

# Council Assessment Panel Minutes

**15 July 2019**

## **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 Fleur Bowden  
Mr John Minney  
Ms Jenny Newman

**Staff** Carlos Buzzetti General Manager Urban Planning and Environment  
Ellen de Souza Development Officer Planning  
Nenad Milasinovic Senior Urban Planner

**APOLOGIES**

**ABSENT**

**1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT  
PANEL HELD ON 17 JUNE 2019**

*Motion was put that the minutes of the Meeting of the Council Assessment Panel, held on  
17 June 2019 be taken as read and confirmed.*

*Seconded and carried*

## 2. STAFF REPORTS

### 2.1 COUNCIL ASSESSMENT PANEL TERMS OF REFERENCE

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**REPORT AUTHOR:** General Manager, Urban Planning & Environment  
**GENERAL MANAGER:** Not Applicable  
**CONTACT NUMBER:** 8366 4562  
**FILE REFERENCE:** S/1099  
**ATTACHMENTS:** A & B

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#### PURPOSE OF REPORT

The purpose of this report is to advise the Council Assessment Panel Members of an additional delegation that has been conferred to the Panel by the Council, to address a shortcoming with respect to the Panel's consideration of planning appeal matters.

#### BACKGROUND

A deficiency in the CAP's delegations was brought to the attention of staff by lawyers representing an Applicant in respect to a Development Application that is currently the subject of an appeal in the ERD Court.

The CAP has historically considered proposals for the settlement of planning appeals in the Environment, Resources & Development Court (ERD Court) or Supreme Court of South Australia, where the CAP was the decision making body for the original Development Application. However, a specific delegation to reflect this was not included in the CAP's delegations from the Council.

Notwithstanding the fact that such a delegation is implied by virtue of the CAP being delegated to assess and determine the original Development Application, prior to an appeal being lodged against the CAP's determination, it was considered timely to address this matter in order to avoid any unnecessary and costly legal arguments regarding the technical wording of the CAP's delegations.

A report on this matter was considered by the Council at its meeting held on 12 June 2019 and the Council resolved to confer an additional delegation to enable the Panel to consider and resolve planning appeals in the Environment, Resources and Development Court and the Supreme Court of South Australia, where it acted as the delegate of the Council in relation to the original Development Application, which is the subject of the appeal.

A copy of the Council report, including the Council resolution, is contained in **Attachment A**.

#### DISCUSSION

The conferring of the additional delegation will allow the Panel to continue to discharge its duties in an orderly and effective manner.

The Panel's Terms of Reference have been updated to include the new delegation and a copy of the draft revised Terms of Reference is contained in **Attachment B**. For completeness, it is recommended that the Panel adopt the revised Terms of Reference.

#### RELEVANT POLICIES & STRATEGIC DIRECTIONS

Not Applicable.

## FINANCIAL IMPLICATIONS

N/A

## SOCIAL ISSUES/IMPACT

Nil.

## ENVIRONMENTAL ISSUES

Nil.

## RESOURCE ISSUES

Nil.

## CONSULTATION

- **Elected Members**  
Nil.
- **Community**  
Nil.
- **Staff**  
Nil.
- **Other Agencies**  
Nil.

## OPTIONS

Nil.

## CONCLUSION

Nil.

## COMMENTS

Nil

## RECOMMENDATION

That, pursuant to 83(1)(f) of the *Planning, Development and Infrastructure Act 2016*, the City of Norwood Payneham & St Peters Council Assessment Panel adopt the Terms of Reference, contained in **Attachment B** to this report.

*Moved*

*That, pursuant to 83(1)(f) of the Planning, Development and Infrastructure Act 2016, the City of Norwood Payneham & St Peters Council Assessment Panel adopt the Terms of Reference, contained in **Attachment B** to this report.*

*Seconded and carried*

## 2. STAFF REPORTS

### 2.2 DEVELOPMENT APPLICATION 155/982/2017 – J&DE HOMES PTY LTD – 10 BLANDEN AVENUE, MARDEN

<b>DEVELOPMENT APPLICATION:</b>	155/982/17
<b>APPLICANT:</b>	J&DE Homes Pty Ltd
<b>SUBJECT SITE:</b>	10 Blanden Avenue, Marden (Certificate of Title Volume: 5692 Folio: 240)
<b>DESCRIPTION OF DEVELOPMENT:</b>	Construction of a two-storey residential flat building comprising four (4) dwellings
<b>ZONE:</b>	Residential Zone Medium Density Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 19 December 2017)
<b>PUBLIC NOTIFICATION CATEGORY:</b>	Category 2

#### Purpose of Report

The purpose of this report is to provide information to the Panel in order for a determination to be made on a Development Application for the construction of a two-storey residential flat building comprising four (4) dwellings.

Staff do not have delegated authority to determine the Application, as it is a Category 2 form of development and objections to the Application were received through the public notification process.

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:	rectangular
Frontage width:	19.2 metres
Depth:	43.59 metres
Area:	836.93m <sup>2</sup>
Topography:	slight incline (in the order of 220mm) from front (west) to rear (east) with a recessed front garden element.
Existing Structures:	detached dwelling and several outbuildings
Existing Vegetation:	low shrubs and small non-regulated trees

The subject land contains a single-storey dwelling with a tiled roof. Two driveways provide access to the property adjacent to the northern and southern side boundaries and lead to carports located forward of the dwelling. The land is relatively flat, with a slight incline of approximately 220mm from the front boundary up to the rear boundary.

A Development Application to divide the subject land via Community Title into four (4) Lots ranging in area from 128m<sup>2</sup> to 201m<sup>2</sup> and common property and has recently been determined under delegated authority, as the land division achieved the relevant quantitative provisions of the Development Plan with respect to site

area and frontage width. The land division Application was granted Development Approval. A copy of the approved land division plan is contained in **Attachment A**.

### Locality Attributes

Land uses: entirely residential  
Building heights (storeys): predominantly single storey

The locality is characterised by a mix of low and medium density housing, predominantly single storey in height. Dwelling types include detached dwellings and residential flat buildings. Twelve single-storey group dwellings contained on three allotments are located directly adjacent to the north of the subject land at 12, 14 and 16 Blanden Avenue. In addition, three dwellings contained within a single-storey residential flat building are located to the west, at 5 Blanden Avenue.

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

### Proposal in Detail

The Applicant seeks consent to construct a two-storey residential flat building containing four (4) dwellings. All four dwellings front onto a common driveway area which runs along the northern boundary of the property.

At ground level, each dwelling has a single carport, an open-plan living/meals/kitchen area, laundry and WC, with Lot 4 having a bedroom located on the ground floor. Each has a south-facing rear yard, while the westernmost dwelling (Lot 1) and the easternmost dwelling (Lot 4) also have side yard areas.

Lot 1, 2 and 3 have three bedrooms and bathrooms on the second floor, with lot 4 having 2 bedrooms on the upper level.

The dwellings have a traditional appearance, with pitched roofs (15 degrees) and a range of cladding materials, including liquorice colour brickwork to the lower walls, and a mixture of rendered lightweight walling to the upper floor detailed in colorbond "monument" and colorbond "surfmist". Articulation to the upper floors is provided through framed-out feature elements and powder-coated aluminium windows (colour "monument").

A 2 metre high rendered front fence that incorporates an integrated recessed landscaping bed is proposed adjacent to the front property boundary.

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	Lot 1	Lot 2	Lot 3	Lot 4	Development Plan Merit Assessment Quantitative Guideline
Site Area	166m <sup>2</sup>	128m <sup>2</sup>	128m <sup>2</sup>	201m <sup>2</sup>	No minimum
Allotment Width	12.71m	9.43m	9.43m	12.02m	N/A
Development site width			19.2m		18.0m
Allotment Depth	11.51-13.2m	13.2m	13.2m	13.2-19.2m	N/A
External Wall Height*	5.64m	5.64m	5.64m	5.64m	Two-storey
Maximum Overall Height (to roof apex)*	6.88m	6.98m	6.98m	6.8m	Two-storey

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

Consideration	Lot 1	Lot 2	Lot 3	Lot 4	Development Plan Merit Assessment Quantitative Guideline
<b>Floor Area (total)</b>	111.3m <sup>2</sup>	109.5m <sup>2</sup>	109.5m <sup>2</sup>	119.1m <sup>2</sup>	100m <sup>2</sup> minimum
<b>Floor Area (footprint)</b>	93.7m <sup>2</sup>	95.9m <sup>2</sup>	95.9m <sup>2</sup>	103.1m <sup>2</sup>	N/A
<b>Site Coverage (excluding common area)</b>	56.4%	74%	74%	51.3%	70%
<b>Site Coverage (including common area)</b>			46.4%		N/A
<b>Private Open Space</b>	35.9m <sup>2</sup> 100% uncovered	35m <sup>2</sup> 63.8% uncovered	35m <sup>2</sup> 63.8% uncovered	55m <sup>2</sup> 100% uncovered	35m <sup>2</sup>
<b>Street Set-back</b>	4.0m	N/A	N/A	N/A	4m
<b>Side Set-back (ground level southern side)</b>	3.85m	4.45m	4.45m	4.5m	2.5m for Dwellings 2, 3 & 4 0.9m for Dwelling 1
<b>Side Set-back (upper level southern side)</b>	5.06m	4.8m	4.8m	4.5m	4.5m for Dwellings 2, 3 & 4 2.77m for Dwelling 1
<b>Rear Set-back (ground level eastern side)</b>	N/A	N/A	N/A	2.5m	2.5m
<b>Rear Set-back (upper level eastern side)</b>	N/A	N/A	N/A	4.5m	4.5m
<b>Occupant Car Parking Provision</b>	2 spaces	2 spaces	2 spaces	2 spaces	2 spaces per dwelling
<b>Visitor Car Parking Provision</b>			1 space		1 space for every 2 dwellings

*\* 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 C**.

### Notification

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

Four (4) representations were received in response to this notification, copies of which are attached (**Attachment D**). The representors were all opposed to the Application. Key issues raised by representors are, in summary:

- concern over loss of visual privacy;
- concern over compromised living and visual amenity and the change to the established built form landscape;
- concern that the proposed development will generate additional vehicular traffic;
- concern over construction impacts; and
- concern with the proposed dwelling density.

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

*Renata Nemeth (on behalf of Virginia Madon);  
Miao-Foong Koh-Buckland & Paul Buckland*

Through their planning consultant, Future Urban, the Applicant has responded to the representations received and a copy of their response is contained in **Attachment E**.

### **State Agency Consultation**

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

### **Discussion**

The subject land is located within the Medium Density Policy Area of the Residential Zone, 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:

Medium Density Policy Area Objectives: 1 & 2  
Medium Density Policy Area Desired Character Statement  
Medium Density Policy Area Principles of Development Control: 3, 5 & 7

Residential Zone Objectives: 1 & 2  
Residential Zone Desired Character Statement  
Residential Zone Principles of Development Control: 1 & 3

Objective 1 of the Medium Density Policy Area encourages a range of medium density dwellings, including a minimum of 15 per cent affordable housing, designed to integrate with areas of open space, neighbouring centres or public transport nodes. Objective 2 speaks towards transitioning density down towards the edges of the policy area.

There is no minimum site area per dwelling for residential flat buildings within the Medium Density Policy Area, with the only quantitative requirement being that the property has a minimum frontage width of 18m. The Desired Character Statement explains:

*“Whilst detached and semi-detached dwellings will continue to be developed within the Medium Density Policy Area, more flexible development parameters for other forms of housing (including group dwellings, row dwellings and residential flat buildings) are included and will provide additional opportunities for increasing residential densities in these locations. While a minimum site area has not been allocated for dwellings within a residential flat building, a minimum floor area requirement for dwellings has been included and will, along with other policies relating to private open space, communal space, car parking and the design of the built form, ensure an acceptable level of amenity for occupants, as well residents in the locality.”*

Accordingly, residential flat buildings are clearly anticipated within the Medium Density Policy Area and whether or not the proposal is acceptable will largely depend on whether policies related to private open space, communal space, car parking and the design of the built form are adequately addressed. These issues are discussed under the relevant headings in the following sections of this report.

streetscape/bulk/scale/height/character

Medium Density PA Desired Character Statement

Medium Density PA Objectives: 2, 4  
Medium Density PA PDCs: 1, 3, 7

Residential Zone Desired Character Statement

Residential Zone Objectives: 3  
Residential Zone PDCs: 6, 8

City Wide Objectives: 18, 19 & 20  
City Wide PDCs: 28-33, 35-37, 181, 184, 197

The Desired Character Statement for the Medium Density Policy Area states (in part):

*“Development will include a range of range of residential development of up to two (2) storeys in height..”*

The proposed two-storey building height is consistent with the maximum height stated in the desired character of the Policy Area.

With respect to the style of the proposed dwellings, the Desired Character Statement for the Residential Zone states:

*“A variety of facade treatments will be permitted in the zone, allowing for individual preferences, however overall proportions of buildings as they present to the street, will be balanced and in accordance with good architectural practice, so as to provide a pleasant streetscape. Garages and carports will be located to the side or rear of dwellings and the placement of driveways will ensure minimal disruption to footpaths and street trees. Where double garaging is proposed, driveways will be tapered, where practicable, to reduce the extent of hard surface areas forward of dwellings.”*

The residential flat building is relatively traditional in style and is considered to provide a reasonable level of visual interest and through a combination of modulated rendered walls, framed-out feature facade elements and pitched corrugated sheet roofing that is generally consistent with the Desired Character Statement.

From the street, the layout of the development with the driveway on the northern side of the residential flat building and the provision of a 4 metre setback at the upper level from the northern side boundary, as well as a 4 metre front setback, would maintain space around the building.

Consistent with the desired character statement, there are no garages facing the street and one (1) driveway crossover services all four (4) dwellings.

Setbacks and Site Coverage

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

Medium Density PA PDCs: 7  
City Wide PDCs: 202, 203, 208

Medium Density Policy Area Principle of Development Control 7 states that dwellings fronting a public road within the Medium Density Policy Area should be designed with a minimum setback from the primary road frontage of 4.0 metres.





Each of the proposed dwellings includes two (2) covered car parking spaces within garages for use by the occupants of the dwellings. In addition, one (1) centrally located dedicated visitor parking space is provided between Dwellings 2 and 3, for use by visitors to any of the four (4) dwellings. This results in a shortfall of one (1) on-site visitor car parking space for the development, when considering the rates in Table NPSP/8.

Although the shortfall of one on-site visitor parking space is a negative aspect of the application, the allotment frontage width maintains sufficient space for two on street vehicle parks in front of the allotment.

With respect to traffic generation, it is considered that the day-to-day travel behaviour of the occupants and their visitors is unlikely to have any significant impact on the existing road network or the amenity of nearby property occupants. While there is the potential from time to time for occupants to host parties or the like and for there to be a spike in on-street parking demand during such times, it is not substantially different than what might already occur throughout the locality under existing conditions.

The additional traffic that would be generated by the proposal can be reasonably anticipated, following the change of zoning in 2015 to Medium Density Policy Area, whereby development of the density proposed is anticipated.

City Wide Principle of Development Control 189 provides guidelines for the configuration of driveway and manoeuvring areas for battle-axe style allotments, so as to achieve safe and convenient access arrangements. In relation to developments involving more than two (2) dwellings utilising a common driveway, Principle 189 states that the driveway should have a 6.0 metre x 6.0 metre paved carriageway at the front of the property, to enable safe and convenient access/egress for vehicles turning into and out of the site simultaneously. The proposal accords with this policy.

Principle 189 also states that the paved carriageway width should be no less than 5.0 metres in width, with an additional 1.0 metre of landscaping, resulting in a total width of paved carriageway and landscaping of 6.0 metres. The proposed development also complies with this policy.

The 85<sup>th</sup> percentile vehicle turning templates within the Australian Standard for off-street car parking have been applied to the manoeuvring areas and it has been determined that vehicles are able to conveniently access and egress all car parking spaces, with vehicles able to access and egress the site in a forward direction.

#### 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, 164, 167-171

The subject land is not within an identified flood plain.

The subject land has an approximate average incline of 220mm from the Blanden Avenue boundary to the eastern rear boundary. The Applicant has nominated the same finished floor level for each of the four proposed dwellings. In terms of Dwelling 1, the proposed finished floor level is between 310 - 350mm above existing adjacent ground level, Dwellings 2 & 3 is 190mm – 330mm higher than adjacent ground level and Dwelling 4, 190 - 250mm higher than adjacent ground level.

The proposed finished floor levels for the dwellings will result in the need for under fence plinths to a height of 300mm along portions of the property boundaries, with the applicant indicating that 1.8 metre high 'Good-neighbour' Colorbond fencing will be used for all internal fencing and the replacement of side and rear fencing. The resulting combined height of retaining and fencing at the boundaries of the site and the resulting level of fill are consistent with City Wide Principles of Development Control 58 and 164 respectively. In response to privacy and noise concerns raised by the owners of 8 Blanden Avenue, the Applicant has agreed to increase the fence height on the southern boundary to 2.1 metres. The Applicant has also agreed to provide a Construction Management Plan as part of the detailed design process prior to the granting of Building Rules Consent, which will include a construction methodology to minimise the foreshadowed construction noise impacts.

A copy of the Civil Plan, which contains the proposed levels and stormwater sump locations, is contained in **Attachment C10**.

The Applicant has proposed to direct roof runoff to 2,000 litre rainwater tanks for each dwelling, which are to be plumbed back to each dwelling for reuse, with overflow directed to a main stormwater collection pipe located beneath the common driveway. Surface water collected from the ground surrounding each dwelling is also proposed to be directed to the main stormwater collection pipe and pumped to the street water table.

Given the relatively high percentage of land that will be covered with impervious surfaces compared with the existing condition, it is considered appropriate that on-site detention be provided to ensure that stormwater leaving the site in a high rainfall event does not exceed current levels, consistent with City Wide Principle of Development Control 160.

As such, if the Panel determines to approve the development proposal, it is recommended that a condition be imposed requiring a Stormwater Management Plan be submitted with the documentation for Building Rules Consent, which confirms that stormwater disposal will be maintained at pre-development levels.

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, 117, 118
City Wide PDCs:	73, 74, 220 & 221, 395, 396

The subject land does not contain any regulated trees, however, contains a number of small mature trees, shrubs and vegetation.

The Applicant has provided a landscaping plan and species schedule, a copy of which is attached (**Attachment C1**).

Overall, it is considered that the proposed landscaping plan demonstrates a reasonable amount and mix of plantings, which will provide a level of screening at the boundaries of the site and provide some shading along the driveway area.

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 proposed orientation of the ground level internal living areas and private open space, is a negative aspect of the proposal, given that POS areas will be shadowed by the upper level during the winter months, with no northern light available to living areas. The orientation of the development does mean that, in overall terms, there are minimal exposed east and west facing windows in the development, which is a positive consideration.

Whilst no rear verandah or pergola structures are proposed, the design is conducive to future owners constructing a shade structure at the rear, to provide some relief from the summer sun angle.

The proposed dwellings are each provided with a 2,000 litre rainwater detention tank, which are to be plumbed back to each dwelling in accordance with City Wide Principle of Development Control 159.

## Summary

The subject land is located within the Medium Density Policy Area, where increased dwelling densities are anticipated. There is no minimum site area for dwellings within a residential flat building and the acceptable density will depend on whether policies related to private open space, communal space, car parking and the design of the built form are adequately addressed.

The communal open space, comprising a common driveway and landscaping, also accords with the relevant Development Plan criteria. Sufficient space is provided for vehicle manoeuvring and meaningful landscaping areas.

The site coverage for allotments 2 and 3 exceeds requirements, however has minimal impact on the building's overall bulk, or appearance within the streetscape, due to their central location on the site.

The amount of on-street parking is slightly less than the rates provided in Table NPSP/8. Specifically, there is an overall shortfall of one (1) on-site parking space, comprising a visitor space. Having regard to the ability afforded in City Wide Principle of Development Control 122 to apply a lesser rate in certain circumstances, the amount of car parking is considered adequate.

The design of the built form is considered appropriate, insofar as the layout provides functional living spaces at ground level with good access to private open space and generous accommodation upstairs for bedrooms and secondary living. The presentation of the development in the streetscape is considered to be compatible with the surrounding the built form and the character statement of the Medium Density Policy Area.

Overall, it is considered that the development 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 155/982/17 by J&DE Homes Pty Ltd for the construction of a two-storey residential flat building comprising four (4) dwellings, on the land located at 10 Blanden Avenue, Marden, 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 Mavtect Designs (Job No 1880) and received by the Council on 3 June 2019, and 24 May 2019.
- Civil Plan (Job No C25572) prepared by RCI Consulting Engineers and dated 5 March 2019;

### 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 the adjacent street water table.
2. A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.

3. All plants 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.
4. All plants shall be watered through the installation of a suitable irrigation system which shall be maintained to the reasonable satisfaction of the Council or its delegate.
5. With the exception of the Western elevation of Lot 1, the portion of the upper floor windows less than 1.7 metres above the internal floor level shall be treated prior to occupation of the dwellings 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. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)
6. The portion of upper floor balconies less than 1.7 metres above the floor level of the balcony shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval (Suggested treatments include, but are not restricted to, wing walls, solid or translucent panels)

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

*Ms Renata Nemeth (on behalf of Virginia Madon) addressed the Panel from 7:02pm until 7:03pm*

*Miao-Foong Koh-Buckland & Paul Buckland addressed the Panel from 7:03pm until 7:09pm.*

*Miss Milly Nott (on behalf of the applicant addressed the Panel from 7:10pm until 7:17pm.*

*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 155/982/17 by J&DE Homes Pty Ltd for the construction of a two-storey residential flat building comprising four (4) dwellings, on the land located at 10 Blanden Avenue, Marden, 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 Mavtect Designs (Job No 1880) and received by the Council on 3 June 2019, and 24 May 2019.*
- Civil Plan (Job No C25572) prepared by RCI Consulting Engineers and dated 5 March 2019;*

*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 the adjacent street water table.*
- 2. A Stormwater Management Plan shall be prepared and provided to the Council with the documentation for Building Rules Consent, which illustrates stormwater discharge from the subject land at pre-development levels. On-site retention of stormwater may be required during high rainfall events. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.*
- 3. All plants 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.*
- 4. All plants shall be watered through the installation of a suitable irrigation system which shall be maintained to the reasonable satisfaction of the Council or its delegate.*
- 5. With the exception of the Western elevation of Lot 1, the portion of the upper floor windows less than 1.7 metres above the internal floor level shall be treated prior to occupation of the dwellings 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. (Suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7 metres above the internal floor level or a window sill height of 1.7 metres above the internal floor level.)*

6. *The portion of upper floor balconies less than 1.7 metres above the floor level of the balcony shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony, with details to be provided to the reasonable satisfaction of the Council or its delegate, prior to the issuing of Development Approval (Suggested treatments include, but are not restricted to, wing walls, solid or translucent panels)*

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'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.*
5. *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.*
6. *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

### 2.3 DEVELOPMENT APPLICATION 155/309/2018 – MR T CENTRELLA – 407 MAGILL ROAD, ST MORRIS

<b>DEVELOPMENT APPLICATION:</b>	<b>155/309/2018</b>
<b>APPLICANT:</b>	<b>Mr T Centrella</b>
<b>SUBJECT SITE:</b>	<b>407 Magill Road, St Morris (Certificate of Title Volume: 6124 Folio: 688)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Change of use from a theatre to a 24 hour fitness centre</b>
<b>ZONE:</b>	<b>Local Shopping Zone -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 a theatre to a 24 hour fitness centre.

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:	30.48 metres
Depth:	45.72 metres
Area:	1393.54m <sup>2</sup>
Topography:	essentially flat
Existing Structures:	two storey (commercial), blockwork building
Existing Vegetation:	limited vegetation to Magill Road frontage

The ground floor tenancy of the building consists of a retail showroom which has been occupied by Dulux Paints since 2008.

The building is listed as a Local Heritage Place as per Table NPSP/6 within the Council's Development Plan.

#### **Locality Attributes**

Land uses:	mix of commercial and residential
Building heights (storeys):	mix of low scale buildings (up to 2 storeys)
Streetscape amenity	low, due to commercial nature of the locality and traffic movement

This section of Magill Road contains a mix of commercial and residential land uses, the most notable being a recently constructed office building located at 409 Magill Road. Built form within the locality is mixed, with higher quality new construction sitting amongst older commercial and residential 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 contained in **Attachment A**.

## Proposal in Detail

The Applicant seeks consent to change the use of the upper floor of the subject building from a theatre to a 24 hour fitness centre. While no formal change of use application has been undertaken for the upper floor of the building, the area has been partially utilised by the existing ground floor tenant for storage purposes.

The existing building on the subject land is a two-storey bricked building built to the Magill and Green Street boundaries. It is listed as a Local Heritage Place in the Council's Development Plan. There is a carpark to the side and rear of the building accessed from Magill Road and Green Street. The upper floor comprises approximately 523m<sup>2</sup> of floor area including entry staircase, open plan floor space and bathroom facilities.

The proposal indicates only minor changes to the floor plan, with new bathroom and toilet facilities to be installed, a manager's office, utility/store, cubbies and a new chairlift to enable disabled access. The floorplan will be divided up into cardiovascular equipment (spin bikes, treadmills), pin loaded weights equipment, a free weights and a group training area. No external changes are proposed to the existing building other than some minor acoustic treatments.

Group classes will be run for members in attendance at the facility during staffed hours, with class sizes limited to 10 members and involve spin, core and boxing classes. The Applicant has stated that no amplified music will be played during class times, with the exception of background music.

The proposed fitness centre will be staffed by 2 staff members from 10am to 7pm Monday to Friday, and Saturday from 8am until 1pm.

No signage is proposed as part of the application and so any desired signage that requires development authorisation will need to be considered via a separate Development Application.

Plans and details of the proposed development are contained in **Attachment B**, with further detail contained within a planning report prepared by IBS Planning Projects in **Attachment C**.

## Notification

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

Five (5) representations were received in response to this notification, copies of which are contained in **Attachment D**.

All five representors were opposed to the proposal. The key issues raised by the representors are, in summary:

- too many fitness centres located within the locality;
- the proposed on-site car parking provision is insufficient, resulting in on-street parking within the surrounding street network; and
- concerns over the impact on the amenity of nearby residents of Green Street due to noise from within the building, and patrons entering and exiting the site.

The following representors desire to be heard in support of their representation by the Panel:

*David White*  
*Carolyn Mountford*

In responding to the representations, the Applicant has provided advice from an Acoustic Consultant and a Traffic Engineer.

A copy of the Applicant's response including the advice of the Acoustic Consultant and Traffic Engineer is contained in **Attachment E**.

## State Agency Consultation

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

## Discussion

The subject land is located within the Local Shopping Zone 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 24 hour fitness centre:

Local Shopping Area Objectives:	1
Local Shopping Area PDCs:	1
City Wide Objectives:	1, 2, 7 & 10
City Wide PDCs:	1, 2, 3 & 12

Local Shopping Zone Objective 1 states:

*A zone primarily accommodating small groups of shops which cater for the day-to-day needs of nearby residents.*

The Local Shopping Zone envisages other land uses besides small groups of shops. For example, offices and consulting rooms can be complying development within the Zone, subject to meeting certain criteria.

The establishment of a 24 hour fitness centre is not envisaged within the Development Plan in a Local Commercial Zone, however is not expressly excluded either, with Objective 1 using the term 'primarily', inferring that other land uses may be appropriate. Given the small scale intensity of the proposal and that it will cater for the day-to-day needs of nearby residents, the proposal is considered to be partly consistent with the intent of Objective 1.

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 the surrounding locality, including offices, consulting rooms, restaurants and shops and adjacent residential properties.

Overall, it is considered that the proposed use of the subject land for a 24 hour fitness centre does not offend the land use objectives of the zone.

### 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 a Local Shopping Zone, and is classified as a Designated Area due to the proximity of the subject land to a high frequency public transit service (bus). The site is serviced by bus stop 12 (Magill Road – North West side).

Within a Designated Area the vehicle parking rates for all non-residential uses (excluding tourist accommodation) is the same (3-6 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, the Applicant has provided advice from Cirqa, which is attached (**Attachment C19**).

The subject land provides 18 parking spaces, with access obtained via two existing crossovers from Magill Road and Green Street. The Cirqa report proposes a redesign of the parking layout to allow for compliant disabled parking and shared use zone on the north west of the site (parking space 15) and the bin storage area relocated adjoining Green Street crossover (north east side of the site).

Regarding the function of carparking between the two tenancies, the advice concludes the following:

- if peak parking demand for both uses of the site were to coincide, an overflow of 5 parking spaces would occur onto the street network, however;
- the differing peak periods of demand associated by the existing tenancy and the proposal allow a shared use of parking contained within the subject site.

Overall, it is considered that the parking requirements on the subject land for a 24 hour fitness centre meet the requirements of City Wide Principle of Development Control 120.

#### 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

City Wide Objective 26 States:

*Development located and designed to minimise adverse impact and conflict between land uses.*

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 subject land is located within a Local Shopping Zone, and adjacent a main Arterial Road, where daytime noise levels from business activity is anticipated to be higher than that which can be reasonably anticipated within the heart of a Residential Zone.

The Applicant has stated that there will be no loud amplified music played within the fitness centre including during class times, with only background music to be used. In addition, only staff members will have access to audio equipment. Due to security requirements, all doors and openings will be shut at all times.

In response to concerns raised in the representations regarding noise, the Applicant has provided advice from an Acoustic Engineer. This advice concludes that the subject land is able to meet the requirements of the *Environmental Protection (Noise) Policy 2007*, based on the construction of the subject premises (the heights of the blockwork walls and lack of penetrations at the side walls) and the location of the nearest noise sensitive receivers, provided that the measures listed below are implemented.

- locating all mechanical plant on the roof of the building within a specified area away from the dwellings. The extent of acoustic treatment shall be confirmed when the final equipment selection becomes available;
- incorporating acoustic seals to the western egress/access doors to the building;
- ensuring the access door is on an automatic closing device and remains normally closed;
- ensuring that the rear and side boundary fences are airtight from bottom to top, including at the join with the ground, and;
- ensuring music played inside the centre is “background music” only, with a maximum music level of 65 dB(A) at any location.
- increasing acoustic measures to the recently approved dwelling directly to the north of the subject land, including:
  - laminated glazing to upstairs bedrooms facing the proposed development, including acoustic seals if required;
  - replacement of glass within the existing sash windows of the RSL hall to laminated glazing and acoustic seals; and
  - providing additional insulation to the upstairs bedrooms ceilings on the addition, and to the roof of the existing RSL hall.

The above measures include suggested modifications to a Local Heritage Place which has recently received Development Plan Consent for use as a dwelling and for two storey alterations and additions. The Applicant has provided a co-signed letter, in which the Applicant and owner agree to the implementation of the works suggested by the acoustic report (at the Applicants expense) in order to meet the requirements of the *Environmental Protection (Noise) Policy 2007*.

The proposed location of plant equipment on the roof of the building has been reviewed by the Council's Heritage Architect, David Brown, who was comfortable with the location, provided that detail of the plant equipment and screening will be provided as part of the Building Rules Consent. If the Panel determines to approve the proposed development, it is recommended that a condition requiring the above be imposed.

Overall, it is considered that the noise policy requirements on the subject land for a 24 hour fitness centre meet the requirements of City Wide Principle of Development Control 86.

A copy of the Acoustic advice, and co-signed letter is attached (**Attachment E13 and E24**).

Due to the difficulty in enforcing an internal maximum noise level arising from playing music, a condition to control the requirement recommended by the acoustic consultant that '*music played inside the centre is “background music” only, with a maximum music level of 65 dB(A) at any location*', is not recommended. Rather, the enforcement of any loud music that is considered to breach the *Environmental Protection (Noise) Policy 2007* can be undertaken through the application of *Local Nuisance & Litter Control Act 2016* provisions.

If the Panel's preference is to impose a planning condition to limit the volume of noise that can emanate from playing music in the fitness centre, this would negate the Council's ability to apply the provisions of the *Local Nuisance & Litter Control Act 2016*, with respect to the enforcement of excessively loud music. In the opinion of staff, the application of the *Local Nuisance & Litter Control Act 2016* provides staff with a more practical way of enforcing loud music compared with the imposition of a planning condition which seeks to set an internal maximum music level.

## Summary

Whilst the provisions of the Local Shopping Zone do not specifically anticipate the establishment of a 24 hour fitness centre, the proposal is considered to meet the day-to-day needs of nearby residents and is therefore consistent with the zone objectives.

With regard to car parking, as the subject land is classified as a 'Designated Area' within a Local Shopping 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 eighteen (18) 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, and as such, the proposal does not generate any additional theoretical 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, and subject to the incorporation of recommended acoustic measures, the predicted noise level achieves the goal noise levels of the *Environment Protection (Noise) Policy 2007*.

Overall, it is considered that the proposal satisfies the relevant Development Plan provisions relating to car parking and noise.

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 155/309/2018 by Mr T Centrella to change the use from a theatre to 24 hour fitness centre on the land located at 407 Magill Road, St Morris, 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:

- Proposed change of use to a fitness centre, prepared by IBS Planning Projects, received by the Council on 10 May 2018.
- Environmental Noise Assessment, prepared by Sonus, received by the Council on 1 July, 2019.
- Site Plan, prepared by CIRQA, received by the Council on 8 April, 2018.
- Co-signed letter between Tony Centrella and AG14 Nominees Propriety Limited, received by the Council on 25 June, 2019.

### Conditions

1. All mechanical plant shall be located behind the southern parapet wall on the roof of the building, and to be acoustically and visually screened to the reasonable satisfaction of Council or its delegate, with details of the installation to be provided with the application for building rules consent.
2. The western access door shall feature an automatic closing device and remain closed at all times, and is to be fitted with acoustic seals.
3. The northern and western boundary fences shall airtight from bottom to top, including at the joint with the ground.
4. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.
5. All car parking spaces shall be line marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition 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.

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Mr David White addressed the panel from 7:33pm until 7:41pm

Ms Carolyn Mountford addressed the panel from 7:42pm until 7:45pm

Mr Dennis Chung (Planning Consultant), Mr Ben Wilson (Traffic Consultant) and Mr Chris Turnbull (Acoustic Engineer) addressed the panel on behalf of the applicant from 7:46pm until 7:54pm

*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 155/309/2018 by Mr T Centrella to change the use from a theatre to 24 hour fitness centre on the land located at 407 Magill Road, St Morris, 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:*

- *Proposed change of use to a fitness centre, prepared by IBS Planning Projects, received by the Council on 10 May 2018.*

- *Environmental Noise Assessment, prepared by Sonus, received by the Council on 1 July, 2019.*
- *Site Plan, prepared by CIRQA, received by the Council on 8 April, 2018.*
- *Co-signed letter between Tony Centrella and AG14 Nominees Propriety Limited, received by the Council on 25 June, 2019.*

Conditions

1. *All mechanical plant shall be located behind the southern parapet wall on the roof of the building, and to be acoustically and visually screened to the reasonable satisfaction of Council or its delegate, with details of the installation to be provided with the application for building rules consent.*
2. *The western access door shall feature an automatic closing device and remain closed at all times, and is to be fitted with acoustic seals.*
3. *The northern and western boundary fences shall be made airtight, as far as is reasonably practicable, from bottom to top, including at the joint with the ground.*
4. *Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.*
5. *All car parking spaces shall be line marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.*
6. *The maximum noise output from the activities associated with the development herein approved, shall not exceed 52dB(A) between 7am and 10pm and 45dB(A) between 10pm and 7am, when measured in accordance with the Environment Protection (Noise) Policy, 2007.*
7. *That signage be provided on the premises requesting gym members to be quiet and respect adjacent residents.*
8. *That directional signage in accordance with Australian Standards be provided to guide customers to the availability of onsite car parking.*
9. *That low level security lighting be provided within the carpark for the convenience of patrons accessing the gym after day time hours.*
10. *That secure parking/storage for at least two (2) bicycles be provided on site for gym users and that additional parking facilities for bicycles be provided within the carpark.*
11. *That vehicular access gates remain open 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.*

*Seconded and carried*

## 2. STAFF REPORTS

### 2.4 DEVELOPMENT APPLICATION 155/C071/2018 – D’ANDREA & ASSOCIATES – 12-14 ELIZABETH STREET, NORWOOD

<b>DEVELOPMENT APPLICATION:</b>	<b>155/C071/18</b>
<b>APPLICANT:</b>	<b>D’Andrea &amp; Associates</b>
<b>SUBJECT SITE:</b>	<b>12-14 Elizabeth Street, Norwood (Certificate of Title Volume: 5088 Folios: 717 and 718)</b>
<b>DESCRIPTION OF DEVELOPMENT:</b>	<b>Community Title land division (creating thirteen allotments from two existing allotments), demolition of two dwellings and construction of a two-storey residential flat building (comprising thirteen dwellings) with basement car parking (Compromise Plan)</b>
<b>ZONE:</b>	<b>Residential Character (Norwood) Zone – Norwood, Payneham and St Peters (City) Development Plan (dated 17 December 2017)</b>
<b>PUBLIC NOTIFICATION CATEGORY:</b>	<b>Category 2 (Public Notification is not applicable in relation to consideration of the Compromise Plan)</b>

#### **Purpose of Report**

The purpose of this report is to provide details to the Panel on a second compromise proposal which has been submitted in relation to a Development Application that was refused by the Panel at its meeting held on 18 February 2019 and which is the subject of an appeal in the Environment Resources and Development (ERD) Court.

#### **Background**

The Panel refused Development Application No. 155/C071/18 for the following reasons:

- 1. The application is not consistent with the desired character of the zone.*
- 2. The proposal does not achieve a mostly single storey appearance to the street.*
- 3. The height and length of upper level walls have not been minimised.*
- 4. The proposal includes undercroft garaging whereas the development plan states that undercroft should only be on the western side of Osmond Terrace.*
- 5. The bulk and scale of the proposal will have an unreasonable overshadowing and visual impact variously on the properties immediately to the south and east of the subject land.*

A copy of the relevant section of the Minutes of the Panel meeting held on 18 February 2019, including the refused plans, is contained in **Attachment A**.

Following the refusal of the Application by the Panel, the Applicant lodged an appeal with the ERD Court.

A compromise proposal was considered by the Panel at its meeting held on 20 May 2019 but was not endorsed on the basis that it did not address the reasons for the Panel’s refusal of the original Development Application.

As part of its consideration of the compromise proposal, the Panel was provided with an amended landscaping plan and an opinion from an Urban Designer about the suitability of the development proposal, but the Panel was not provided with any amended plans due to miscommunication between the Applicant's lawyers and the Council's Assessment Manager.

In this regard, prior to the finalisation of the Agenda, the Council's Assessment Manager sought confirmation from the Applicant's lawyers as to what information was to be presented to the Panel. Unfortunately, as part of this process, the amended plans were not confirmed as forming part of the set of documents that the Applicant wanted the Panel to consider. All that said and to be fair to the Applicant, despite the miscommunication from their end, the reality is that amended plans had in fact been prepared and should have been presented to the Panel.

Since that time, and in light of the Panel's concerns with the first compromise proposal, the Applicant has proposed further changes to the development proposal. As such, the Panel is required to consider the amended plans that form part of the second compromise proposal and advise the ERD Court as to whether or not the amended plans satisfactorily address the concerns identified with the Application, such that Development Plan Consent is now warranted.

A copy of the additional supporting information, including amended plans, that is the subject of this report, is contained in **Attachment B**.

## **Discussion**

The additional supporting information will be discussed in the context of the reasons for refusal given by the Panel at its meeting held on 18 February 2019. All other aspects of the proposal are addressed in the previous staff report contained in **Attachment A** and are not significantly or adversely affected by the additional information or the amended plans.

### Amended Plans

The Applicant has proposed numerous changes to the original proposal, details of which are set out below.

- a reduction in the total number of dwellings from 15 to 13;
- redesign of the layout of the dwellings, with a resulting reduction to the overall bulk and scale of the development, through:
  - redesigning the rear (eastern) two dwellings so as to make them single storey;
  - in conjunction with the redesign of the rear dwellings, reducing the overall length of the upper level component by 4.0 metres, giving the upper level a setback of 10 metres to the rear (eastern) boundary;
  - increasing the substantive upper floor setback from the northern boundary to 4.35 metres;
  - increasing the substantive ground floor setback from the southern boundary to 4.86 metres;
  - reducing the height of the north, south, east and west elevations by 1.0m -1.3m through the removal of parapets and replacement with a corrugated iron roof with a 3 degree pitch.
- removal of all four north and south facing upper level balconies;
- an overall reduction in the building footprint at undercroft, ground and first floor level, which results in:
  - an increase in the area of private open space at ground level for each dwelling;
  - an increase in the landscaping area provided; and
  - a reduction in the extent of site works required.

The Applicant has also provided some supporting information to demonstrate the extent of the changes proposed. In this regard, the floor plans contained in **Attachment B28** highlight the extent to which the overall floor area has been reduced at ground and upper floor level. A total floor plate reduction of 178m<sup>2</sup> is proposed, which is the equivalent of approximately two small apartments.

The Plan contained **Attachment B22** includes a graphic representation which demonstrates the reduced visual impact of the development, when viewed from 11 Hampton Grove, Norwood, due to the increased rear setback and reduced number of dwellings and building mass.

Updated shadow diagrams, landscaping plans and an urban design statement by Mr Ross Bateup have also been provided as well as an amended Waste Management Plan.

Consistency with the desired character of the zone

The Applicant has submitted an updated Urban Design Statement of Support by Mr Ross Bateup, who has qualifications and experience in architecture, urban design and town planning.

Mr Bateup has stated:

*“from an overview of the desired character for residential development in the zone, it is apparent the Plan and the Zone allow for a range of dwelling types up to two storeys high. Increased density is also anticipated e.g. a residential flat building as proposed”*

and

*“In my opinion the proposed development of a two-storey residential flat building with land division outside of the character pockets is consistent with the desired character of the Zone in terms of land use and development density”*

In response to the desire expressed in the Desired Character Statement for the design of buildings to be innovative and contemporary, Mr Bateup has opined:

*“the design of the whole site reflects an urban design awareness of a high standard”*

and

*“the design shows a commendable practical understanding that results in a proposal comfortable in a streetscape setting eg. designing with the street trees, pedestrian crossing safety considerations, driveway entrance (set well back from the street), facade symmetry and a building design responding to the Plan and Zone desired character”.*

Mostly single storey appearance to the street

This reason for refusal has been derived from Principle of Development Control 6, which states:

*“For sites identified on Concept Plan Fig RC(N)/1, where two-storey development is proposed, it should be designed to achieve a mostly single-storey streetscape appearance...”*

As the subject land is not a site identified on Concept Plan Fig RC(N)/1, Principle 6 does not apply. Therefore, the proposal is not required to have a mostly single storey appearance to the street.

The height and length of upper level walls have not been minimised

This reason for refusal has been derived from the Desired Character Statement, which states:

*“Outside of the localities identified on Concept Plan Fig RC(N)/1, opportunities will be provided for increasing the density of a site. Building heights of up to two (2) storeys may occur, however, where proposed, consideration will be given to the impact of second storey walls from neighbouring properties. In this context, it will be important that the height and length of upper storey walls are minimised and finished and articulated in such a way so that they are visually recessive and do not create any unreasonable overshadowing impacts.”*

Mr Bateup notes that the length of the building is determined by the site dimensions, the built form design and the zone complying front and rear setbacks. He proceeds to opine that the apparent bulk of the building is reduced by the architectural elements and articulation of the north elevation with rigorous articulation of the south elevation with deep shade reveals and boxed out window protrusions. Mr Bateup also notes that the elevation treatment also reduces the potential for overlooking at the upper level and that the upper level length of the building as amended is reduced by approximately 4.0 metres as a result of an increase of the rear setback from 6.0 metres to 10.030 metres at the upper level.

It is also worth noting that the height of the north, south, east and west elevations has been reduced towards the centre and rear of the development by 1.0m -1.3m through the removal of upper level parapets and the removal of two dwellings.

The combination of reducing the number of dwellings, removing parapets, removing the north and south facing upper level balconies that would have had to incorporate solid screens and increasing the rear setback has resulted in a significant reduction of the height and length of upper level walls and a commensurate reduction in visual and overshadowing impacts to occupants of adjacent dwellings. Given the scale and intensity of development that can be reasonably anticipated on the subject land, it is considered that the height and length of the upper level walls has been minimised.

*The proposal includes undercroft garaging whereas the development plan states that undercroft should only be on the western side of Osmond Terrace*

This reason for refusal has been derived from Principle of Development Control 18, which states:

*“Undercroft or below ground garages should only be developed on sites located along the western side of Osmond Terrace.”*

Mr Bateup has opined that the decision to create an undercroft carpark is an innovative and contemporary design approach that responds to the development potential on a relatively large site, within a Zone that allows for the development of a mix of protected historic pockets of historic dwellings and other allowable dwelling types. The design approach takes advantage of the east west site fall of approximately 1 metre. By creating a car parking area beneath the building, Mr Bateup previously suggested the design utilises the slope to simplify the access driveway and allows a constant finished floor level on the east west axis.

Mr Bateup also suggests that the lack of support in the Development Plan for undercroft parking in the zone is inconsistent with the intent of the Desired Character Statement.

*The bulk and scale of the proposal will have an unreasonable overshadowing and visual impact variously on the properties immediately to the south and east of the subject land.*

Mr Bateup has considered the shadow diagrams which were submitted with the application and has agreed with the interpretation in the previous Council staff report, that the winter solstice impact is reasonable and in accordance with the Development Plan. He also notes that the overshadowing impacts will be further reduced as a result of the amended design, the reduced building floor plate at ground and upper floor level and the increased setback to the southern boundary.

In relation to the visual impact of the proposal on the properties immediately to the south and east of the subject land, Mr Bateup considers that the apparent bulk of the building is reduced through ‘rigorous articulation’ and design elements such as:

*“variable sized alfresco patios, planter boxed, trees of variable height, variable upper level roof overhangs, verandahs, translucent alfresco roofs, screen fences, a mix of compatible materials and a non-monochromatic paint scheme”.*

Mr Bateup also notes that the introduction of a low line pitched roof with protruding eaves has the effect of reducing wall heights (assisted by the removal of parapet walls) giving a conventional residential facade appearance to the north, east and south elevations.

### Other

Although the Panel did not express a concern with the proposed landscaping in their reasons for refusal, the applicant has submitted a new landscaping plan by Oxigen Landscape Architects. The plan includes various tree plantings around the perimeter of the site, as well as hedges and various ground covers. The Plan details increased landscaping along the Elizabeth Street frontage and more importantly, along the north and south boundaries of the site.

A detailed Waste Management Plan has also been provided by the Applicant.

### **Summary**

The additional supporting information reflects the views expressed in the previous Council staff report to the Panel. The new landscaping plan provides an increased level of detail and is considered to represent an improvement to the proposal.

The nature of the proposed changes in the compromise proposal address several of the Panel's original reasons for refusal. In this regard, in the opinion of staff, the Panel's concerns regarding the height and length of upper level walls as well as concern regarding the visual and overshadowing impacts of the development proposal, have been adequately addressed.

The Panel's concern regarding the lack of a single storey appearance to the street for the proposed building is not considered a valid reason for refusal and the supporting information provided by Botten Levinson Lawyers and Mr Bateup in relation to the suitability of the design in light of the desired character of the zone is considered accurate.

The provision of undercroft garaging remains an outstanding design issue of concern to the Panel which has not been addressed, however, the provision of the undercroft garaging is supported by staff for the reasons outlined in the previous staff report and is further supported by the supporting information provided by the Applicant as part of the compromise proposal.

Accordingly, the proposal is considered to sufficiently accord with the relevant Development Plan to warrant consent, for the reasons set out in the previous report.

### **RECOMMENDATION**

That the Environment Resources and Development Court be advised that the Council Assessment Panel is satisfied that the amended proposal sufficiently accords with the Development Plan to merit Development Plan Consent, subject to the following conditions (or any similar conditions deemed appropriate by the ERD Court):

#### Relevant Plans

- Plan of Division prepared by Cavallo Forest & Associates, numbered REF No. 18-256 Rev 06, dated 5 July 2019.
- plans and elevations by D'Andrea Architects, Sheet 01 Rev D, Sheet 02 Rev D, Sheet 03 Rev H, Sheet 04 Rev G and Sheet 05 Rev F, all dated 8 July 2019.
- Waste management plan by D'Andrea Architects, dated 8 July 2019
- Landscaping plan by Oxigen, Drawing Number 001, Revision C, dated 5 July 2019.

#### Conditions

1. A Stormwater Management Plan shall be prepared and provided to the reasonable satisfaction of the Council prior to the issuing of development approval, which demonstrates stormwater discharge from the subject land being maintained at pre-development levels. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.

2. Tree protection zones (TPZ's) shall be established around the two street trees adjacent the land, in accordance with advice obtained from the Council's City Arborist, prior to demolition and shall be maintained throughout construction.
3. All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.
4. The trees to be planted adjacent to the balconies of Dwellings 13 and 14, shall have a minimum height at the time of planting, of 2.5 metres.
5. Each dwelling shall be installed with a rainwater tank with a storage capacity not less than 2 kilolitres (2000 litres), or alternatively, a 30 kilolitre (30,000 litres) communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.
6. The portion of the upper floor windows on the northern, eastern and southern sides, less than 1.7 metres above the floor levels, shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony to the reasonable satisfaction of the Council or its delegate.

#### 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'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.
5. 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.

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.
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Moved

*That the Environment Resources and Development Court be advised that the Council Assessment Panel is satisfied that the amended proposal sufficiently accords with the Development Plan to merit Development Plan Consent, subject to the following conditions (or any similar conditions deemed appropriate by the ERD Court):*

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1. *A Stormwater Management Plan shall be prepared and provided to the reasonable satisfaction of the Council prior to the issuing of development approval, which demonstrates stormwater discharge from the subject land being maintained at pre-development levels. Sufficient storage (above or below ground) shall be provided to safely contain stormwater runoff from the contributing catchments for a 5 year ARI rainfall event.*
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  3. *All areas nominated as landscaping or garden areas on the approved plans shall be planted in accordance with the landscaping plan and schedule, prior to the occupation of the premises and shall be maintained to the reasonable satisfaction of the Council or its delegate.*
  4. *The trees to be planted adjacent to the balconies of Dwellings 13 and 14, shall have a minimum height at the time of planting, of 2.5 metres.*
  5. *Each dwelling shall be installed with a rainwater tank with a storage capacity not less than 2 kilolitres (2000 litres), or alternatively, a 30 kilolitre (30,000 litres) communal rainwater tank shall be installed, with each dwelling contributing rainwater from at least 50m<sup>2</sup> of its roof catchment area to the communal tank and in either case, water shall be plumbed to each individual dwelling to a toilet, water heater and/or laundry cold water outlet by a licensed plumber in accordance with AS/NZS 3500 and the SA Variations published by SA Water. Details of the installation shall be provided with application for Building Rules Consent.*
  6. *The portion of the upper floor windows on the northern, eastern and southern sides, less than 1.7 metres above the floor levels, shall be treated prior to occupation of the building in a manner that permanently restricts views being obtained by a person from the balcony to the reasonable satisfaction of the Council or its delegate.*
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7. *The feature trees to be planted adjacent the rear boundary incorporate a minimum planting height of 2.5m.*

Notes to Applicant

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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*

**3. OTHER BUSINESS**

Nil

**4. CONFIDENTIAL REPORTS**

Nil

**5. CLOSURE**

The Presiding Member declared the meeting closed at 9:04pm

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**Terry Mosel**  
Presiding Member

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**Mark Thomson**  
Manager Development Assessment