

# Council Assessment Panel Minutes

**20 November 2018**

## **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** Mayors Parlour, Norwood Town Hall

**HOUR** 7pm

**PRESENT**

**Panel Members** Mr Terry Mosel  
Mr Phil Smith  
Ms Jenny Newman  
Ms Fleur Bowden

**Staff** Mark Thomson Manager Development Assessment  
Kathryn Clausen Senior Urban Planner  
Nenad Milasinovic Senior Urban Planner  
Ellen de Souza Development Officer Planning

**APOLOGIES**

**ABSENT**

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE SPECIAL COUNCIL ASSESSMENT PANEL HELD ON 14 NOVEMBER 2018**

*Motion was put that the minutes of the Meeting of the Special Council Assessment Panel, held on 14 November 2018 be taken as read and confirmed.*

*Seconded and carried*

## 2. STAFF REPORTS

### 2.1 DEVELOPMENT APPLICATION 155/896/2017 – LANG HOMES – 213-215 MAGILL ROAD, MAYLANDS

<b>DEVELOPMENT APPLICATION:</b>	155/896/17
<b>APPLICANT:</b>	Lang Homes
<b>SUBJECT SITE:</b>	213-215 Magill Road, Maylands (Certificate of Title Volume: 5843 Folio: 230)
<b>DESCRIPTION OF DEVELOPMENT:</b>	Alterations to and conversion of a dwelling to an integrated design studio, office, retail space and coffee shop, including the construction of a freestanding studio/workshop building at the rear of the site and a freestanding display cube at the front of the site.
<b>ZONE:</b>	Local Commercial Zone - Norwood, Payneham and St Peters (City) Development Plan (dated 30 May 2017)
<b>PUBLIC NOTIFICATION CATEGORY:</b>	Category 3

#### Purpose of Report

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application involving alterations to and conversion of a dwelling to an integrated design studio, office, retail space and coffee shop, including Alterations to an existing dwelling; the construction of a freestanding studio/workshop building at the rear of the site and a freestanding display cube at the front of the site..

Staff do not have delegated authority to determine the Application, as the Application has been processed as a Category 3 development for the purposes of public notification.

As such, the Application is referred to the Panel for determination.

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

#### Subject Land Attributes

Shape:	regular
Frontage width:	27.43 metres
Depth:	45.72 metres
Area:	1,254.10m <sup>2</sup>
Existing Structures:	single-storey detached dwelling (symmetrical cottage) along with several outbuildings and ancillary structures
Existing Vegetation:	some low-level landscaping and fruit trees

Three (3) mature ironbark street trees along with what appears to be a conifer/pine tree are located adjacent front property boundary. A stobie pole is situated in-line with the eastern side boundary of the subject land. An existing crossover is situated between the central and easternmost ironbark street trees.

## Locality Attributes

Land uses:	a mix of commercial (both on the northern and southern sides) and residential land uses (on the northern side) fronting Magill Road as well as residential land uses abutting the subject site on the western and northern property boundaries
Building heights (storeys):	mixture of single-storey and two-storey
Streetscape amenity	moderate – the locality is greatly influenced by the heavily trafficked nature of Magill Road. The majority of the existing development along Magill Road within the immediate area incorporates varied front setbacks.

A plan of the subject site and its surrounds is contained in **Attachment A**.

## Proposal in Detail

The Applicant is seeking consent to undertake alterations to the existing vacant dwelling on the subject land along with constructing a freestanding building and a freestanding display cube on the land. The proposal also involves changing the use of the land from residential to an integrated design studio, office, retail space and coffee shop within the existing vacant dwelling as well as introducing workshops and design classes within the proposed freestanding building.

The existing dwelling is to have its roof and front verandah areas reclad with new zincalume roof sheeting. A deck area (ie. approximately 28m<sup>2</sup>) is proposed to be added to the rear of the existing dwelling.

The proposed freestanding building is to accommodate two designated workshop areas along with a machine room along with amenities and storage space. The proposed freestanding building is to be constructed from a combination of colorbond corrugated sheet cladding (colorbond colour “Dune”) and Scyon “Axon 133 Smooth” light weight cladding along with masonry blockwork to the rear northern elevation and a portion of the eastern side boundary.

A 4.8 metre long by 2.1 metre wide by 2.2 metre high freestanding display cube is proposed within the south-eastern corner of the front yard in order to display furniture and/or art pieces. The display cube is to be constructed and clad externally from lightweight sheet metal cladding (Lysaght “Longline” profile and colorbond colour “Monument”) along with toughened glass to the front and rear elevations.

In terms of hours of operation, the showroom/studio areas, office component are intended to operate Monday to Friday 9:00am to 5:00pm. The coffee shop is intended to operate between 8:00am to 2:00pm Monday to Friday and 8:00am to 12:00pm on Saturday. The workshop areas in the proposed freestanding building are intended to operation 9:00am to 6:00pm Monday to Friday and 9:00am to 1:00pm on Saturday.

A car parking area of sixteen (16) car parking spaces will be provided for the subject land with twelve (12) of these spaces located adjacent the western side boundary.

Plans and details of the proposed development are contained in **Attachment B**.

**TABLE 1: DEVELOPMENT DATA:**

Consideration	Proposed Dwelling	Development Plan Merit Assessment Quantitative Guideline
Site Area	1,254.10m <sup>2</sup>	N/A
Allotment Width	27.43m	N/A
Allotment Depth	45.72m	N/A
External Wall Height of Proposed Building	3.1m – 5.7m	N/A
Maximum Overall Height of Proposed Building	6.3m	N/A

**TABLE 1: DEVELOPMENT DATA *continued...***

Consideration	Proposed Dwelling	Development Plan Merit Assessment Quantitative Guideline
<b>Floor Area (footprint of all buildings)</b>	582m <sup>2</sup>	N/A
<b>Side Setback</b>	Western side – 1.0m Eastern side – boundary development	N/A
<b>Rear Setback</b>	900mm	N/A
<b>Car Parking Provision</b>	16 spaces	<ul style="list-style-type: none"> <li>• office - 4 spaces per 100m<sup>2</sup></li> <li>• retail showroom - 2 – 4 spaces per 100m<sup>2</sup></li> <li>• light industry/warehouse/service industry 3 spaces per 100m<sup>2</sup> (office component plus 1 space per 100m<sup>2</sup> (non-office component))</li> <li>• Restaurant (including café) 1 space per 3 seats (no additional requirement for outdoor dining up to 25% of indoor seating)</li> </ul>

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

### Notification

The proposal has been identified and processed as a Category 3 form of development.

A total of five (5) representations were received (one in favour (subject to conditions), four opposed) in response to this notification, copies of which are contained in **Attachment C**. The key issues raised by representors are, in summary:

- potential visual impact of the proposed building upon the neighbouring dwelling at 3/4 Phillis Street.
- lack of detail regarding the proposed wall along the northern rear boundary of the subject land.
- uncertainty regarding the proposed use of the warehouse/workshop building.
- potential noise impacts from machinery within the proposed workshop building and potential noise impact from the proposed air conditioning unit.
- potential air quality impacts from the proposed dust extraction area within the workshop.
- the use of zincalume and the associated reflective properties.
- insufficient car parking provision.

The following representors have indicated in their representation that they wish to be heard by the Panel:

- *Mr. J Evins and Mrs. M Evins;*
- *Mr. M Dignam and Mrs. K Dignam; and*
- *Mr. J Lane.*

All of the representors have advised that they will be represented by Mr Wayne Gladigau, of Masterplan Town and County Planners.

Through their planning consultant, Mr Phillip Brunning, the Applicant has responded to the representations received and a copy of their response is contained in **Attachment D**.

## State Agency Consultation

The Application was referred to the Commissioner of Highways pursuant to Schedule 8 of the Development Regulations 2008, as the proposed development involves creating a new access in relation to an existing arterial road. The Commissioner of Highway's response is discussed in detail under the heading Car-parking/access/manoeuvring later in the report. In summary, the Commissioner raised no objections to the proposed development.

## Discussion

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

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

### Land Use and Density

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

Local Commercial Zone Objectives:	1
Local Commercial Zone Principles of Development Control:	1
City Wide Objectives:	1, 2, 7, 8, 10, 26 & 27.
City Wide Principles of Development Control:	1, 2, 3, 4, 12, 16, 19, 83 – 87, 90 & 91.

The subject land is located within the Local Commercial Zone. The zone boundary separating the Local Commercial Zone and Residential Character Zone runs in an east-west direction through the rear (northern) boundary of the subject land.

The Local Commercial Zone Objective is for a zone primarily accommodating local service activities which are compatible with the amenity of the locality.

The following land uses are specifically anticipated within the Local Commercial Zone, by virtue of being listed as complying forms of development (subject to conditions), providing some assistance in interpreting what is meant by the term 'local service activities':

- Hotel
- Motel
- Non-residential club
- Petrol Filling Station
- Private Hotel
- Residential Club
- Service Industry
- Store
- Timber Yard
- Warehouse

The case of *Meccariello & Corp of The City of Campbelltown v Dac and Cirocco (No 1) No ERD-02-187 [2002] SAERDC 88 (11 September 2002)*, also provides some assistance in understanding what is meant by the term 'service activities'. In that judgment, the Commissioner referred to a similar zone objective encouraging local service activities in the context of an Application for a three level shop and dwelling and opined:

*“This objective is not met on the evidence of all town planners and I agree to an extent, except to say that a small “shop”, as defined within the Development Regulations, depending on its type and nature, could constitute a local service activity (eg. a hairdresser, beautician or other personal service establishment) and hence the shop component may not be widely apart from the intent of the objective”*

Having regard to the ERD Court judgment referred to above, as well as the uses which are listed as complying within the zone, the showroom, studio areas and coffee shop components are considered to be consistent with the objective of the zone, in that those uses are of a nature and scale which would serve the local community. That said, the design studio/showroom areas, office and retail space are more than likely to service a much wider catchment and is therefore not considered to be a local service activity.

Objective 1 and Principle 1 of the Local Commercial Zone use the word ‘primarily’, indicating that other land uses may be appropriate in the zone in the right circumstances. Therefore, if there was a view that a component of the proposal was of a nature or scale which would not constitute a local service activity, it may still be acceptable within the zone.

Consideration needs to be given to the likely impacts associated with the operation of the proposed uses of the land on the adjacent residential properties. The subject land is surrounded to the north, east and west by residential properties. City Wide Principles of Development Control 83 and 84 relate to developments that abut residential zones. While the subject land and the residential properties at 211 and 217 Magill Road and 2 Phillis Street are located within the Local Commercial, the three adjacent residential properties at the rear of the land at 4 Phillis Street are located within the Residential Character Zone.

In this context and in response to the concerns raised by both residential occupiers through the public notification process and that of the Council’s Planning staff, the Applicant has sought advice from an acoustic engineer on the proposal.

An initial report was prepared by Sonus (an acoustic consulting engineering firm) to assess the noise impacts of the proposal, in particular, the noise generating activities conducted within the workshop and machine equipment areas with the new building.

City Wide Principle of Development Control 86 states:

*“Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises.”*

To achieve the *Environment Protection (Noise) Policy 2007*, which provides recommended noise level criteria for noise sources associated within developments adjacent residential areas, Sonus have recommended that acoustic treatment be undertaken in the following manner:

- construct the proposed building that is to accommodate the workshops and machine equipment areas with specific roofing, facade and glazing materials;
- when activity is undertaken with the workshop and machine room, all external doors are to remain closed;
- construct 2.1 metre high sheet metal fencing along the eastern and western side boundaries. Construct a 1.8 metre high sheet metal fence on top of the existing 600mm concrete sleepers along the northern rear boundary; and
- construct a sheet metal screen to screen roof mounted mechanical plant equipment with the screen having a minimum height of 1.0 metre above the mechanical plan unit.

Sonus based their advice on the description which the Applicant provided, as to the current intended users of the studio/workshop space, and the types of machinery they would use. Primarily such machinery is that which is used for the manufacturing of wooden items.

Council staff initially raised some concern that it may be difficult over time, to ensure that other activities which potentially generate more noise, do not occur within the studio/workshop space. In response to those concerns, Sonus recommended additional attenuation measures (which are included in the dot-points above) to provide a safeguard against noisier activities. The additional measures further reduce the predicted noise level from within the building by 5dB(A).



That said, Sonus have advised that their suggested noise attenuation measures would still not be sufficient to achieve the Environment Protection (Noise) Policy in the event that metal fabrication was to be undertaken, such as metal cutting and grinding, unless either a purpose built enclosure constructed with specific materials containing appropriate insulating properties or alternatively, a proprietary acoustic enclosure (ie. having the equivalent acoustic properties) was installed. A copy of the Sonus reports are contained in **Attachments F**.

As no metal work activity is proposed, the applicant does not propose to provide an acoustic enclosure for metal working. Having discussed the types of activities which could reasonably be expected to occur within the studio/workshop, Council staff are satisfied that acoustic treatment for metal fabrication is not required. If the Panel determines to grant consent to the application, it is considered that the description of the development, as well as a suitably worded condition, would adequately ensure that metal fabrication of the nature which would exceed the Environment Protection (Noise) Policy, would be outside the scope of the consent and able to be the subject of enforcement.

Having regard to the advice from Sonus, the anticipated noise generating activities within the proposed building are not considered to result in an unreasonable impact on directly neighbouring residential properties, subject to the acoustic measures recommended.

From an overall land use perspective, the proposal is considered to essentially comprise local service activities which are compatible with the amenity of the locality, consistent with the objective of the Local Commercial Zone.

streetscape/bulk/scale/height/character/heritage

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

City Wide Objectives:                               18, 19 & 20.  
City Wide PDC's:                                     29-33, 35, 37 & 39

The proposed workshop/warehouse building is to be set back in the order of 31.6 metres from the Magill Road property boundary. In addition, the proposed building would be partially hidden (ie. approximately one third when viewed directly from within the Magill Road streetscape) from view behind the existing vacant dwelling that is being retained and converted. In this context, the proposed building is likely to have a negligible impact on the streetscape.

In terms of the proposed 4.8 metre long by 2.1 metre wide by 2.2 metre high freestanding display cube, the cube is to be situated in the south-eastern corner of the front yard and is to be parallel to the front property boundary and set back approximately 400mm. In a streetscape context, the display cube is not considered to visually jar given its horizontally proportioned and relatively low-lying rectilinear form compared to the much larger existing vacant dwelling situated in the background.

Setbacks

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

City Wide PDC's:                                     205, 206 & 207.

In terms of side setbacks, the proposed freestanding building has a setback of 1.0 metre from the western side boundary. The directly adjacent residential property at 211 Magill Road, contains an existing freestanding shed within its north-eastern corner. The freestanding shed is approximately 10 metres in length and is situated in the order of 1.0 metre and 700mm from the northern rear and eastern side boundaries respectively. The proposed freestanding building is to have a 1.0 metre side back from the western side boundary and is to project approximately 4.0 metres forward (ie. to the south) of the neighbouring shed at 211 Magill Road. With respect to the residential occupiers at 211 Magill Road, it is considered that they will retain a reasonably open outlook to the north. The proposed building is to incorporate a boundary wall on the eastern side boundary of the subject land.

City Wide Principle of Development Control 207, states:

*“A wall or structure on a side or rear boundary should generally be limited to a height of 3 metres above natural ground level and a length of 8 metres. A greater height or length may be considered where:*

- (a) there is an existing abutting boundary wall or structure on the adjoining land: or*
- (b) there will be no unreasonable visual outlook impact or overshadowing impact on the occupants of the adjoining property.”*

The proposed boundary wall is to have a height of 3.0 metres and a length of 8.0 metres. This aspect of the proposal is consistent with Principle 207 as it is not considered that the neighbouring occupiers at 2 Phillis Street will be subjected to an unreasonable level of overshadowing and/or loss of natural light to their rear yard area.

At the closest point, the proposed building is set back 900mm from the northern rear boundary to building's 3.0 metre high wall. Beyond this, a 3.4 metre setback is proposed to the 4.4 metre wall of the building. To the north of the rear boundary of the subject land, is a group dwelling at 3/4 Phillis Street and a freestanding carport associated with 1/4 Phillis Street. The dwelling at 3/4 Phillis Street has its main private open space area adjacent the northern side of the building and small courtyard in south-eastern corner. Given the siting location and configuration of the neighbouring dwelling at 3/4 Phillis Street and the proposed separation of the new building, the proposed rear setbacks are considered to be acceptable in this instance.

Overall, it is considered that the proposed setbacks and the potential visual impact of the proposed new building on the occupiers of adjacent residential land are acceptable.

In terms of the freestanding display cube, the cube has a relatively modest setback of approximately 400mm from the Magill Road property boundary. In terms of the existing buildings situated on the northern side of Magill Road between Augusta Street and Phillis Street, the front setbacks are inconsistent and vary between a “zero” setback to the verandah and balcony area of the two-storey Local Heritage Place at 203 - 205 Magill Road through to an 8.0 metre setback to the front facade of the existing vacant dwelling on the subject land. Given the overall height (2.2 metres) and overall length (4.8 metres) of the freestanding display cube combined with the varied front setback pattern of the adjacent and nearby much larger buildings, the proposed front setback is considered to be acceptable in this context.

#### Car parking/access/manoeuvring

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

City Wide Objectives:	32 & 34.
City Wide Principles of Development Control:	98, 102, 103, 104, 113, 115, 117, 120, 122, 123, 124, 127, 129 & 130.

Table NPSP/9 and NPSP/10

Pursuant to Schedule 8 of the Development Regulations 2008 and more specially, Section 3 —Development adjacent to main roads, comprising the creation of a new access, the proposal was referred to the Department of Planning, Transport and Infrastructure (DPTI). In relation to creating a new crossover in order to provide access to and from Magill Road, DPTI reviewed the proposal and advised that the development should be serviced by a single shared access/egress points that is 8.0 metres in width and suitably flared to the kerbline, with the remaining crossover reinstated to the Council's standard kerb and watertable requirements. The proposed new crossover is consistent with DPTI's recommendation.

A copy of DPTI's advice is contained in **Attachment E**.

City Wide Objective 34 and City Wide Principle of Development Control 98 state the following respectively:

*“Development which provides adequate and safe car parking appropriate to the demands generated.”*

And

*“Development should provide safe and convenient access for all anticipated modes of transport.”*

The proposed development is to have sixteen (16) car parking spaces on the subject land.

In terms of the anticipated car parking demand that the proposed development is likely to generate, Table NPSP/9 in the Development Plan provides the following car parking rates:

- office - 4 spaces per 100m<sup>2</sup>
- retail showroom - 2 – 4 spaces per 100m<sup>2</sup>
- light industry/warehouse/service industry 3 spaces per 100m<sup>2</sup> (office component plus 1 space per 100m<sup>2</sup> (non-office component))
- Restaurant (including café) 1 space per 3 seats (no additional requirement for outdoor dining up to 25% of indoor seating)

The Applicant engaged the services of Mr Frank Siow, a Traffic Engineer, to provide an analysis of the anticipated car parking demand that the proposed development is likely to generate and whether the proposed on-site car parking provision is adequate to service the proposal. In summary, Mr Siow's report states the following:

- adopting the car parking rates specified in the Council's Development Plan for the proposed land use components, in a 'worst case' scenario, the proposed development would generate a car parking demand of 13.4 spaces (ie. rounded up to 14 spaces).
- in terms of the proposed design classes within the new freestanding building, it is considered that up to 6 – 8 people can be accommodated given the surplus on-site car parking provision (ie. two spaces), the availability of on-street car parking along Magill Road (before clearway restrictions come into effect at 4:30pm, Monday to Friday) and the provision of 6 bicycle parking on site (ie. applying Table NPSP/10 the required a bicycle parking rate of 5 spaces).
- the proposed car parking layout and configuration satisfies the requirements of *Australian/New Zealand Standard 2890.1: 2004* and *Australian/New Zealand Standard 2890.6-2009*.

A copy of Mr Siow's report is contained in **Attachments B21- B24**.

The proposed development satisfies the car parking requirements specified in Table NPSP/9 and Table NPSP/10. With respect to the configuration of the car park, the arrangements are consistent with the relevant car parking standards in terms of the bay lengths, bay widths and aisle widths.

Overall, the car parking provision is considered acceptable and the development is considered to enable safe and convenient access/egress to the subject land and therefore accords with City Wide Objective 34 and Principles of Development Controls 98 respectively.

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

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

City Wide Objectives:	24 & 25.
City Wide Principles of Development Control:	73 - 78.

As the existing vacant dwelling is to be retained and the proposed car parking area is to be configured to the western side of the dwelling, the provision of a dual crossover requires the removal of one of the three iron bark street trees (ie. the centrally located tree). The Council's Urban Service Department has provided their authorisation for the removal and replacement of the tree provided the development is considered reasonable, there are no alternative design solutions and the Applicant covers the cost of removal and planting of a replacement tree in a suitable location elsewhere. Should the Panel determine to approve the Application, it is recommended that a condition be imposed requiring the Applicant to pay the costs for the removal and replacement of the tree.

The subject land contains several mature trees, none of which are identified as being regulated pursuant to the *Development Regulations 2008*.

The Applicant has indicated that they intend to introduce landscaping within the landscaping strip situated between the western boundary fence and the twelve right-angle parking bays. Landscaping is also intended to be introduced to the south-eastern section of the front yard area between the front property boundary and the existing vacant dwelling. At the time of preparing the report, the Applicant's planning consultant, Mr Phillip Brunning, advised that the Applicant is preparing a specific landscaping scheme and plan detailing the nominated plants and ground covers which will be provided to the Panel members at the meeting on Tuesday 20 November 2018.

Finished floor levels/flooding/retaining

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

City Wide Objectives:	42
City Wide PDC's:	147, 148, 149 & 151

The subject land is located within the 1 in 100 year Average Recurrence Interval floodplain.

City Wide Principle of Development Control 171 states:

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

Given that the proposed development does not compromise any residential elements, Principle 171 has no application in this instance.

The Application was referred to the Council's Project Manager, Assets, for his review of levels and stormwater disposal. The Project Manager, Assets, has advised that the stormwater calculations demonstrate that the existing 1 in 5 year ARI peak flow is maintained and not exceeded. Accordingly, if the Panel determines to approve the development, it is recommended that the Engineering recommendations set by the Applicant's consulting engineers, MLEI Consulting Engineers, be imposed as a condition of consent.

## Summary

Whilst not a specifically anticipated land use, the proposed development is considered to be acceptable from a land use perspective. The proposed land use is unlikely to create any significant loss of amenity for directly adjacent and nearby residents within the locality, subject to the measures recommended by Sonus.

The bulk and scale of the proposed new building is relatively compatible with existing development within the immediate area as well as the existing urban character and amenity of the locality as a whole.

The on-site car parking provision satisfies the quantitative requirement of the Development Plan. Vehicular access and egress is considered to be safe and convenient.

Accordingly, it is considered that the proposal is not seriously at variance with the Development Plan and sufficiently accords with the relevant provisions of the Development Plan to warrant consent.

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/896/17 by Lang Homes to undertake alterations to an existing dwelling; the construction of a freestanding building and a freestanding display cube; a change of use from residential to an integrated design studio, office, retail space and coffee shop; and introduction of workshops and design classes within the freestanding building, on the site located at 213 - 215 Magill Road, Maylands, subject to the following requirements, conditions and notes:

### Relevant Plans

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

- plans and elevations prepared by Lang Homes and received by the Council on 15 November 2018;
- stormwater management plan (Issue B and dated 4 December 2017) and prepared by MLEI Consulting Engineers; and
- recommendations contained in the Environmental Noise Assessment Reports (Reference Numbers S5687C2 and S5687C3) prepared by Sonus Pty Ltd.

### Conditions

1. The proposed development, herein approved, may only commence following the payment of all costs associated with the removal of the centrally located Ironbark street tree and the planting of a new street tree in a suitable location. The Council will undertake the work with all costs to be borne by the Applicant.
2. The hours of operation shall be restricted to the following times:
  - showroom/studio areas, office - Monday to Friday 9:00am to 5:00pm.
  - coffee shop – Monday to Friday 8:00am to 2:00pm and 8:00am to 12:00pm
  - workshop areas and machine room - Monday to Friday 9:00am to 6:30pm and Saturday 9:00am to 1:00pm.
3. The freestanding studio/workshop shall be used by designers and artisans engaged in conceiving, designing, developing and producing objects and articles and shall not be used for manufacturing at a scale which is considered by the Council to constitute an industrial use.
4. 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.
5. All car parking spaces shall be linemarked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.
6. Wheel stopping devices constructed of concrete, metal or wood shall be placed at the end of each parking bay so as to prevent damage to adjoining fences, buildings or landscaping to the reasonable satisfaction of the Council or its delegate.
7. All car parking spaces, driveways, and vehicle manoeuvring areas shall be maintained in a good condition at all times to the reasonable satisfaction of the Council or its delegate.
8. At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.
9. All external lighting of the site, including car parking areas and buildings, shall be located, directed and shielded and of such limited intensity that no nuisance or loss of amenity is caused to any person beyond the site to the reasonable satisfaction of the Council or its delegate.
10. 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 prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate.

11. All plants existing and/or within the proposed landscaped areas 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.
12. All trade waste and other rubbish shall be stored in covered containers pending removal and shall be kept screened from public view to the reasonable satisfaction of the Council or its delegate.
13. All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Council or its delegate.

#### Notes to Applicant

1. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.

The Applicant's attention is particularly drawn to the requirements of the *Fences Act 1975* regarding permission from 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 available at [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au). Alternatively a hard copy can be mailed to you on request by contacting the Planning Department on 8366 4530 or 8366 4508.

The Applicant's attention is also drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.

2. 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.
3. The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.

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

4. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
  - *Mr Wayne Gladigau, of Masterplan Town and County Planners representing Mr & Mrs Digman, Mr J Lane and Mr & Mrs Evins addressed the Panel from 7:01pm until 7:06pm*
  - *Mr Phil Brunning on behalf of Lang Homes addressed the Panel from 7:07pm until 7:15pm*

Moved

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/896/17 by Lang Homes to undertake alterations to an existing dwelling; the construction of a freestanding building and a freestanding display cube; a change of use from residential to an integrated design studio, office, retail space and coffee shop; and introduction of workshops and design classes within the freestanding building, on the site located at 213 - 215 Magill Road, Maylands, subject to the following requirements, conditions and notes:*

#### Relevant Plans

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

- *plans and elevations prepared by Lang Homes and received by the Council on 15 November 2018;*
- *stormwater management plan (Issue B and dated 4 December 2017) and prepared by MLEI Consulting Engineers; and*
- *recommendations contained in the Environmental Noise Assessment Reports (Reference Numbers S5687C2 and S5687C3) prepared by Sonus Pty Ltd.*

#### Conditions

1. *The proposed development, herein approved, may only commence following the payment of all costs associated with the removal of the centrally located Ironbark street tree and the planting of a new street tree in a suitable location. The Council will undertake the work with all costs to be borne by the Applicant.*
2. *The freestanding studio/workshop herein approved, shall be constructed in accordance with the specifications and recommendations contained within the Environmental Noise Assessment Reports (Reference Numbers S5687C2 and S5687C3) prepared by Sonus Pty Ltd.*
3. *The hours of operation shall be restricted to the following times:*
  - *showroom/studio areas, office - Monday to Friday 9:00am to 5:00pm.*
  - *coffee shop – Monday to Friday 8:00am to 2:00pm and Saturday 8:00am to 12:00pm*
  - *workshop areas and machine room - Monday to Friday 9:00am to 6:30pm and Saturday 9:00am to 1:00pm.*
4. *The freestanding studio/workshop shall be used by designers and artisans engaged in conceiving, designing, developing and producing objects and articles at a small scale to the reasonable satisfaction of the Council or its delegate. No metal working shall occur except where it is subordinate or ancillary to products made with other materials.*
5. *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.*
6. *All car parking spaces shall be linemarked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.*
7. *Wheel stopping devices constructed of concrete, metal or wood shall be placed at the end of each parking bay so as to prevent damage to adjoining fences, buildings or landscaping to the reasonable satisfaction of the Council or its delegate.*

8. *All car parking spaces, driveways, and vehicle manoeuvring areas shall be maintained in a good condition at all times to the reasonable satisfaction of the Council or its delegate.*
9. *At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.*
10. *All external lighting of the site, including car parking areas and buildings, shall be located, directed and shielded and of such limited intensity that no nuisance or loss of amenity is caused to any person beyond the site to the reasonable satisfaction of the Council or its delegate.*
11. *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 prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate.*
12. *Additional advanced specimen landscaping be incorporated within the carpark to the reasonable satisfaction of the Council or its delegate.*
13. *All plants existing and/or within the proposed landscaped areas 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.*
14. *All trade waste and other rubbish shall be stored in covered containers pending removal and shall be kept screened from public view to the reasonable satisfaction of the Council or its delegate.*
15. *All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Council or its delegate.*
16. *The machine room roller door shall remain closed during operation of a saw or cutting machinery.*
17. *The final location of the air conditioner unit adjacent to workshop area 2 shall be to the reasonable satisfaction of the Council or its delegate. Consideration should be given to relocating it to the southern side of the building.*

Notes to Applicant

1. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.*

*The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding permission from 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 available at [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au). Alternatively a hard copy can be mailed to you on request by contacting the Planning Department on 8366 4530 or 8366 4508.*

*The Applicant's attention is also drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*

2. *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.*
3. *The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being*



*undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.*

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

- 4. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*

*Seconded and carried*

## 2. STAFF REPORTS

### 2.2 DEVELOPMENT APPLICATION 155/44/2017 – IAN BEVERLEY AND ANNE MORANT – 22A FLINDERS STREET, KENT TOWN

<b>DEVELOPMENT APPLICATION:</b>	<b>155/44/2017</b>
<b>APPLICANT:</b>	<b>Ian Beverley and Anne Morant</b>
<b>SUBJECT SITE:</b>	<b>22A Flinders Street, Kent Town (Certificate of Title: Volume 5513 Folio 814)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Demolition of a detached dwelling (pre-1940s) and the construction of a 2-3 storey detached dwelling, swimming pool and associated retaining walls and fencing</b>
<b>ZONE:</b>	<b>Residential Historic (Conservation) Zone – Kent Town 1 Policy Area – Norwood, Payneham and St Peters (City) Development Plan (dated 28 April 2016)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application involving the demolition of a detached dwelling (pre-1940s) and the construction of a 2-3 storey detached dwelling, swimming pool and associated retaining walls and fencing.

Staff do not have delegated authority to determine the Application, as it comprises the construction of a new dwelling in the Residential Historic (Conservation) Zone.

As such, the Application is referred to the Panel for determination.

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

#### **Subject Land Attributes**

Shape:	irregular
Frontage width:	13.11m
Depth:	32m (approx) excluding a 16.73m long walkway link to Little Wakefield Street
Area:	433m <sup>2</sup>
Topography:	slight fall from the rear to the front of the existing dwelling, with a more substantial fall towards the front property boundary
Existing Structures:	single-storey detached dwelling and a freestanding ancillary carport sited on the Little Wakefield Street frontage
Existing Vegetation:	mature but non-regulated tree in the front yard

The subject land is located on the south-eastern side of Flinders Street. The allotment includes a narrow strip of land which serves as a pedestrian walkway through to Little Wakefield Street. The existing dwelling on the subject land is a late bungalow styled dwelling, constructed during the Inter-war period. The dwelling has an elevated siting, with the front yard sloping steeply down to Flinders Street, similar to several other sites along this stretch of Flinders Street.

The subject land is subject to and together with a free and unrestricted right of way along the south-western side, which provides pedestrian access for the subject site and also for the property directly behind the subject land (known as 22 Flinders Street). The width of the right of way is 1200mm, with the subject and adjacent land each owning a 600mm wide strip. A copy of the Certificate of Title for the subject land is attached (**Attachment F**) and shows the configuration of the right of way.

### **Locality Attributes**

Land uses:   predominantly residential  
Building heights (storeys):                 single-storey and two-storey dwellings

Along Flinders Street, the locality is characterised by a mix of dwelling styles from both the late nineteenth and early twentieth centuries, mostly within established garden settings. Front fences of various sizes and materials are a common feature and the street is lined with mature exotic trees. The Panel has recently approved a two-storey contemporary dwelling, which is proposed to be built adjacent to the subject land (24 Flinders Street). Beyond this, a large contemporary two storey dwelling and a large two-storey commercial building are located at 26 and 30 Flinders Street. On the City side of the subject land (20 Flinders Street) is another large two-storey contemporary dwelling which is set well back from Flinders Street and is barely visible from the street. Beyond that is character dwelling, which is also not visible from the street due to its generous set-back. A State Heritage listed mansion is located on the opposite side of Flinders Street.

The locality is considered to have a moderate level of historic character, due to the mix of historic buildings and newer development. Similarly, it is considered that the locality only has a moderate level of residential amenity, due to very high traffic volumes along Flinders Street.

A plan of the subject land and its surrounds is contained in **Attachment A**.

### **Proposal in Detail**

The Applicant seeks consent to demolish a detached dwelling and to construct a replacement 2-3 storey detached dwelling with a swimming pool and associated fencing and retaining.

The existing dwelling that is proposed to be demolished is described as a late Bungalow styled dwelling, most likely built in the late 1920s or early 1930s.

The proposed dwelling comprises at the lower ground level a double garage, pool plant, cellar and lift. The upper ground floor plan includes the main living areas, kitchen, bathroom, laundry and lift. The outdoor areas are on this level. The first floor comprises three (3) bedrooms, two bathrooms, retreat, study and a separate toilet. A large balcony overlooks Flinders Street.

Pedestrian access from Flinders Street to the main entrance at the upper ground level is proposed via a set of stairs to be built on the existing shared right of way. A gate at street level also provides pedestrian and vehicle access to the lower ground level.

The dwelling incorporates a relatively simple hipped roof design with stone and render on the front façade. The front elevation has a high proportion of glazing, which is broken up by a balcony at the first floor and a steel framed arbor intended to shade the upper ground floor.

A 2m high front fence, which incorporates timber gates and dark grey rendered walls, is proposed.

The colour palette is off-white through to grey render with timber and grey stone tile feature and 'monument' corrugated roofing and black aluminium doors and windows. The relevant details of the proposal in terms of areas, setbacks and the like are set out in Table 1 below.

**TABLE 1: DEVELOPMENT DATA:**

Consideration	Proposed Dwelling	Development Plan Merit Assessment Quantitative Guideline
Site Area	433m <sup>2</sup>	200m <sup>2</sup> – Kent Town 1 Policy Area PDC 5
Allotment Width	13.11m	N/A
Allotment Depth	31.85m (excluding pedestrian walkway)	N/A
External Wall Height*	6.3m – 8.8m	N/A
Maximum Overall Height (to roof apex)*	10.6m	Two-storey – Kent Town Policy Area PDC 4
Floor Areas	Lower ground = 86m <sup>2</sup> Upper ground = 148m <sup>2</sup> First floor = 149m <sup>2</sup>	N/A
Site Coverage	38%	N/A
Private Open Space	136m <sup>2</sup> (31%) (comprising rear yard and court yard)	20% of the site area - City Wide PDC 225(a)
Street Set-back	7.2m	N/A
Side Set-back	<u>North- eastern</u> 1.1 – 4.9m  <u>South-western</u> 610mm	N/A
Rear Set-back	5.6m – 7.8m	N/A
Car Parking Provision	2 undercover and 2 uncovered	2 on-site parking spaces per dwelling (Table NPSP/8)

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

Plans and details of the proposed development are contained in **Attachment B**.

### Notification

Pursuant to Residential Historic (Conservation) Zone Principle of Development Control 41, the proposal has been identified and processed as a Category 2 form of development, as it involves the demolition of a building which was constructed prior to 1940.

In response to the notification process, two (2) representations were received (one in favour and one opposed). A copy of the representations is contained in **Attachment C**.

Richard Martin is the owner of the adjoining residence at 20 Flinders Street and is in favour of the proposal subject to clarification of privacy and fencing matters.

Richard Cullen and Rita Freiverts are the owners of the adjoining residence at 22 Flinders Street and are opposed to the Application due to concerns regarding the following:

- access to the representor's property located at 22 Flinders Street, both during and after construction;
- removal of a large tree located on the subject land may damage gas and water services to the representor's property;
- gas meter location and management due to the redesign of the stair and pathway along the right of way;
- roof overhang and issues of maintenance due to siting of the buildings in relation to boundaries.

Richard Cullen and Rita Freiverts desire to be heard personally by the Council Assessment Panel (CAP).

The Applicant has responded to the representations received and a copy of their response is attached (**Attachment D**).

### **State Agency Consultation**

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

### **Discussion**

The subject land is located within the Kent Town 1 Policy Area of the Residential Historic (Conservation) Zone, as identified within the Norwood Payneham and St Peters (City) Development Plan. The proposed development is neither a complying nor a non-complying form of development and accordingly is required to be assessed on its merits having regard to all of the relevant provisions of the Development Plan.

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

#### Land Use and Density

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

Kent Town 1 Policy Area Desired Character Statement

Kent Town 1 Policy Area PDCs: 1, 2, & 3

Residential H(C) Zone Desired Character Statement

Residential H(C) Zone Objectives: 1, 4

Residential H(C) Zone PDCs: 7, 8

City Wide Objectives: 1, 2, 7 & 10

City Wide PDCs: 1, 2, 3 & 4

Principle of Development Control 3 of the Kent Town 1 Policy Area and Principle of Development Control 8 of the Residential Historic (Conservation) Zone, state respectively:

*“Existing buildings originally constructed prior to 1940 which contribute to the desired character of the Zone and the Policy Area should not be demolished.”*

and

*“The introduction of new dwellings in the zone should only occur where:*

- (a) land is vacant or under-utilised and the development can be achieved without adverse impact on the established residential amenity and the historic character of the relevant policy area;*
- (b) it replaces a building or use of land which does not contribute significantly to the heritage value, historic character and the desired character of the zone; or*
- (c) it involves the conversion of an existing building to row dwellings, or semi-detached dwellings, where such conversion will enhance the historic character of the zone.”*

As the proposal includes the demolition of a dwelling constructed prior to 1940, the Application was referred to the Council’s Heritage Advisor, David Brown, for advice on whether the subject dwelling contributes significantly to the historic character and the desired character of the zone. In this respect, Mr Brown noted in his report of 8 February 2017, that the dwelling is a somewhat unusual bungalow style dwelling with much unsympathetic re-working, including the complete replacement of the front walls with 1980s bricks. He further states:

*“As for the house potentially being an example of an Interwar infill building representing the post WW1 development in the area; it is not a particularly good example, and what is left has been severely compromised by unsympathetic reworking. There are much better examples of Interwar dwellings in Kent Town than those found on Flinders Street”.*

Whilst the desired character of the Kent Town 1 Policy makes reference to cottages and bungalows, the primary focus appears to be on large scale Victorian and turn-of-the-century villas. Mr Brown verifies this in his second report dated 8 August 2018, where he states:

*“The loss of the Interwar houses is not significant to the Flinders Street context, as the dominant character is from the 1870s-1900s. The new buildings confined to this short portion of Flinders Street, reflect a generally current design language and form an update on the earlier infill buildings.”*

Mr Brown also commented on the structural condition of the building as being poor, noting that the Interwar infill dwellings in the immediate locality were constructed on the old creek and ceramics factory site, which he considers is a contributing factor to their poor condition. This should be treated as anecdotal advice, as Mr Brown does not have engineering qualifications.

A copy of Mr Brown's reports dated 8 February 2017 and 8 August are attached (**Attachment E**).

In light of Mr Brown's opinion that the dwelling does not significantly contribute to the desired character of the Policy Area, it was not considered necessary to seek a professional opinion on the structural condition of the building, particularly as in relation to the requirement to assess the structural condition of a building, PDC 27 expressly refers only to Contributory Items listed in Table NPSP/7.

With regard to the proposed continued use of the land for a detached dwelling, this proposal is consistent with PDC 2 of the Policy Area which provides for a *“range of types and forms of residential accommodation, offering a wide range of housing choice.”*

Streetscape/bulk/scale/height/character

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

Kent Town 1 Policy Area Desired Character Statement

Kent Town 1 Policy Area Objective: 1  
Kent Town 1 Policy Area PDCs: 1, 3 & 4

Residential Historic (Conservation) Zone Desired Character Statement

Residential H(C)Z Objectives: 1, 3 & 5  
Residential H(C)Z PDCs: 1, 2, 3, 13-19, 22, 23, 25 & 26

City Wide Objectives: 18, 19 & 20  
City Wide PDCs: 28-32, 37, 39 & 41

The height of the proposed dwelling is three (3) storeys facing Flinders Street, scaling back to two (2) storeys at the rear. The three (3) storey component exceeds the two storey maximum height of the Kent Town 1 Policy Area.

The dwelling has been designed to utilise the slope of the land in order to incorporate undercroft garaging at the lower ground floor level, which would be accessed from the existing vehicle crossover in Flinders Street. The garage is designed to be at grade and due to the height of the proposed fence, would be mostly hidden from the street. The remainder of the front yard is proposed to slope upwards from just above street level to the upper ground floor, similar to the existing situation. From a streetscape perspective, the dwelling is likely to have the appearance of an elevated two-storey dwelling, the elevation being similar to that of the yet to be constructed two-storey dwelling at 24 Flinders Street, and the existing two-storey dwellings at 26 Flinders Street. The existing two-storey dwelling on the western side of the subject land (20 Flinders Street) also has a similar elevated siting, however, is barely visible from the street.

In this regard, the scale and height of the proposed three (3) storey front section of the dwelling is not considered to be at odds with the scale of the existing and approved built form along this section of Flinders Street and is therefore considered to be acceptable.

Residential Historic (Conservation) Zone Principle of Development Control 16 states:

*Development of a new building or building addition should demonstrate a compatible visual relationship with the buildings that contribute to the historic character of the relevant policy area through consideration of the following:*

- (a) *bulk and scale;*
- (b) *width of site frontage, front and side boundary setback patterns, wall height and window placement;*
- (c) *the proportions (vertical and horizontal) of additions visible from the street that complement the existing building façade and other elevations facing a public road;*
- (d) *the form and level of visual interest present in a building (as determined by the height of eaves, the length and size of unbroken walling, treatment of openings and depths of reveals, roof form and pitch, external colour and texture of materials used, as well as detailing, landscaping and fencing); and*
- (e) *design elements such as verandahs, balconies and eaves where appropriate. (v) the total width of second storey windows should not exceed 30 per cent of the total roof width along each elevation and be designed so as to not overlook the private open space of adjoining dwellings.*

Given that the subject land is located within an Historic (Conservation) Zone, advice was sought from the Council's Heritage Advisor, Mr David Brown, regarding the heritage aspects of the proposal. Mr Brown has summarised the proposal as follows:

*"The proposed new house is a considered design that incorporates the intent of the Development Plan provisions for this Historic Conservation Zone and Policy Area. Once complete it will sit within a group of newer buildings, all replacing earlier infill Interwar houses built on the old ceramics site along the creek. The loss of the Interwar houses is not significant to the Flinders Street context, as the dominant character is from the 1870s – 1900s. The new buildings confined to this short portion of Flinders Street reflect a generally current design language and form an update on the earlier infill buildings".*

A complete copy of Mr Brown's report is attached (**Attachment E**).

Having regard to the relevant heritage provisions of the Development Plan and the advice of David Brown, it is considered that the design of the proposed dwelling is compatible with the established built form character of the locality. In particular, the overall mass and proportions of the dwelling, combined with the well-articulated facade, assists in the new dwelling being compatible whilst at the same time clearly distinguishable from the original dwellings of heritage significance in the locality.

#### Setbacks and Site Coverage

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

Residential H(C)Z PDCs:	10, 11 & 12
City Wide PDCs:	50, 204-206 & 208

Principles 10 and 11 of the Residential Historic (Conservation) Zone state respectively:

*"Dwellings should be setback from the allotment boundary on the primary street frontage:*

- (a) *the same distance as one or the other of the adjoining dwellings (or any distance in between), provided the difference between the setbacks of the two adjoining dwellings is not greater than 2 metres; or*
- (b) *not less than the average of the setbacks of the adjoining dwellings, if the difference between the setbacks of the adjoining dwellings is greater than 2 metres."*

and

*“Where a consistent building set-back is not evident in a particular locality, development should incorporate front and side setbacks that complement the predominant pattern established by the surrounding heritage places and contributory items, but in any case should not project forward of an adjacent heritage place or contributory item.”*

With regard to the front setback, the adjacent approved dwelling at 24 Flinders Street (not yet constructed) has been approved with a front set-back of between 6 and 7.2m. On the other side, the adjacent dwelling at 20 Flinders Street has a front set-back of approximately of 16m. With regard to RH(C)Zone PDC 10(b), the average front set-back is approximately 11m and therefore the proposed front set-back of 7.2m to the main face of the dwelling is not in accordance with this provision.

In this instance, the imposition of a greater set-back would not be practical due to the shallower depth of the subject site in comparison with its neighbours. Also, the dwelling at 20 Flinders Street is not visible from the street so from a streetscape perspective, a better reference point would be its visible neighbour at 24 Flinders Street. In this regard, the proposed set-back is consistent with the approved set-back of 24 Flinders Street and importantly, as neither of the neighbouring dwellings are considered to be contributory, the proposed front set-back does not offend RH(C)Zone PDC 11.

With regard to side set-backs, there is a wide variation within the locality and in this section of Flinders Street, there is no real reference point to be taken from buildings which are considered to contribute to the historic character. The proposed dwelling is proposed to be set back from both side boundaries – being set back between 1.1m and 4.9m from the north eastern side boundary and 610mm from the south western side boundary. On the south western boundary the set-back is further increased by the 590mm wide strip of land belonging to 22 Flinders Street, which forms part of the shared right of way. It is considered that the set-back from the north eastern boundary would maintain a relatively open outlook for the occupants of the neighbouring land. On the south-western side, the neighbouring two-storey dwelling (20 Flinders Street) has an unbroken expanse of windowless brick wall facing this elevation.

Whilst the proposed dwelling would cause some overshadowing of 20 Flinders Street, most of the shadow would be cast over the front yard of the dwelling, which appears to have a small undercover verandah area and a small uncovered deck area closer to the other side boundary. There is also a row of large pencil pines planted along the neighbour’s boundary which would cast shadow over the front yard. In this context, the side set-backs are considered to be appropriate and are unlikely to have a detrimental impact on the streetscape of Flinders street.

Residential Historic (Conservation) Zone Principle of Development Control 12 states that the site coverage of proposed buildings should be compatible with the site coverage of those existing buildings in the locality, which contribute significantly to the historic character.

The site coverage of proposed dwelling is 38%, which is generally consistent and/or less than the site coverage of existing residential development within the locality (e.g. 22, 24, 32A, 34, 1/36, 2/36, 3/36, 4/36 Flinders Street and 26A, 26B 32A, 32B, 35 and 37 Little Wakefield Street).

Accordingly, the proposed site coverage is considered to be acceptable.

#### Overshadowing/overlooking

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

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

As discussed in the previous section of this report the proposed dwelling would overshadow the blank wall and part of the front yard area of 20 Flinders Street. Whilst it appears that the front yard of 20 Flinders Street is used as private open space, it is noted that the dwelling also has private open space at the rear. In this regard, the amount of overshadowing would not exceed the guidance provided in City Wide PDC 196, which states:



*“Unless otherwise specified in the relevant Zone and/or Policy Area, development should ensure that at least half of the ground level private open space of existing dwelling(s) receive direct sunlight for a minimum of two hours between 9.00am and 3.00pm on 21 June. Development should not increase the overshadowed area in cases where overshadowing already exceeds these requirements.”*

The neighbouring dwelling at 20 Flinders Street has solar panels on the two storey roof, which would be unaffected by the proposed two storey form, consistent with City Wide PDC 71.

The neighbour at 20 Flinders Street did seek clarification of privacy matters with regard to windows which are proposed to face that property and also with regard to the proposed balcony overlooking Flinders Street. The plans do not indicate that any of the windows on the south-western elevation include privacy treatment, however, in the response to representations, the Applicant has advised that they are willing to comply with any requirements for privacy treatment.

With regard to the proposed front balcony, the Applicant has questioned the need for privacy treatment given the use of the adjoining space, which is proposed to be a bedroom, retreat and a study, as well as it being sited well forward of the neighbouring dwelling. Whilst the overlooking of a front yard is generally acceptable, in this case the front yard appears to be utilised as a second private courtyard area. In this regard, it is considered appropriate that at least the end section of the balcony (south-western elevation) could be screened without significantly altering the aesthetics of the balcony or without impeding views out over the front yard of the subject land and the street.

The proposed upper level windows on the north-eastern elevation are indicated as having privacy treatment, with the exception of bedroom 3. The proposed upper level windows on the south-eastern elevation do not indicate any privacy treatment. As it is unclear whether or not these windows would allow overlooking into 24 Flinders Street or 22 Flinders Street, it is considered appropriate to require privacy treatment, which could be subject to review during construction.

Overall, the proposal is considered to be consistent with the above City Wide Principles of Development Control regarding overshadowing and overlooking, subject to the imposition of conditions which require privacy treatment to the balcony and upper level windows.

#### Private open space

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

City Wide PDCs: 222-225 & 229

The proposed dwelling has been provided with 136m<sup>2</sup> of private open space, which includes a pool area, courtyard area and includes a service yard. It is well orientated in the north-eastern section of the site and is directly accessible from the main living areas. This equates to approximately 31% of the overall site area, which well exceeds the 20% guidance provided in City Wide Principle of Development Control 225(a).

#### Car-parking/access/manoeuvring

Residential H(C)Z PDCs: 32

City Wide Objectives: 34

City Wide PDCs: 98, 104, 120, 181 & 219

#### Table NPSP/8

Table NPSP/8 prescribes that the proposed dwelling should be provided with two (2) on-site car parking spaces, of which at least one should be covered.

The proposal includes a double garage at the lower ground level which is accessed from an existing double driveway adjacent to Flinders Street, allowing for 2 undercover and 2 uncovered spaces which exceeds the requirements of Table NPSP/8.

A representation has been received from the owner of the neighbouring property at 22 Flinders Street. This property shares a right of way for pedestrian access which runs along the south-western side of the subject land through to Flinders Street. The configuration of this shared arrangement is such that 22 and 22A Flinders Street each own a 600mm strip of the right of way, making it 1.2m wide. A copy of the Certificate of Title showing the configuration of the right of way is attached (**Attachment F**). The property at 22 Flinders Street also has vehicle and pedestrian access from Little Wakefield Street. The representation raises specific concerns about the impact of the development on this right of way both during and after construction and also the impact of development on the water and gas services belonging to 22 Flinders Street, which run along the right of way.

Presumably, any works undertaken to alter the right of way, including the construction of stairs, would have to be agreed to by both owners prior to any such works occurring.

Based on the response provided by the applicant to the concerns of the owners of 22 Flinders Street, it appears that no such agreement has yet been reached. There are a variety of mechanisms by which the applicant may acquire the lawful right to alter the laneway. If an agreement is not easily reached between the parties, avenues exist through the Magistrates Court to have the matter resolved. It would seem likely that a resolution is achievable, since the proposal appears to retain a free and unrestricted right of way to both properties.

Based on advice received from Norman Waterhouse Lawyers in a similar past situation, as there is a reasonable prospect that the applicant will ultimately be able to implement a consent if granted, the CAP may proceed to determine the application on its merits. If the CAP determines to grant consent, it should advise the applicant by way of a note, of their obligation to separately obtain the lawful right to alter the laneway.

Finished floor levels/flooding/retaining

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

City Wide PDCs: 53-58, 79, 148 & 164

The subject land is not in a recognised flood plain or in an area that is identified as being subject to flooding.

The proposed finished floor level of the new dwelling is commensurate with that of the existing dwelling on the subject land (and the surrounding dwellings) and is proposed to be 2.7m above the top of kerb level in Flinders Street.

As discussed previously, this elevated design approach is similar to the existing and surrounding built form and works well with the existing slope of the land. Some replacement of existing retaining walls would be required, both internal to the site and along the north-eastern and south-western boundaries between the proposed dwelling and Flinders Street. The plans indicate that 1.8m high good neighbour fencing is proposed along the boundary with 20 Flinders and along the boundary with 24 Flinders Street, a combination of good neighbour fencing and rendered and painted fencing up to 2m high is proposed.

The Applicant has not specified the profile of the proposed side fencing. Should the Panel determine to approve the proposed development, it is recommended that a condition of consent is imposed requiring that the fencing incorporate a custom orb corrugated profile, as this is considered to be an appropriate design response for sheet metal fencing in a Historic (Conservation) Zone.

A combination of 2m high render and paint finish (dark grey) and timber is proposed along the front boundary with Flinders Street. Given the variety of fencing types and heights within the Flinders Street locality, the proposed masonry fence is considered appropriate. The Council's Heritage Advisor has advised that the proposed front fence is considered acceptable from a heritage perspective, particularly given the high traffic volumes.

Stormwater is indicated as being directed to the Flinders Street water table, which is accordance with the Council's requirements.

Trees (regulated, mature & street) and landscaping

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

Residential H(C)Z PDCs:	36 & 37
City Wide Objectives:	24 & 98
City Wide PDCs:	220 & 221

There are no regulated trees situated on, or in close proximity to, the subject land.

There is a large non-regulated mature tree located in the front yard behind the garage, which is proposed to be removed.

The Applicant has provided a landscaping plan which indicates areas of proposed landscaping but does not include a planting schedule. Notwithstanding this, it is considered that there is sufficient space for meaningful landscaping and the proposed inclusion of a steel arbor and raised planter beds at the front of the dwelling provide additional opportunities for planting.

There are no street trees located adjacent to the Flinders Street frontage of the subject land.

Environmental Sustainability

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

City Wide Objectives:	23 & 42
City Wide PDCs:	67-72, 147, 148, 151 & 159

The subject land runs north-west to south-east with the primary private open space area being located on the north-eastern side of the proposed dwelling, which will allow good access to northern sunlight. The proposed steel arbour and wide eave overhang on the front of the dwelling will provide summer shading for north facing windows on the lower and upper ground floors.

City Wide Principle of Development Control 159 prescribes that new dwellings should be provided with a 2,000 litre rain water tank in order to maximise the use of stormwater collected from roof areas. The Applicant has indicated that a 1,000 litre rain water tank is to be provided as part of the proposal. In this regard, it is recommended that if the Panel determines to approve the proposed development, that a condition be imposed requiring that a rainwater tank with a minimum capacity of 2,000 litres be installed in accordance with City Wide Principle of Development Control 159.

**Summary**

The existing dwelling on the subject land was built prior to 1940 and is proposed to be demolished and replaced with a 2-3 storey detached dwelling.

The Council's Heritage Advisor provided advice in February 2017 that the bungalow style dwelling is not a particularly good example of an Interwar infill dwelling that the original fabric and character has been severely compromised through unsympathetic re-working. Whilst bungalows are noted as contributing to the desired character of the Kent Town 1 Policy Area, the main emphasis appears to be on the large scale Victorian and turn-of-the-century villas. In this context, and given the condition, siting and re-working of the dwelling, it was concluded that the dwelling makes little contribution to the historic character. As such, it was considered that further investigation of the structural condition of the dwelling in order to further justify support for the proposed demolition, was not warranted.

The proposed replacement of the dwelling with a detached dwelling on the subject land is consistent with the land use objectives of the Residential Historic (Conservation) Zone. The Council's Heritage Advisor is supportive of the proposed design and the use of materials and finishes.

The application was subject to Category 2 notification and two representations were received, with one being opposed to the proposal on the basis of a range of civil matters, including access during and after construction (mainly regarding a shared right of way arrangement for pedestrian access) and possible damage to infrastructure (gas and water pipes which traverse the right of way).

The proposal is considered to be generally consistent with the provisions of the Residential Historic (Conservation) Zone, in that it reflects a similar bulk and scale to existing dwellings in the locality, incorporates common architectural elements, and uses materials and finishes which complement the built form in the locality. The proposed dwelling is considered to be a high quality design, which will contribute positively to the streetscape.

Privacy matters have been addressed through the imposition of conditions regarding the upper floor balcony and upper level windows.

On balance, it is considered that the proposal is not seriously at variance with the Development Plan and sufficiently accords with the provisions of the Development Plan to warrant Development Plan Consent.

## RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/44/2017 by Ian Beverley and Anne Morant, to demolish the existing dwelling and to construct a replacement 2-3 storey detached dwelling, swimming pool and associated fencing and retaining, on the land located at 22A Flinders Street, Kent Town, subject to the following requirements, conditions and notes:

### Relevant Plans

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

- plans and elevations (Job Number 18002 dated 3 August 2018) prepared by Enzo Caroscio Architecture and Design and received by the Council on 7 August 2018.

### Conditions

1. 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 kerb & water table or a Council underground pipe drainage system.
2. A 2,000 Litre rainwater tank shall be plumbed into a toilet, water heater and/or laundry cold water outlet by a licenced plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with the application for Building Rules Consent.
3. The proposed "Good Neighbour" fencing along the north-eastern and south-western side boundaries herein approved, shall incorporate a custom orb corrugated profile.
4. All upper level (first floor) windows, with the exception of those fronting Flinders Street, shall be treated prior to the occupation of the dwelling in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate.
5. The south-western end of the balcony shall include screening to height of 1.7m above the finished floor level and shall be installed prior to the occupation of the dwelling to the reasonable satisfaction of the Council or its delegate.

6. 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 prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate
7. All plants existing and/or within the proposed landscaped areas 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.

Notes to Applicant

1. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to obtain the lawful right to alter the laneway shared with the owners of 22 Flinders Street.
  2. The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.
  3. The Applicant's attention is drawn to the Environment Protection Authority's Guidelines IS NO 7 "Construction Noise". These guidelines provide recommended hours of operation outside which noisy activities should not occur. Further information is available by contacting the Environment Protection Authority on 8204 2004.
  4. The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513. All works on Council owned land required as part of this development is likely to be at the Applicant's cost.
  5. The Applicant is advised that the property is located within an Historic (Conservation) Area and that Approval must be obtained for most works involving the construction, demolition, removal, conversion, alteration or addition to any building and/or structure (including fencing).
  6. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.
  7. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.
- 
- *Richard Cullen addressed the Panel from 7:57pm until 8:06pm*
  - *Mr Terry Golding on behalf of the Applicant addressed the Panel from 8:07pm until 8:29pm*

Moved

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/44/2017 by Ian Beverley and Anne Morant, to demolish the existing dwelling and to construct a replacement 2-3 storey detached dwelling, swimming pool and associated fencing and retaining, on the land located at 22A Flinders Street, Kent Town, subject to the following requirements, conditions and notes:

#### Relevant Plans

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- plans and elevations (Job Number 18002 dated 3 August 2018) prepared by Enzo Caroscio Architecture and Design and received by the Council on 7 August 2018.

#### Conditions

1. 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 kerb & water table or a Council underground pipe drainage system.
2. A 2,000 Litre rainwater tank shall be plumbed into a toilet, water heater and/or laundry cold water outlet by a licenced plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with the application for Building Rules Consent.
3. The proposed "Good Neighbour" fencing along the north-eastern and south-western side boundaries herein approved, shall incorporate a custom orb corrugated profile.
4. All upper level (first floor) windows, with the exception of those fronting Flinders Street, shall be treated prior to the occupation of the dwelling in a manner that permanently restricts views being obtained by a person within the room to the reasonable satisfaction of the Council or its delegate.
5. The south-western end of the balcony shall include screening to height of 1.7m above the finished floor level and shall be installed prior to the occupation of the dwelling to the reasonable satisfaction of the Council or its delegate.
6. 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 prior to the occupation of the premises to the reasonable satisfaction of the Council or its delegate
7. All plants existing and/or within the proposed landscaped areas 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.
8. The applicant to provide a revised landscaping plan showing articulation and or visual interest to the front fence to the reasonable satisfaction of Council or its delegate.
9. The eave on the south-western side of the dwelling shall be modified so as to be contained entirely on the Certificate of Title for the subject land.

Notes to Applicant

1. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation. The Applicant's attention is particularly drawn to the need to obtain the lawful right to alter the laneway shared with the owners of 22 Flinders Street.*
2. *The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.*
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5. *The Applicant is advised that the property is located within an Historic (Conservation) Area and that Approval must be obtained for most works involving the construction, demolition, removal, conversion, alteration or addition to any building and/or structure (including fencing).*
6. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*
7. *The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.*

*Seconded and carried*

## 2. STAFF REPORTS

### 2.3 DEVELOPMENT APPLICATION 155/624/2018 – KIORA SA PTY LTD (TRADING AS DOGCITY DAYCARE) – 59 KING WILLIAM STREET, KENT TOWN

<b>DEVELOPMENT APPLICATION:</b>	<b>155/624/2018</b>
<b>APPLICANT:</b>	<b>Kiora SA Pty Ltd (Trading as Dogcity Daycare)</b>
<b>SUBJECT SITE:</b>	<b>59 King William Street, Kent Town (Certificate of Title Volume: 5072 Folio: 219 )</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Change of use from an Office/Warehouse to a Canine Daycare Facility</b>
<b>ZONE:</b>	<b>Urban Corridor Zone – (Business Policy Area) - Norwood, Payneham and St Peters (City) Development Plan (dated 19 December 2017)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2</b>

#### **Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application for the change of use of the subject land from an office/warehouse to a canine day care facility.

Staff do not have delegated authority to determine the Application, as it is a Category 2 development for the purpose of public notification and there were representations opposing the Application. As such, the Application is referred to the Panel for determination.

#### **Subject Land Attributes**

Shape:	regular
Frontage width:	15.24 metres
Depth:	48.16 metres
Area:	733.95m <sup>2</sup>
Topography:	essentially flat
Existing Structures:	single storey (commercial), blockwork building
Existing Vegetation:	no vegetation

#### **Locality Attributes**

Land uses:	mix of commercial and residential
Building heights (storeys):	mix of low and higher scale buildings (up to 5 storeys)
Streetscape amenity:	low, due to commercial nature of the locality and traffic movement

This section of King William Street contains a mix of commercial and residential land uses, the most notable being a recently constructed serviced apartment building located at 62-64 King William Street and a mixed use (commercial and residential apartment) building located at 54-60 King William Street. Built form within the locality is mixed, with higher quality new construction sitting amongst older commercial and warehouse style buildings. Residential amenity is considered to be low to moderate, due to the mix of land uses, the highly varied built form and the relatively high traffic volumes within the locality.

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



## Proposal in Detail

The Applicant seeks consent to change the use of the subject building from an office and warehouse to a canine day care facility (DogCity Daycare). The most recent tenant was an aerial survey and mapping specialist.

DogCity Daycare currently operates out of the premises located at 24 King William Street, Kent Town (approximately 180m from the subject land). The Applicant is seeking to re-locate within the locality as the owner intends to redevelop the current premises.

The existing building on the subject land is a two-storey blockwork building built to both side boundaries. There is a small carpark in front of the building and carparking spaces to the rear of the building accessed from Little King William Street. The ground floor comprises approximately 540m<sup>2</sup> of floor area including entry/foyer, warehousing and bathroom facilities. The mezzanine level comprises approximately 170m<sup>2</sup> of floor area, including offices and common areas.

The proposed floor plan indicates only minor changes to the floor plan. At the ground level, the area previously used for warehousing is proposed to be divided into a series of eight (8) pens, which allows for the separation of the dogs into suitable companion groups. The remainder of the ground floor is proposed to comprise a reception area, a concierge area for the handover of dogs, a viewing room for clients, grooming area, toilets and washroom facilities and storage. The mezzanine level remains largely unchanged and will remain as ancillary office space, lunch room, and a common area.

The current facility at 24 King William Street caters for between 20-30 dogs at any given time during the operating hours, being Monday to Friday, 7am until 6.30pm. Up to five (5) employees are on site at any given time (depending on the number of dogs enrolled for that day).

The Applicant is not proposing any changes to the current hours of operation or number of dogs.

The dogs are to be contained within the building at all times and required to be kept on leash when entering and leaving the premises.

The information included with the Application details the operational and management practices of the proposed business, including requirements for waste management, the de-sexing, vaccination and registration of dogs, restrictions regarding certain breeds of dogs and animal behaviour regimes.

The proposal also includes some 'testimonial' letters from neighbours of the business at the existing location (24 King William Street) and clients regarding the business. Some advice from animal experts is also included.

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

## Notification

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

Three (3) representations were received (two (2) opposed and one (1) neutral) in response to this notification, copies of which are attached (**Attachment C**). The key issues raised by representors are, in summary:

Mr Rodney John O'Neill is the owner of the serviced apartment building located at 62-64 King William Street. He is opposed to the proposal in close proximity to his premises. No reason was given for the objection and the representation states that no action would change his opinion. Mr O'Neill does not wish to be heard.

Ms Marleen Sommariva has made a representation on behalf of the Centre for Automotive Safety Research, located at 57 King William Street, directly adjacent to the subject land. The Centre is neither in favour or opposed to the Application, however has raised queries regarding waste management, possible noise nuisance and parking; in particular the potential for clients to illegally park on the Centre's site. The Centre advised that it does not wish to be heard but would appreciate feedback from the Council or the Applicant with regard to these matters.

Mr Thomas Lowe and Mr Keat Gan are the owners of an apartment located at 54-60 King William Street and a dwelling located at 1/5A College Road Kent Town. They are opposed to the Application due to the proximity of the site to residential dwellings and the possibility of noise and the increase in traffic and parking. Mr Lowe and Mr Gan have indicated that they wish to be heard. It should be noted that the property located at 1/5A College Road, Kent Town was not subject to notification as it is not defined as 'adjacent land' under the Development Act.

In responding to the representations, the Applicant has provided advice from an Acoustic Consultant and a Traffic Engineer. The Applicant has also met with the Centre for Automotive Safety Research to discuss their concerns and has advised that the Centre was not opposed but wished to open dialogue in case issues arise. The Applicant has also written to Mr Lowe and Mr Gant, offering to meet with them to discuss their concerns.

A copy of the Applicant's response including the advice of the Acoustic Consultant and Traffic Engineer is attached (**Attachment D**).

### **State Agency Consultation**

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

### **Discussion**

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

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

#### Land Use

The following Development Plan provisions provide guidance on the proposed uses of the land for a canine daycare facility:

Urban Corridor Zone Desired Character Statement	
Urban Corridor Zone Objectives:	1, & 3
Business Policy Area Desired Character Statement	
Business Policy Area Objectives:	1, 2, 4
Business Policy Area PDCs:	1, 2
City Wide Objectives:	1, 2, 7 & 10
City Wide PDCs:	1, 2, 3 & 12

The Urban Corridor Zone Desired Character Statement includes the following guidance in relation to land use:

*"The Urban Corridor Zone supports a mix of compatible non-residential and residential uses at densities which reflect its close proximity to the City of Adelaide and the Adelaide Park Lands, as well as its location around Primary Road Corridors and public transport infrastructure.*

*Within Kent Town, the Urban Corridor Zone will play a significant role in contributing to the overall population and employment targets for the Eastern Metropolitan Adelaide Region, which are set out in the 30 Year Plan for Greater Adelaide, by providing opportunities for the development of a high quality urban environment, which supports a mix of employment generating activities and medium to high density residential development.*

*Kent Town will continue to be developed as a 'creative industries hub' with a focus on digital media, advertising, publishing and design activities. Temporary and permanent art installations on public and private land will be encouraged, to further complement and strengthen this identity."*

Objectives 1 and 3 of the Urban Corridor Zone state respectively:

*"A mixed use zone accommodating a range of compatible non-residential and medium and high density residential land uses orientated towards a high frequency public transport corridor."*

and

*"A mix of land uses that enable people to work, shop and access a range of services close to home."*

The Business Policy Area Desired Character Statement includes the following further guidance specific to the subject locality:

*"The Business Policy Area will continue to develop as the core area for the location of business related uses within Kent Town, with a strong focus on digital media, advertising, publishing and design activities.*

*Residential development may be established above compatible ground and first floor level non-residential uses. Wholly commercial buildings are also appropriate.*

*Retail activity, including shops will comprise smaller scale lunch bars and cafes, which serve local businesses.*

*While light industry and warehouses are not the primary land uses in the Policy Area, some light industry uses and warehousing may be appropriate in circumstances where it can be accommodated within high quality buildings and where it will not unreasonably compromise the level of amenity expected in a mixed-use area."*

Objectives 1 and 2 of the Business Policy Area state respectively:

*"A mixed use business policy area that accommodates a range of commercial and light industrial land uses together with compatible medium and high density residential development."*

and

*"Development that minimises any adverse impacts upon the amenity of the locality within the zone."*

With regard to land use, neither the Desired Character Statements for the Urban Corridor Zone or the Business Policy Area specifically anticipate the proposed use of the land for a canine daycare facility. Notwithstanding this, the Objectives anticipate a diverse mix of uses and in the case of the Business Policy Area, this includes a stronger focus on non-residential uses, including wholly commercial uses and light industry in some locations.

A canine day care facility is considered to be a commercial use which provides a service to the local and broader community. The hours of operation (7am until 7pm Monday to Friday) are considered to be within the range of 'normal' hours of operation for commercial and business related activities, and animals will not be kept on the premises outside of these hours.

Presumably a factor in determining whether or not this type of business is appropriate, lies in its compatibility with the more commonly anticipated types of uses within a mixed use environment, including offices, consulting rooms, shops and residential. In this case, as the business is already operating within the locality, its compatibility can be tested by considering what impact it has on its neighbours and the locality. In this regard, the Application includes several letters from neighbours who indicate that they suffer no loss of amenity being adjacent or close to the Centre.

This is supported by the fact that the Council has to date, received no complaints regarding the Centre. Staff have also visited the site on two (2) occasions and observed no practises or behaviours which would suggest incompatibility with the surrounding land uses.

As a point of clarification for the Panel, the proposed development does not trigger the need for any licensing under the Dog and Cat Management Act, as it is not considered to be in the nature of a boarding kennel, nor is it considered to be intensive animal keeping, due to the fact that the animals are not to be housed at the subject land. The Panel should also note that no statutory referral of this Application to the Environment Protection Authority is required, as it does not involve any activities contained within Schedules 21 and 22 of the Development Regulations 2008.

Overall, it is considered that the proposed use of the subject land for a canine daycare facility does not offend the land use objectives of the zone or policy area.

#### Carparking/access/manoeuvring

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

##### Table NPSP 9/A

City Wide Objectives:	34
City Wide Principle of Development Control:	120

The subject land is located within the Urban Corridor Zone, therefore vehicle parking rates for all non-residential uses (excluding tourist accommodation) is the same (3 spaces per 100m<sup>2</sup>). On this basis, as the building is existing and the floor area is not being increased, there is no theoretical change in demand. Notwithstanding this, in response to concerns raised by representors regarding parking and traffic, the Applicant has provided advice from Cirqa, which is attached (Attachment D).

In summary, the advice concludes the following:

- there would be no noticeable change in traffic volumes on King William Street given that that is no increase in dog numbers and the locality is the same;
- additional on-site parking is proposed at the new location (11 spaces can be accommodated at the new premises in comparison to 4 spaces at the existing premises), which should improve the current situation;
- in relation to the number of spaces generated by the dog daycare use, such uses are typically assessed on the same basis of a child care centre (1 space per four children, which includes parent and staff parking). Adopting this rate would result in a peak demand of eight (8) spaces, which can be accommodated on the subject land.

One of the representors raised concerns with regard to 'illegal' parking, which is a matter for the Council's Regulatory Service staff in the case of roads and footpaths and a civil matter in the case of private property.

#### Environmental Impacts

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

City Wide Objectives:	26, 27
City Wide Principles of Development Control:	12, 80, 86, 90
Urban Corridor Zone Objectives:	7
Business Policy Area Objective:	2

City Wide PDC 12(a) states:

*“Development should take place in a manner which is not liable to cause an unreasonable nuisance to neighbours or the community or significantly detrimentally affect the amenity, use or enjoyment of nearby properties by:*

*(a) the emission beyond the site boundaries of noise, vibration, odour, atmospheric liquid or other pollutants, waste water, waste products, electrical interference, light overspill or loss of privacy;”*

City Wide PDC 86 states:

*“Development that emits noise (other than music noise should include noise attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises”.*

The Applicant has provided details regarding the management of noise, waste and odours, which are outlined below.

### Noise

The subject land is located within a mixed use zone, where daytime noise levels from business activity (which includes more intensive activity in the Business Policy Area) is anticipated to be higher than in a wholly residential zone. This is recognised in the

The information provided by the Applicant states that barking is not an acceptable behaviour within this type of facility and outlines the various management techniques employed to ensure that barking is minimised. Anecdotal information would suggest that dogs are more likely to bark when left alone, bored or displaying territorial behaviour on their home ground. The current practice will continue whereby dogs are separated into compatible groups, and will be supervised at all times.

As stated earlier in this report, the Council has not received any complaints or queries regarding the business at its current location in King William Street, including from residents directly across the road from the business. Staff have also attended the premises on two (occasions) – once when the business commenced and the second time in recent weeks to observe the running of the centre and consider noise impacts. On each occasion, no excessively loud or continual barking was heard and the dogs appeared generally relaxed and well behaved. In any case, the dogs are under close supervision at all times, i.e. at least two (2) staff are in each pen and are able to immediately manage any erratic behaviour.

In response to concerns raised in the representations regarding noise, the Applicant has provided advice from an Acoustic engineer, which concludes that based on the construction of the subject premises (the heights of the blockwork walls and lack of penetrations at the side walls), the location of the nearest noise sensitive receivers and observation of the current business practice and other similar businesses, there is unlikely to be any further noise emission to surrounding receivers than that which is generated by the current business. A copy of the Acoustic advice is attached (**Attachment D**).

Notwithstanding this, it is noted that there is no indication in the proposal that the roller door in the rear of the building would be closed during the day. As this is a possible area for noise escape, if the Panel determines to support the proposal then it is recommended that a condition of approval be included which requires the door to remain closed at all times during operating hours.

### Odour/pest control

The Applicant has provided the following information in relation to waste management, which will be the same as for the current operation:

- *Dog waste is collected immediately and placed in a designated lined and sealed bin contained within the premises. Waste is collected by a commercial waster company a minimum of two (2) times per week.*
- *Trade waste discharge application to SA Water for the purpose of washing floors with a disinfectant solution after each soil and general cleaning. All waste water will be strained to prevent dog hair entering sewer, with drains being cleaned periodically throughout the day. A silt trap is to be installed at the facility.*

Given that the dogs will be contained indoors and the proposed waste disposal measures to be put in place, it is considered that the proposed facility is unlikely to generate offensive odours and would be akin to the smell associated with a veterinary clinic or the like. In addition, given the nature of the business, which is aimed at providing elite level canine care, it is unlikely to be successful unless the dogs are cared for in a very clean and safe environment. Whilst this information is anecdotal, it is considered that this type of facility should not be compared to a boarding/rescue kennel facility, where the animals are predominantly fed and penned both indoors and outdoors and do not receive any significant attention or stimulation.

Accordingly, it is considered that the proposal is unlikely to create any unreasonable environmental impacts beyond the subject land and satisfies the relevant Development Plan provisions relating to noise, air pollution and pests/vermin.

### Summary

Whilst the provisions of the Urban Corridor Zone are silent on the establishment of a canine day care facility, the Zone supports a range of business and commercial activities, including higher impact activities, such as light industry and warehouses within the Business Policy Area. Additionally, the proposed business will provide a service to the local and broader community, and is located in a convenient City Fringe location.

With regard to car parking, within the Urban Corridor Zone, all non-residential land uses (with the exception of Tourist accommodation) have the same off-street vehicle parking rate (3 spaces per 100m<sup>2</sup>). The subject premises includes eleven (11) on-site spaces (5 at the front of the building and 6 to the rear of the building) which increases the number of on-site spaces for the current business. In this regard, as the Application is not proposing to increase the existing floor area of the building, the proposal does not generate any additional on-site vehicle parking demand.

With regard to noise, the Applicant has provided advice from an acoustic engineer who concludes that based on the construction of the subject premises, the location of the nearest noise sensitive receivers and observation of the current business practice and other similar businesses, there is unlikely to be any further noise emission to surrounding receivers than that which is generated by the current business. To date, the existing business has not been the subject of any noise (or other) complaints. Staff have also attended the business on two (2) occasions to observe the business and were of the opinion that barking was very infrequent and barely audible from outside the building.

With regard to odours and waste management, it is considered that the Applicant has provided sufficient information to demonstrate that suitable waste management practices are proposed.

As with many other non-residential land use proposals, there is always the potential that poor management practises may lead to complaints and non-compliance issues. In this instance however, observation and anecdotal evidence from surrounding neighbours and clients indicate that it is extremely well managed and operated.

Overall, it is considered that the proposal satisfies the relevant Development Plan provisions relating to environmental issues, including noise, air pollution, pests and vermin.

Accordingly, it is considered that the proposal is not seriously at variance with the Development Plan and does sufficiently accord with the relevant provisions of the Development Plan to warrant consent.

### RECOMMENDATION

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/738/2009 by Ms O Harvey to establish a canine day care facility on the land located at 24 King William Street, Kent Town, subject to the following requirements, conditions and notes:

### Relevant Plans

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

- Application for a Change of Use prepared by Dogcity Daycare, received by the Council on 7 September 2018.

### Conditions

1. That the number of dogs on the premises at any given time should not exceed thirty (30).
2. That the roller door adjacent to Little King William Street be closed at all times during business hours.
3. The operators of the canine day care facility shall adopt management practises to ensure that all dogs entering and exiting the subject land are under the proper control of the dog owners at all times.

### Notes to Applicant

1. The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.
2. The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.
3. The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.  
  
The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
4. The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.  
  
All works on Council owned land required as parts of this development are likely to be at the Applicant's cost.
5. This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.

Moved

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/624/2018 Kiara SA Pty Ltd (trading as Dogcity Daycare) for a change of use from an Office/Warehouse to a Canine Daycare Facility on the land located at 59 King William Street, Kent Town, subject to the following requirements, conditions and notes:*

Relevant Plans

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

- *Application for a Change of Use prepared by Dogcity Daycare, received by the Council on 7 September 2018.*

Conditions

1. *That the number of dogs on the premises at any given time should not exceed thirty (30).*
2. *That the roller door adjacent to Little King William Street be closed at all times during hours when dogs are kept on the premises.*
3. *The operators of the canine day care facility shall adopt management practises to ensure that all dogs entering and exiting the subject land are under the proper control of the dog owners at all times.*
4. *The hours of or operation within which dogs may be kept on the premises shall be restricted to between 7:00am and 6:30pm Monday to Friday.*

Notes to Applicant

1. *The Applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.*
2. *The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.*
3. *The granting of the consent does not remove the need for the Applicant to obtain all other consents which may be required by any other legislation or regulation.*  
  
*The Applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.*
4. *The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council's Urban Services Department, prior to any works being*



*undertaken. Further information may be obtained by contacting Council's Urban Services Department on 8366 4513.*

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

5. *This Development Plan Consent will lapse within 12 months of the date of this notice unless full Development Approval has been obtained.*

*Seconded and carried*

**2. STAFF REPORTS**

**2.4 DEVELOPMENT APPLICATION 155/584/2018 – ANDRASH PTY LTD – 88 STEPHEN TERRACE, ST PETERS**

<b>DEVELOPMENT APPLICATION:</b>	<b>155/584/2018</b>
<b>APPLICANT:</b>	<b>Andrash Pty Ltd</b>
<b>SUBJECT SITE:</b>	<b>88 Stephen Terrace, St Peters (Certificate of Title Volume: 5281 Folio: 253) (Certificate of Title Volume: 5281 Folio: 254)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Variation to approved hours of operation from 6.30 am to 10.00 pm Monday to Sunday to 6.30 am to 12.00 am Monday to Sunday for the service station component only</b>
<b>ZONE:</b>	<b>Residential Character – St Peters/Joslin/Royston Park Policy Area - Norwood, Payneham and St Peters (City) Development Plan (19 December 2017)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 3</b>

**Purpose of Report**

The purpose of this report is to provide information to the Panel in order for a determination to be made on an Application to vary conditions attached an existing Development Approval, which relate to the permissible trading hours for the service station component of a petrol filling station.

Staff do not have delegated authority to determine the Application, as it was subject to Category 3 notification.

As such, the Application is referred to the Panel for determination.

**Background**

In 1993, Development Approval was granted by the ERD Court, to undertake alterations and additions to a petrol filling station and to add a shop component. This approval was subject to fourteen (14) conditions, including the following condition, which relates to operating hours of the Petrol Filling Station:

*Condition 1.1: That the hours of operation of the business on the Land shall not exceed the following:*

<i>Shell Shop and fuel sales</i>	<i>6.30 am – 10.00 pm (Monday to Sunday)</i>
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Since the original approval of application 160/245/1993, a number of built form applications have been lodged associated with the site which relate to built form including:

- 155/603/2003 – Installation of a 7500 litre LP gas tank and dispenser
- 155/318/2011 – Replacement of a freestanding sign (petrol price board and identification sign)
- 155/210/2016 – Replace existing fuel dispenser canopy with new canopy

- 155/620/2016 – Alterations and additions to a service station and the construction of a freestanding garage

However, none of these applications involved a variation to the land use, or proposed to vary the hours of operation.

At some time after 28 March 1994, the service station commenced operating outside of its approved operating hours, and currently operates from 5am to 11pm 7 days per week.

Further detail of the proposed variations is contained in letter provided by Adelaide Planning & development Solutions on behalf of the Applicant, which is contained in **Attachment B**.

### **Subject Land and Locality Attributes**

The subject land is bounded by the Adelaide O-Bahn/Linear Park to the north, a residential allotment at 18 Tenth Avenue to the west, Stephen Terrace to the east and Tenth Avenue to the south. The Petrol Filling Station comprises a fuel sales outlet and store and a vehicle service centre, both of which are single storey in height and front Stephen Terrace and Tenth Avenue. The business is surrounded by a predominantly residential locality, with the exception of a childcare centre located at 79-83 Stephen Terrace. Vehicular access to the site is from both Stephen Terrace and Tenth Avenue.

The locality is considered to encompass allotments fronting Tenth avenue from 16 Tenth Avenue to 26 Tenth Avenue, and sites fronting Stephen Terrace between the Linear Park and 79-83 Stephen Terrace. Dwellings fronting Tenth Avenue are small to medium detached dwellings on medium sized allotments (with the exception of the residential flat building at 16 Tenth Avenue) and all have a high level of amenity, with a pleasant streetscape consisting of a wide tree lined street with landscaped front gardens and consistent setbacks.

Dwellings fronting Stephen Terrace within the locality are larger detached dwellings situated on medium to large allotments, landscaped front yards and are considered to have a compromised level of amenity due to the noise associated with arterial road traffic.

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

Section 39(7) of the *Development Act 1993* allows a person to seek the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation), provided that:

- the relevant authorisation is still operative;
- in a case where the development to which the development authorisation previously given was Category 3 development—the variation is also dealt with as an application for Category 3 development if any representations were made, unless the relevant authority determines that no such representation related to any aspect of the development that is now under consideration on account of the application for variation and that, in the circumstances of the case, it is unnecessary to deal with the matter as Category 3 development;

It should also be noted that an application to vary a previous authorisation cannot:

- have effect so as to impose a new condition, or to vary an existing condition, with respect to a matter that does not fall within the ambit of the application for variation; and
- cannot affect the operation of a condition imposed with respect to the original authorisation, unless the relevant authority has made specific provision for the variation of the condition in its decision on the application for variation.

### **Proposal in Detail**

The applicant is seeking consent to vary the Petrol Filling Station's hours of operation from:

6.30 am – 10.00 pm Monday to Sunday (current approved hours)

to

6.30 am – 12.00 am Monday to Sunday (proposed hours)

Currently, the Petrol Filling Station's trading hours do not reflect either the approved hours of operation or the proposed times, with advertised hours of operation from 5am-11pm Monday to Sunday. This commencement of trade is 1.5 hours earlier and 1 hour later than the operative approval, with the current application seeking to return the hours of operation to 6:30am and extend the hours of operation until midnight (12.00am).

### **Notification**

The proposal has been identified and processed as a Category 3 form of development as per s39 (7) (c) of the Development Act, as the development seeks to vary a development authorisation which was previously given as a Category 3 form of development and valid representations were made.

No representations were received in response to this notification.

### **State Agency Consultation**

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

### **Discussion**

The subject land is located within the Residential Character – St Peters/Joslin/Royston Park Policy Area, of the Norwood, Payneham and St Peters (City) Development Plan. The proposal is neither complying nor non-complying and accordingly is required to be assessed on its merits having regard to all of the relevant provisions of the Development Plan.

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

#### Interface Between Land Uses

The following Development Plan provisions provide guidance with respect to interface between land uses .

City Wide Objectives	26 & 27.
City Wide PDC's	80, 82, 84 & 86.

City Wide Principle of Development Control 86 states that:

*Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises.*

The *Environment Protection (Noise) Policy 2007* sets out daytime and night time limits for sensitive land uses from emitting activities, measured at the sensitive land use boundary, with a night time limit average of 40 dB(A) and a maximum noise level of 60 dB(A).

As part of the application documentation, the Applicant has commissioned an Acoustic Report prepared by Sonus Pty Ltd, a copy of which is contained in **Attachment C**. Sonus undertook an assessment of the acoustic observations of the site on 9 August 2018 after 10pm during the proposed hours of operation.

These observations measured 21 vehicles after 10pm, with an average maximum noise level from a passing vehicle recorded as 71 dB(A), while an average noise level of 42 dB(A) was recorded when no cars were passing and no activity was undertaken at the subject site. When activity was conducted at the subject site, the maximum noise level recorded for vehicle movements, vehicle doors closing and the use of a fuel filling bay was 54 dB(A) (vehicle doors closing). The average noise observed was 42 dB(A) at the measurement

location, while no cars were passing, however the noise from the mechanical plant and passengers talking was not audible and as such was assumed to be significantly less than the average noise level.

This report concludes that the subject site achieves the requirements of the *Environment Protection (Noise) Policy, 2007* during the proposed extended operating hours.

As such, the proposed development meets the requirement of City Wide Principle of Development Control 86.

The proposed change equates to only two additional hours of trading within the Petrol Filling Station component only, which is unlikely to have any significant or unreasonable impact on the occupants of nearby dwellings.

Overall, it is considered that the proposed variation to the trading hours of the Petrol Filling Station is unlikely to significantly impact on the amenity of the locality.

### **Summary**

The Applicant is seeking to vary a previously imposed condition of Development Approval relating to the operating hours for the petrol filling station.

The Application was subject to Category 3 notification because it proposes to vary previous Development Applications which were subject to Category 3 notification, with no representations were received in opposition to the proposal.

The applicant has stated that the service station has been operating outside of its approved hours of operation for a number of years, which has not come to the attention of the Council until recently in response to a submission from an adjoining landowner.

An acoustic report has concluded that the noise emanating from the service station is less than passing traffic from Stephen Terrace, and falls under the Environmental Protection (Noise) Policy criteria.

Accordingly, it is considered that the proposal to vary a previously imposed condition of Development Approval for the petrol filling station, is not seriously at variance with the Development Plan and sufficiently accords with the Development Plan to merit consent.

### **RECOMMENDATION**

That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the *Development Act 1993*, Development Plan Consent be **granted** to Development Application No 155/584/2018 by Andrash Pty Ltd to the Variation to approved hours of operation from 6.30 am to 10.00 pm Monday to Sunday to 6.30 am to 12.00 am Monday to Sunday for the service station component only on the land located at 88 Stephen Terrace, St Peters, subject to the following conditions:

#### Relevant Plans

Pursuant to Section 44 (2) and (3) of the *Development Act 1993* and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the information presented in a letter prepared by Mark Kwiatkowski of Adelaide Planning & Development Solutions received by the Council on 21 August 2018.

#### Conditions

1. The hours of operation for the petrol filling station component only shall be as follows:
  - Monday to Sunday between 6.30am and 12:00am

*Moved*

*That having regard to the relevant provisions of the Norwood, Payneham and St Peters (City) Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 155/584/2018 by Andrash Pty Ltd to the Variation to approved hours of operation from 6.30 am to 10.00 pm Monday to Sunday to 6.30 am to 12.00 am Monday to Sunday for the service station component only on the land located at 88 Stephen Terrace, St Peters, subject to the following conditions:*

*Relevant Plans*

*Pursuant to Section 44 (2) and (3) of the Development Act 1993 and except where varied by a Condition specified hereunder, it is required that the development be undertaken, used, maintained and operated in accordance with the information presented in a letter prepared by Mark Kwiatkowski of Adelaide Planning & Development Solutions received by the Council on 21 August 2018.*

*Conditions*

1. *The hours of operation for the petrol filling station component only shall be as follows:*
  - *Monday to Sunday between 6.30am and 12:00am*

*Seconded and carried*

**3. OTHER BUSINESS**

Nil

**4. CONFIDENTIAL REPORTS**

Nil

**5. CLOSURE**

The Presiding Member declared the meeting closed at 9:02pm

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**Terry Mosel**  
Presiding Member

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**Mark Thomson**  
Manager Development Assessment