."

It is noted that this combination of reactive soils, lack of moisture and limited footings, is present in almost every historic building in South Australia. Council's Heritage Advisor outlines examples in his report where cracking has occurred even in buildings which had recently been repaired. That said, this site is unique due to the nature and extent of the damage. While buildings which had been in a better structural condition prior to the drought would have experienced some cracking, this cracking could be repaired; whereas in this case, the already poor condition of the building would mean that this additional weather induced soil movement has resulted in movement of the building that is beyond an easily repairable solution.

It is evident that without intervention, the building will suffer from a structural failure, though when that may be is unknown. To quote Council's Heritage Advisor:

"In my experience some walls eventually lose their ability to remain as a bonded masonry element that is able to function as a structural part of a building. This is usually due to excessive and continuous movement over time, moisture entry, and usually neglect. This is more common in random stone walls, as brick walls tie together more strongly due to the modular elements and less reliance on large mortar joints. There are engineering solutions available (stainless steel bars, underpinning, etc), but the knock-on effects of only repairing some walls mean the rest of the house still moves with the seasonal changes in soil moisture. This is why many engineers will not get involved in underpinning, as it is not a strict engineering science unless every wall is underpinned to a depth greater than the depth of the reactive clay soil (usually between 2-4m)."

This is further supported by the opinion of Council's consultant Structural Engineer:

"I concur with the opinion expressed in the original report that strengthening the existing footings is not practical, and underpinning of the weak footings on the highly reactive clays is also inappropriate and unlikely to be successful."

Repairing the badly deformed and cracked masonry walls by rebuilding on the existing footings is most likely to result in walls with similar problems in time and also not considered appropriate."

Therefore, repairs to the building's structural condition are necessary, and this will need to involve work to the building's foundations.

Necessary Repairs

Section 13.2 of the Applicant's Structural Engineering Report outlines the opinion that the only manner by which the walls can be returned to an appropriate level of structural integrity is by carefully demolishing the relevant walls, constructing new footings, and then rebuilding the walls. As above, Council's Consultant Structural Engineer agreed that the only practical solution was to construct new footings.

Both representors submit that urethane injection could be used as an alternative method of stabilising the footings, and then allow plastering or the like to repair the cracking.

In their response to representations, the Applicant's Structural Engineer suggests that such a method would not be appropriate in this instance, due to the reactivity of the soil. It is noted that this is followed by an AI summary, but such summaries are generally not to be relied upon given the propensity for large-language models and other machine learning/AI tools to "hallucinate" and produce answers which are not supported by evidence (it is noted that one representation also included such an AI summary). In this instance however, the engineer's professional opinion is clearly provided, and this is considered more reliable. Noting that the representors do not have such engineering expertise, the view of the applicant's engineer is preferred.

Council's Heritage Advisor remarked that he has also used urethane injection as a repair method previously but did not provide further commentary on its use in this particular case. He noted that his previous use was done at the suggestion of an engineer. In this case, no engineer has put this forward as a suggestion.

One alternative mentioned by Council's Heritage Advisor as having occurred previously was to build a dwelling addition to the side of the building, allowing the (now internal) walls to be demolished.

In this case however, serious cracking and instability has occurred to all dwelling walls. While the front wall is less severely damaged than the side walls, it is still clearly in a poor condition and, to quote the Applicant's Structural Engineer, "would require demolition to rectify" (from 13.2.2 of the initial report). Therefore, this solution is not considered applicable to this scenario.

A series of other suggestions are provided in Representation 2, including the use of lime mortar, removal of

the “railway irons” and the use of specialist tradespeople to straighten the walls. Each of these points are addressed in both Council’s Heritage Advisor’s report and the Response to Representations. In general, the views expressed by the Applicant’s engineer are preferred, noting his experience as a Structural Engineer, and his having inspected the site and considered its unique circumstances.

Reasonableness of Repairs

As outlined above, the necessary repairs would require the demolition of much (if not all) of the existing structure of the building and then reconstructing this with modern footings. Doing so would negate much of the heritage value of the building - in the manner of the “grandfather’s hammer” or “ship of Theseus” thought experiments. Council’s Heritage Advisor expands on this:

“Reconstruction of demolished buildings come with its own problems of interpretation, historical understanding, and assessment of the value of the building as to whether it is worthy of reconstruction. Once the original historic fabric has been dismantled, the heritage value is gone, and so would the heritage listing (though difficult from an administrative perspective). The building then becomes a reconstruction using salvaged materials, and is not the same building with the same history, technology or character. Hence the usual approach with suburban dwellings is once they are demolished, to construct a sympathetic new dwelling for the context.”

Council’s Heritage Advisor concluded that, *“It would be a pity to lose another stone Villa in St Peters. Though this one is hiding behind a high fence on a busy road, so its level of contribution is somewhat diminished currently. The condition of the building is such that it would be extremely difficult to repair, and to have that repair remain permanent without a significant cost.”*

The high fence does diminish the extent to which the building can contribute to the historic streetscape, and it should be noted higher fencing in this location is envisaged in the Historic Area Statement given the traffic conditions on Stephen Terrace. This limits the significance and contribution of this dwelling to the Historic Area more broadly.

Case law does suggest that the extent of a building’s contribution to the Historic Area is relevant to the reasonableness of repairs, particularly in *Ikkaj Pty Ltd v District Council of the Copper Coast* [2010] SASC 38 at [63] where White J opines:

The evaluation of whether a structurally unsound building can be economically repaired for the purposes of Principle 4 will also usually require an evaluation of a number of other matters. Those matters include the nature and extent of contribution which the structure makes to the value (including the heritage value) of the property on which it is located, or to its neighbouring properties, or to the heritage character of the Zone generally. If the structure in question is of particular historical significance, or is, for example, of iconic status in its street or in the Zone generally, the conclusion may more readily be reached that its renovation, despite the expense, can be reasonably expected. Conversely, it may not be reasonable to require the expensive renovation of a structurally unsound building which contributes in only a minor way to the heritage character of an area.

While no clear cost is provided in this instance, it would be expected that the works would incur a significant cost, which, combined with the reduced heritage value, diminishes the reasonableness of such repairs, in the context of Historic Area Overlay PO 7.1.

Considering the already limited contribution to the area’s historic character, and that this contribution would be further reduced by the necessary repairs, the bar for what is a “reasonable repair” is somewhat lower than may otherwise be the case. Given the extent of work necessary, it is considered that this bar is “cleared” in this instance, and administration is supportive of the demolition.

CONCLUSION

Considering the evidence provided by both engineers, the extent of repair work required to return the building to a safe and sustainable condition is substantial. While representors have suggested alternative methods of repair, the Applicant’s Structural Engineer has reviewed these and has outlined why these are not suitable for the circumstance at hand.

On the basis that the only appropriate repair method is the careful demolition of the existing walls, construction of new footings, and then rebuilding of new walls using the existing materials, this is considered

to have a disproportionate cost to the heritage value of the building. Therefore, the building is considered to be “beyond reasonable repair”, and its demolition is consistent with the principle outlined in Historic Area Overlay PO 7.1, and thus sufficiently accords with the Planning and Design Code to warrant consent.

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 25015527, by HBC Homes C/- Future Urban Pty Ltd 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).

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 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 5

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 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 Wilkinson addressed the Council Assessment Panel from 6.35pm until 6.40pm

Mr Cree addressed the Council Assessment Panel from 6.46pm until 6.51pm

Mr Troncone addressed the Council Assessment Panel from 6.53pm until 6.54pm

Mr John addressed the Council Assessment Panel from 6.54pm until 6.57pm

Moved by Mr Bateup

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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.

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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

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Seconded by Mr Adcock

CARRIED

**5.2 DEVELOPMENT NUMBER – ID 25003913 – JOHN & HALEY MILLER
- 69 HIGH STREET KENSINGTON SA 5068**

DEVELOPMENT NO.:	25003913
APPLICANT:	John Miller Haley Miller
ADDRESS:	69 HIGH ST KENSINGTON SA 5068
NATURE OF DEVELOPMENT:	Demolition of a dwelling (Local Heritage Place)
ZONING INFORMATION:	Zones: • Established Neighbourhood Overlays: • 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 Technical Numeric Variations (TNVs): • 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 at City of Norwood Payneham & 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)

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ATTACHMENT 4:	Subject Land Map	ATTACHMENT 9:	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 for the demolition proposal to be considered and determined.

BACKGROUND:

At its meeting on 19 May 2025, the Council considered this development application and resolved as follows:

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.*

In responding to these reasons for refusal, the Applicant has provided:

- A quote from Finch Constructions to address the first request for information pursued through the deferral;
- A legal opinion by Felicity Niemann of Wallmans Lawyers; and
- A town planning opinion by Phillip Brunning of Phillip Brunning & Associates.

The Applicant has not procured any further engineering advice as requested by the Panel. Instead, the Applicant has requested that the Panel consider the additional information presented herein and determine this development application. This additional information is contained within **Attachment 2**.

PLANNING ASSESSMENT

The previous planning assessment undertaken by the administration is contained within **Attachment 3**. This report will discuss only the additional information provided in the Applicant's Response (**Attachment 2**) before making a recommendation to the Panel.

By way of reminder, 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.*

At its meeting on 19 May 2025, the Panel was not satisfied that criterion (b) above had been satisfied to justify the demolition of the subject Local Heritage Place; hence the reason for deferral.

Finch Constructions were engaged by the Applicant to provide a cost estimate for repair works to this dwelling, based on the information provided in the engineering reports previously completed by OB Engineering and Imparta Engineers. The Panel should note that the quoted work involves complete demolition and reconstruction of the front southern wall and the side western wall, consistent with the works recommended by both engineers. The total cost of the works quoted for by Finch Constructions is \$616,762.30.

The Applicant's town planner and lawyer both suggest that a third engineering report, as requested by the Panel, is not required for the reasons explained below.

Firstly, it is argued that there should be no doubt that the structural integrity or condition of the Local Heritage Place represents an unacceptable risk to public or private safety, per Performance Outcome 6.1(b) of the Local Heritage Place Overlay, as evidenced by the fact that the Council has closed off the footpath and road area in front of this building. This same opinion was provided by the administration to the Panel in the meeting in May.

Secondly, it is suggested that the two existing structural engineering reports provide sufficient evidence that the building is irredeemably beyond repair. Specifically, OB Engineering recommended demolition of the southern and western external walls due to their severe rotation and risk of collapse, whereas Imparta Engineers suggested that underpinning of these walls is unlikely to be successful and reconstruction of these two walls is likely to be the only solution.

The lawyer engaged on behalf of the Applicant has quoted relevant case law that suggests that the demolition and reconstruction of original parts of a Local Heritage Place do not constitute 'redemption' of the building in the sense sought by Performance Outcome 6.1 above. A summary of one of these cases, *Klemich v City of Norwood Payneham & St Peters* [2002] SAERDC 10, was provided to the Panel in the previous report (**Attachment 3**).

The other case quoted was the more recent decision of *Om Holdings (SA) Pty Ltd v Minister for Climate, Environment and Water & Ors* [2025] SAERDC 14. This case considered the removal of an upright neon box sign attached to the façade of a State Heritage Place. In considering whether the structure was "irredeemably beyond repair", the Court (at [105]) reaffirmed the reasoning in *Klemich*: that 'redeeming' includes 'the restoration, repair and rehabilitation of the original building fabric of heritage value. It [does] not include full replacement with new materials; being "rectification"'. In this case, the Court did not have sufficient evidence before it to conclude whether the extent of work required 'would effectively require a new sign to be constructed' (at [116]) and therefore whether the sign was irredeemable.

With respect to this subject application, however, two structural engineering opinions have been obtained that both suggest that any attempt to repair the front and side walls of the building (e.g. by underpinning) would likely be unsuccessful. Contrarily, it was complete demolition, underpinning and reconstruction of these two walls that both engineers were comfortable to recommend as being a solution for salvaging this building. In this event, the building would no longer be the same original building and, as advised by Council's Heritage Advisor, the Local Heritage Place listing should accordingly be removed.

Contrasted to the decision in *Om Holdings*, the Applicant's lawyer suggests that the Panel has sufficient evidence before it to conclude that the building is irredeemable and therefore its demolition should be supported. For the same reasons as those expressed in the original report provided to the Panel (**Attachment 3**), the administration agrees with this suggestion.

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 the 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 Brunning and Ms Niemann addressed the Council Assessment Panel from 7.42pm until 7.52pm

Moved By Mr Smith

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 refused Planning Consent subject to the following reasons:*
 - *It has not been demonstrated that the structural integrity or safe condition of the Local Heritage Place is irredeemably beyond repair, as required by Performance Outcome 6.1 of the Local Heritage Place Overlay. Consequently, demolition of the Local Heritage Place is not justified.*

Seconded by Mr Rutt
CARRIED

6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT

7. REVIEW OF ASSESSMENT MANAGER DECISIONS

8. ERD COURT APPEALS

9. OTHER BUSINESS

- *Maintenance of older buildings in Historic Areas – Presiding Member asked what Council can do to inform residents on how to best maintain older dwellings on reactive soils. Acting Manager to discuss with other Council staff.*

10. CONFIDENTIAL REPORTS

11. CLOSURE

The Presiding Member declared the meeting closed at 8.12pm

Stephen Smith
PRESIDING MEMBER

Kieran Fairbrother
ACTING MANAGER, DEVELOPMENT ASSESSMENT