

Council Assessment Panel Agenda & Reports

19 August 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.*

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

15 August 2019

To all Members of the Council Assessment Panel:

- Mr Terry Mosel (Presiding Member)
- Ms Jenny Newman
- Mr Phil Smith
- Ms Fleur Bowden
- Mr John Minney

NOTICE OF MEETING

I wish to advise that pursuant to Section 56A of the *Development Act 1993*, the next Ordinary Meeting of the Norwood Payneham & St Peters Council Assessment Panel, will be held in the Mayor's Parlour, Norwood Town Hall, 175 The Parade, Norwood, on:

Monday 19 August 2019, commencing at 7.00pm.

Please advise Kate Talbot on 8366 4562 or email ktalbot@npsp.sa.gov.au if you are unable to attend this meeting or will be late.

Yours faithfully

Mario Barone
CHIEF EXECUTIVE OFFICER

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City of
**Norwood
Payneham
& St Peters**

1.	CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL HELD ON 15 JULY 2019	1
2.1	DEVELOPMENT APPLICATION 155/124/2019 – MINICOZZI (OSMOND TERRACE) PTY LTD – 114A OSMOND TERRACE, NORWOOD	2
2.2	DEVELOPMENT APPLICATION 155/770/2018 – J&DE HOMES PTY LTD – 44 SHELLEY STREET, FIRLE	11
2.3	DEVELOPMENT APPLICATION 155/265/2019 – D'ANDREA ARCHITECTS – 16 REGENT PLACE, KENSINGTON.....	23
2.4	DEVELOPMENT APPLICATION 155/307/2019 – ASPEX BUILDING DESIGNERS – 32 PORTRUSH ROAD, PAYNEHAM.....	33
2.5	DEVELOPMENT APPLICATION 155/D026/2019 – GIMENEZ INVESTMENTS PTY LTD – 11A PHILLIS STREET, MAYLANDS.....	41
3.	OTHER BUSINESS	48
4.	CONFIDENTIAL REPORTS	48
5.	CLOSURE	48

VENUE Mayors Parlour, Norwood Town Hall

HOUR

PRESENT

Panel Members

Staff

APOLOGIES Ms Fleur Bowden, Mr Phil Smith

ABSENT

- 1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT
 PANEL HELD ON 15 JULY 2019**

2. STAFF REPORTS

2.1 DEVELOPMENT APPLICATION 155/124/2019 – MINICOZZI (OSMOND TERRACE) PTY LTD – 114A OSMOND TERRACE, NORWOOD

DEVELOPMENT APPLICATION:	155/124/2019
APPLICANT:	Minicozzi (Osmond Terrace) Pty Ltd
SUBJECT SITE:	114A Osmond Terrace, Norwood (Certificate of Title Volume: 6159 Folio: 892)
DESCRIPTION OF DEVELOPMENT:	Demolition of a dwelling and the construction of a replacement dwelling
ZONE:	Residential Character (Norwood) Zone Norwood, Payneham and St Peters (City) Development Plan (dated 19 December 2017)
PUBLIC NOTIFICATION CATEGORY:	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 for the demolition of a dwelling (a Local Heritage Place) and the construction of a replacement dwelling.

Staff do not have delegated authority to determine the Application, as it is a Category 3 application. 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.

Background

In November 2005, an extreme flood event caused water levels within First Creek, Norwood to rise and flood a large number of dwellings, including the dwellings at 112 Osmond Terrace and 114A Osmond Terrace. Following the flood, the Council undertook extensive flood mitigation works to significantly improve the capacity of First Creek, thereby improving the flood protection of nearby dwellings.

In 2006 and 2007 respectively, the owners of 114A and 112 Osmond Terrace lodged separate development applications seeking approval to demolish the dwellings on those properties. Arguments which were put in support of the applications related to the flood-prone nature of the dwellings and the limited extent of heritage value they possess. There was little to no suggestion that either dwelling was structurally unsound.

The Development Assessment Panel (DAP) refused the development applications for the demolition of the dwellings at 114A and 112 Osmond Terrace on 19 February 2008 and 18 June 2008 respectively. In both instances, the DAP placed little weight in its assessment, on the extent to which the properties are prone to flooding and/or the relative heritage value of the properties. Rather, the DAP focussed its assessment on the one policy of the Development Plan which directly applies to applications to demolish a Local Heritage Place; City Wide Principle of Development Control 363 (current numbering). In relation to development applications for entire demolition of a Local Heritage Place, Principle 363 effectively only applies a structural condition test.

Both of the decisions of the DAP were subsequently appealed to the Environment Resources and Development Court (the ERD Court). The ERD Court joined the appeals together, given that the same issues were dealt with in both. The joined appeals proceeded to a hearing and the Court upheld the DAP's decisions.

The owner of 112 Osmond Terrace subsequently appealed the decision of the ERD Court to the Supreme Court. The Supreme Court found that the ERD Court (and by implication the DAP) had erred in the manner in which it had approached the assessment. In particular, it was found that insufficient weight had been placed in the assessment of the application, on the extent to which the dwelling was prone to flooding and the relative heritage value of the property. A copy of a review of the Supreme Court decision, which was prepared by Council staff for the DAP meeting held on 16 August 2010, is contained in **Attachment A**.

In February 2010, development plan consent was granted to Development Application number 155/520/09, for two storey additions to the rear of the existing dwelling at 114A Osmond Terrace. The consent has subsequently lapsed.

In October 2014, development approval was granted to Development Application number 155/170/13, for alterations and additions to the existing dwelling, including the construction of a freestanding carport and front fence; and the construction of two (2), three-storey detached dwellings fronting Brown Street, with associated fencing and landscaping. The approval included the construction of a flood protection wall alongside the creek, to protect the existing dwelling from flooding.

The approval to DA 155/170/13 has been partially implemented. In particular, the two new dwellings fronting Brown Street have been constructed, as has the flood protection wall. However, the additions and alterations to the Local Heritage Place, which included restoration works to the facade, have not been undertaken.

Subject Land Attributes

The subject land is a large allotment with a frontage to Osmond Terrace of approximately 27.4 metres and a depth of approximately 36 metres, with an additional 19 metres depth provided for a narrow (approximately 3m wide) section adjacent the southern boundary, providing access to Brown Street at the rear. The total site area is approximately 1028m².

The subject land is located adjacent to First Creek to the north. The subject land is occupied by a large Federation style dwelling constructed Circa 1900's. The dwelling is listed as a Local Heritage Place and is described in a Heritage Survey by Mark Butcher Architects in 1994 as:

"An attractive single storey Federation masonry house with complex hipped roof with feature gablets and integral front verandah with side return. Notable for its attractive design and relative intactness. Set in a mature garden behind a wonderful Pittosporum hedge. Appears to be in good condition for its age."

and

"a good, relatively intact example of a well built Federation house. It is associated with an important period of Norwood's development, ie. the latter end of the 1880's-1900 boom. It is indicative of the way of life in Norwood at that time and in particular of the better quality house found on Osmond Terrace. It is an attractive building architecturally, forming part of an important group of imposing larger Victorian/Edwardian houses located in Osmond Terrace."

The dwelling was listed as a Local Heritage Place, having been deemed by the Council, the Local Heritage Advisory Committee (LHAC) and the Minister for Urban Development and Planning, to satisfy the following criteria pursuant to Section 23 (4) of the *Development Act 1993*:

- (a) it displays historical, economic or social themes that are of importance to the local area;
- (b) it represents customs or ways of life that are characteristic of the local area; and
- (c) it displays aesthetic merit, design characteristics or construction techniques of significance to the local area.

Locality Attributes

The locality is characterised by a wide range of dwelling types and styles, including several original detached dwellings with heritage significance, later detached dwellings of various age and style and medium density infill in the form of residential flat buildings, row dwellings and semi-detached dwellings.

A detached brick dwelling with gabled roof form, which appears to be approximately twenty (20) years old is located immediately north of the subject land at 114 Osmond Terrace. The front fence of this property doubles as a bridge parapet and is listed as a Local Heritage Place. Further north at 112 Osmond Terrace, is a Victorian cottage, also listed as a Local Heritage Place. Two (2) more Victorian cottages, with no heritage listing are located to the south of the subject land at 116 and 118 Osmond Terrace. Other Local Heritage Places in the locality include an Edwardian Villa at 103 Osmond Terrace and a Victorian cottage at 103 Osmond Terrace.

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

Proposal in Detail

The applicant is seeking consent to demolish the existing dwelling on the land and construct a replacement dwelling.

The proposed replacement dwelling is two storeys in height and has a double-width garage facing Osmond Terrace. The dwelling is a contemporary 'flat roof' design, with stone cladding at ground floor level and standing seam sheet metal cladding at upper level.

A retaining wall of approximately 660mm height is proposed to be constructed 1.1m inside the front property boundary, with a 2.1m high steel picket fence above, returning along the length of the driveway. The 1.1m setback between the street boundary and the retaining wall/fence is proposed to be landscaped.

A copy of the development application is contained in **Attachment C**.

Notification

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

Ten (10) representations were received in response to this notification, copies of which are contained in **Attachment D**. Nine of the representations were in opposition to the application and one was in favour of the application.

The following representors desire to be heard personally by the Council Assessment Panel:

- *Ms Judith Brine;*
- *Ms Rowena Dunk;*
- *Mr Jim Dunk;*
- *Mrs Christine Francis; and*
- *Mr Alexander Wilkinson.*

In summary, with the exception of the one representor who was in favour of the application, the representors do not consider that the existing dwelling should be demolished, as they consider that it is important from a heritage conservation perspective and is not excessively prone to flooding.

Mr Phillip Brunning of Phillip Brunning and Associates, has responded to the representations on behalf of the applicant. Mr Brunning disagrees with the view of the majority of the representors, opining that the heritage value of the property has diminished and that the property is prone to flooding to an excessive degree. A copy of the response to the representations is contained in **Attachment E**.

State Agency Consultation

The Development Regulations 1993 do not require consultation with State Government Agencies.

Discussion

Zoning and land use

The subject land is located within the Residential Character (Norwood) Zone of the City of Norwood Payneham & St Peters (City) Development Plan. The proposed development is neither identified as being complying nor non-complying, and accordingly is required to be assessed on its merits having regard to the relevant provisions of the Development Plan.

The Desired Character Statement for the Residential Character (Norwood) Zone recognises the importance of buildings of heritage significance within the zone, by stating:

“Although the built form character throughout Norwood is relatively varied, there remains a strong theme associated with the historic built form, which includes a significant number of Local Heritage Places and buildings constructed before 1940 and is further supported by the areas of Residential Historic (Conservation) Zone, which are found throughout Norwood. The regular street grid pattern and the high level of vegetation, including mature street trees and landscaped gardens, are elements that assist in unifying the various eras of built form development in Norwood.”

With the exception of Local Heritage Places and State Heritage Places, demolition is a complying form of development within the Residential Character (Norwood) Zone and detached dwellings, amongst other dwelling types, are an anticipated new land use.

Demolition

Several City Wide provisions of the Development Plan are aimed at the conservation and enhancement of buildings within the Council area which are identified as Local Heritage Places or State Heritage Places. The most relevant of these provisions are set out below:

Objective 111: *“Conservation of places and objects registered, designated or listed pursuant to the Heritage Places Act 1993.”*

Objective 113: *“Development that retains the heritage value of State and Local Heritage Places such that the heritage value of the place, locality and the Council area is reinforced through:*

- (a) the conservation and complementary development of such places; and*
- (b) the complementary development of land and sites adjacent to such places.”*

Objective 114: *“Development which conserves and reinforces the historic integrity of the Council area and is compatible with the desired character of the appropriate zone and policy area.”*

Principle 346: *“All development involving or affecting State and Local Heritage Places, as designated in Tables NPSP/5 and 6, should ensure that those places are retained, restored, rehabilitated, altered and added to, in an appropriate manner, which:*

- (a) preserves, respects and complements the original integrity, character, scale and bulk, street frontage, architectural style, design, roof form and pitch, window and door openings and specific features, materials, colours and finishes of the existing identified place; and*
- (b) maintains or reinstates the integrity and prominence of the original street frontage and significant streetscape, setbacks and other aspects and features.”*

Principle of Development Control 363 reinforces the need to retain Local Heritage Places, whilst setting out the limited circumstances under which demolition may occur:

Principle 363: *“A Local Heritage Place should not be demolished or removed, in whole or in part, unless:*

- (a) that portion of the place to be demolished or removed does not contribute to the heritage value of the place; or*
- (b) it can be demonstrated that the structural condition of the place is seriously unsound and cannot be rehabilitated, which is verified by appropriate independent, qualified expert advice; and*
- (c) in either of the circumstances described above, a heritage impact statement has been prepared by an independent qualified heritage expert, reviewing the heritage values of the place and including an assessment of the proposed demolition or removal on the heritage value of the place.”*

Part (a) of Principle 363 is not relevant to the assessment of a proposal to demolish an entire Local Heritage Place building.

Part (b) is relevant to the proposal and provides for a Local Heritage Place to be demolished in circumstances where the building is seriously unsound and cannot be rehabilitated. In this respect, no information has been provided to suggest that the structural condition of the dwelling is seriously unsound.

With respect to part (c) of Principle 363, it is important to understand the intent behind its inclusion within the policy. The intent of part (c) is two-fold. Firstly, in instances where only part of a Local Heritage Place is proposed to be demolished, a report from a heritage expert is useful in determining the impact on the remaining portion of the place. Secondly, in instances of applications for total demolition of a place based on its structural condition, it is useful to consider the views of a heritage expert on whether the place has deteriorated since its listing to an extent that it no longer warrants protection, or whether any works required to make the place structurally sound would unreasonably affect the heritage value of the place.

In the Supreme Court appeal, there were mixed views amongst the Judges, as to whether or not the relative heritage value of the dwelling should be a factor in the assessment of the Application. Justice Kourakis was of the opinion that the heritage value is a relevant consideration and should be weighed up against the ‘residential flooding standard’. By implication, Justice Kourakis seems to be suggesting that a good example of a Local Heritage Place might not warrant demolition, notwithstanding sub-standard flood protection, whereas a relatively average or borderline Local Heritage Place might warrant demolition in those circumstances.

In contrast to this view, Justice Layton considered that the relative heritage value of the property should not be a relevant consideration, until such time as it has first been determined that Principle 363(b) has been satisfied, in that the dwelling is structurally unsound. This is due to the structure of Principle 172 whereby clause c, which requires a heritage statement to be provided by the Applicant, is required only after clauses a or b have been satisfied.

Whilst there remains some uncertainty over the extent to which the relative heritage value of the dwelling is relevant to the assessment of the application, it is considered appropriate to give it some consideration.

The Applicant has submitted a report by Mr Douglas Alexander of Flightpath Architects, which provides an assessment of the heritage value of the property. In summary, Mr Alexander has advised:

- the integrity of the Local Heritage Place has suffered through post flooding changes that have occurred and also through lack of use;
- the detailing of the building is modest and not representative of a quality imposing house expected on Osmond Terrace;
- the removal of landscaping has diminished the heritage value, by negatively impacting on its setting;
- the two storey townhouses at the rear of the property (facing Brown Street), has introduced a dominant element and denies the opportunity to construct a meaningful rear addition to the Local Heritage Place.

Mr Alexander has also expressed opinions in relation to the flooding potential of the property and the implications of flood mitigation measures. Those opinions are based on advice from Mr Geoff Fisher of Water Technology, dated 7 January 2019. That report has since been revised in light of more recent flood plain mapping. As a result, the opinions of Mr Alexander with respect to flooding are based on superseded flood advice. In any event, the issue of flooding appears to be of little relevance to the heritage value of the property. A copy of the report by Mr Alexander is contained in **Attachment F**.

The Council's Heritage Advisor, David Brown, has reviewed the advice of Mr Alexander and the following is a summary of his advice:

- it appears that Douglas Alexander was not aware of the historical significance of the building, as set out in the report by historian Patricia Sumerling in 2008;
- Mr Alexander's interpretation of the house as being a "building of fairly ordinary construction and aesthetic merit" shows a lack of understanding of the history of the building, and the period in which it was built. Just because the building is not a highly decorated Victorian or Federation house, does not make it less important. In fact in this case it is probably more important as a stand-out architect designed dwelling that was at the cutting edge of the current style at the time of construction;
- the suggestion that the proximity of the two new dwellings deny any future rear or side addition to the Local Heritage Place indicates Mr Alexander is not aware of the application that was approved for a high quality outcome for the original house as a part of the application to construct the two new dwellings;
- it is recognised that these new dwellings at the rear do have a visual impact on the setting of the Local Heritage Place. This was judged as an acceptable intrusion at the time, as the application included the additions, alterations and conservation works to the Local Heritage Place. These positive works were judged to adequately offset the slightly negative impact of the large rear structures; and
- the loss of landscaping in reality has little impact on the heritage value of the property, as any new owner with a will and pride would landscape the property and resolve this issue.

A copy of the advice from Mr Brown is contained in **Attachment G**.

Having regard to the reports by Mr Alexander and Mr Brown, it is considered that the Local Heritage Place remains a highly valuable heritage building, based on its historical significance, as well as its architectural merit.

Flooding

Although there are no provisions within the Development Plan which directly provide for flood risk to be taken into consideration when considering the demolition of a Local Heritage Place, it is clear from the Supreme Court decision, that flood risk is a relevant consideration. The Development Plan sets standards of flood protection for new buildings and therefore, when applying the Development Plan as a practical guide, it can be inferred that the Development Plan intends for all dwellings, regardless of age, to be afforded a reasonable level of flood protection.

That is not to say that the Development Plan requires that historic dwellings have the same level of flood protection as a new dwelling. Rather, the Supreme Court judgement suggests that flooding should be given due consideration and weighed against all other relevant considerations, including the heritage value of a property.

Mr Geoff Fisher of Water Technology has provided flood advice on behalf of the Applicant. He has provided two reports; an initial report dated 17 May 2019 and a supplementary report dated 21 July 2019. Mr Schalk has provided two reports for the Council; an initial report dated 9 July 2019 and a supplementary report dated 7 August 2019. All flood reports are included in **Attachment H**.

Reliability of Modelling

In the opening section of his 17 May report, Mr Fisher has suggested that the most recent flood modelling by Tonkin Consulting is unreliable, due to the use of disclaimers by Tonkin Consulting as to the accuracy limitations and the possibility of blockages during a storm event. For these reasons, Mr Fisher has recommended a freeboard of 500mm above the 100 year average return interval (ARI) flood level, rather than the industry standard 300mm freeboard.

With respect to the limitations on accuracy, the latest modelling is far more accurate than previous modelling undertaken in 2005 and is the most accurate modelling available for the creek system. In this context, it is considered reasonable and appropriate to base a flood assessment on the modelling.

With respect to the possibility of blockage of the creek system during a storm, it is not considered reasonable to base any flood assessment on such an occurrence. No flood modelling can predict the effect of every possible form and location of blockage or impediment. The standards which are typically used for determining the minimum floor area of a new dwelling (ie. 300mm above 100 year ARI flood level) already provides a contingency (ie. 300mm) for factors which could lead to a greater level of flooding than what is predicted based on modelling. It is not usually the practice of Hydrology Engineers to recommend floor levels of more than 300mm above the 100 year ARI flood level, due to the possibility of blockages or other unforeseen events.

Floor Level and Flood Levels

The 100 year ARI flood level in Osmond Terrace immediately west of the property, is 59.0 mAHD.

The 100 year ARI flood level in First Creek immediately north of the property, is 58.5 mAHD.

The existing dwelling has a finished floor level of 58.98 mAHD, or 20mm below the 100 year ARI flood level in Osmond Terrace.

Existing Flood Protection

Despite having a floor level 20mm below the 100 year ARI flood level, the existing dwelling is protected against inundation in a 100 year ARI flood event. This protection is provided through a combination of flood protection measures associated with the townhouses at the rear and the flood protection wall which was constructed alongside the creek to the north of the dwelling.

Mr Fisher has suggested that the 3m wide access path located south of the two townhouses is a potential flood path in a 100 year ARI event. In this respect, the development approval for the townhouses included a requirement for the level of that path to be raised to achieve a high point which would afford a 400mm freeboard above the 100 year ARI event.

The flood wall which has been constructed alongside the creek, north of the Local Heritage Place, provides a freeboard of 500mm above the 100 year ARI flood level.

Water Entry from Osmond Terrace

With existing flood protection measures east and north of the dwelling providing 400mm and 500mm freeboard above the 100 year ARI flood level respectively, the only remaining possibility of water approaching the dwelling in such an event, is from Osmond Terrace.

There is a natural depression or 'sag' in Osmond Terrace, adjacent to the subject land. The footpath adjacent to the subject land provides a 150mm freeboard above the 100 year ARI flood level.

Mr Fisher has suggested that the central median in Osmond Terrace is higher than the footpath, such that any flood waters would be forced onto the subject land, rather than continuing west across Osmond Terrace. Mr Schalk has pointed out that the survey information provided with the application shows that the central median is in fact 40mm below the footpath level in front of the subject land.

Mr Schalk has also advised that, even if flood waters did enter the property from the front boundary (rather than overtopping the central median), this does not mean that the dwelling would be simultaneously flooded, as the ground levels on the subject land are lower than the floor level of the dwelling, such that there is holding capacity. In addition, since the ground levels on the subject land are approximately 300mm higher than the 100 year ARI flood level in First Creek, Mr Schalk has advised that drainage of the site to the creek is possible.

Possible Further Flood Protection

Whilst it appears from the advice of Mr Schalk that a 100 year ARI flood event would not lead to inundation of the Local Heritage Place, there are additional flood mitigation measures which could be readily introduced to provide further flood protection. One option would be to construct a low wall or bund across the frontage of the property. Only 150mm height would be required above footpath level to achieve a 300mm freeboard above the 100 year ARI level in Osmond Terrace.

Another option, as advised by the Council's Project Manager –Assets, would be to install additional side entry pits in Osmond Terrace, to drain flood waters into First Creek, since the 100 year ARI level is lower in First Creek than in Osmond Terrace.

Development Plan Flood Considerations

City Wide Principle of Development Control 171 states:

“the finished ground floor level of all habitable spaces should not be less than 300mm above the 1 in 100 year Average Recurrence Interval floodplain”

Applying the findings of the Supreme Court appeal, Principle 171 signals a desirable planning outcome that all properties within the Council area (old or new) are afforded a suitable level of flood protection.

Similarly, an extension of the intent behind City Wide Principle of Development Control 363(b), quoted below, could be that a Local Heritage Place should be able to be demolished if it is uninhabitable on a regular basis, due to a circumstance such as flood damage.

*“A Local Heritage Place should not be demolished or removed, in whole or in part, unless:
...(b) it can be demonstrated that the structural condition of the place is seriously unsound and cannot be rehabilitated, which is verified by appropriate independent, qualified expert advice; and...”*

That said, in the true spirit of treating the Development Plan as a practical guide for practical application, it is important that the intent behind the provisions of the Development Plan pertaining to retention of Local Heritage Places is also factored into the assessment.

In the case of the current Application, the advice of Mr Schalk, is that the dwelling is likely to be unaffected by a 100 year ARI flood event. Even if the 100 year flood level in Osmond Terrace was to reach the floor level of the dwelling (which Mr Schalk considers unlikely), this would mean that the dwelling would flood to a level of 20mm on average once every 100 years. Furthermore, relatively simple and inexpensive measures could be taken to increase the level of protection to achieve a 300mm or greater freeboard above the 100 year ARI level.

Part of the broad intent behind Principle 363, is that buildings of local heritage value are to be retained, even in circumstances where considerable cost and effort may be incurred by the owner of the place in order to maintain the building in serviceable condition. In this respect, the expectation of retention is higher than it is for a Contributory Item, as evidenced in the difference in the structural condition tests. A Local Heritage Place should not be demolished unless the structural condition is *“seriously unsound and cannot be rehabilitated”*, whereas a Contributory Item should not be demolished unless the condition is *“structurally unsound and substantial rehabilitation work is required to an extent that is unreasonable”*.

In the case of 114A Osmond Terrace, the place is structurally sound, however may require some repair work if it is flooded; which based on the advice received, is likely to occur less frequently than every 100 years on average, even without any further flood mitigation works. Retention of the place is therefore considered to be consistent with the intent behind Principle 363.

Ultimately, as previously stated, the Panel needs to be aware that flood risk should be taken into consideration as part of the assessment of the Application. However, in the opinion of staff, in light of the minimal extent of flooding and the infrequent occurrence which is likely to affect the subject land, it should be given only minor consideration in this instance.

Replacement Dwelling

The subject land is an identified site in Residential Character (Norwood) Zone Concept Plan Fig RC(N)/1. Therefore, Principle of Development Control 6 applies and requires that new dwellings achieve a “mostly single storey appearance from the primary street frontage”.

The upper level of the proposed dwelling is set back 3.4 metres behind the ground level facade (the elevations show a 4.7m dimension, however that is measured from projecting ground level wing walls, rather than the facade). This minimal setback, combined with the fact that there is no visible roof over the projecting ground level section, is considered to result in a building which presents to the street as mostly two storey in appearance, inconsistent with Principle 6.

Principle of Development Control 13 states that dwellings on sites identified on Concept Plan Fig RC(N)/1, should complement and reinforce the character and design elements of the pre 1940's dwellings in the locality, particularly with regard to roof pitch, verandah treatments and window proportions. The proposed dwelling does not achieve Principle 13, as it does not have a visible roof form.

Summary

The proposal does not meet the requirements of City Wide Principle of Development Control 363, which deals specifically with the demolition of Local Heritage Places. The structural condition of the dwelling is not seriously unsound.

Having regard to the advice provided by the heritage advisors, it is considered that the heritage value of the property is significant and has not altered substantially since its original listing.

Having regard to the advice of the Hydrology Engineers, the Local Heritage Place is unlikely to be affected by a 100 year ARI flood event and there are simple measures which could be implemented to further improve the level of flood protection.

The proposed replacement dwelling does not achieve the criteria for new dwellings on sites identified in Concept Plan Fig RC(N)/1, as it does not present to the street in a mostly single storey form and does not complement and reinforce the design elements of pre-1940's dwellings, particularly with respect to roof pitch.

Accordingly, the Application is not considered to be seriously at variance with the Development Plan, however does not sufficiently accord with the relevant provisions of 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 **refused** to Development Application No 155/124/19 by Minicozzi (Osmond Terrace) Pty Ltd to demolish a dwelling and construct a replacement dwelling, for the following reasons:

1. The proposed demolition is contrary to City Wide Objectives 111, 113 and 114 and Principle of Development Control 346, all of which encourage the retention and/or conservation of Local Heritage Places.
2. The proposed demolition is contrary to City Wide Principle of Development Control 363, as the structural condition of the dwelling is not seriously unsound and it can be rehabilitated.
3. The existing dwelling is afforded a reasonable level of flood protection and there are further flood mitigation measures available to further improve the level of protection.
4. The proposed replacement dwelling is inconsistent with Residential Character (Norwood) Zone Principles of Development Control 6 and 13, as it does not appear mostly single storey from the street and does not complement and reinforce the design elements of pre-1940's dwellings, particularly with respect to roof pitch.

2. STAFF REPORTS

2.2 DEVELOPMENT APPLICATION 155/770/2018 – J&DE HOMES PTY LTD – 44 SHELLEY STREET, FIRLE

DEVELOPMENT APPLICATION:	155/770/18
APPLICANT:	J&DE Homes PTY LTD
SUBJECT SITE:	44 Shelley Street, Firle (Certificate of Title Volume: 5112 Folio: 211)
DESCRIPTION OF DEVELOPMENT:	Construction of a two-storey residential flat building (containing four (4) dwellings), associated civil works and landscaping
ZONE:	Residential Zone Medium Density Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 21 March 2019)
PUBLIC NOTIFICATION CATEGORY:	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 residential flat building containing four (4) two storey dwellings, associated civil works and landscaping.

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:	17.68 metres
Depth:	60.96 metres
Area:	1,077.77m ²
Topography:	relatively flat
Existing Structures:	detached dwelling and several outbuildings
Existing Vegetation:	low shrubs and small non-regulated trees

The subject land contains a single-storey bungalow with a tiled roof. A driveway enters the property adjacent to the western side boundary and leads to an attached sheet metal clad garage. The land is relatively flat, with a slight fall of between 210 - 310mm from the front boundary down to the rear boundary.

A Development Application to divide the subject land via Community Title into four (4) Lots ranging in area from 171m² to 258m² and common property has recently been approved under delegated authority, as the land division ostensibly achieves the relevant quantitative provisions of the Development Plan with respect to site area and frontage width. A copy of the approved land division is contained in **Attachment A**.

Locality Attributes

Land uses: predominantly 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. Directly adjacent to the east of the subject land at 46A Gage Street is a single-storey group dwelling. In addition to this, at 48 Shelley Street are five dwellings contained within a single-storey residential flat building.

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 western boundary of the property.

At ground level, each dwelling has a double garage, an open-plan living/meals/kitchen area, laundry and WC. The southernmost dwelling (Dwelling 4) has a ground level bedroom. Each dwelling has an eastern-facing rear yard, while the southernmost dwelling also has a side yard area.

At first floor level, Dwellings 1 – 3 have three bedrooms and bathrooms whereas Dwelling 4 has two bedrooms and two bathrooms.

The dwellings have a relatively traditional appearance, with pitched roofs (25 degrees) and a range of cladding materials, including face brickwork (colour Nubrik 'Chapel Red'), rendered lightweight walls (colour "white"), horizontally fixed wall cladding (James Hardie Stria Panel colour 'Monument') and framed-out feature elements (Matrix Panels with express joints colour 'Monument') and aluminium windows (colour 'Monument').

A 1.8 metre high rendered front wall 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	Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Development Plan Merit Assessment Quantitative Guideline
Site Area	196m ²	158m ²	158m ²	258m ²	No minimum
Allotment Width	13.65m	10.75m	10.75m	12.4m	N/A
Development site width			17.68m		18.0m
Allotment Depth	10.47-11.68m	11.68m	11.68m	11.68m	N/A
External Wall Height*	5.6m	5.6m	5.6m	5.6m	Two-storey
Maximum Overall Height (to roof apex)*	7.4m	7.4m	7.4m	7.4m	Two-storey
Floor Area (total)	168m ²	186m ²	186m ²	154m ²	100m ² internal floor area minimum
Floor Area (footprint)	97m ²	107m ²	107m ²	103m ²	N/A

TABLE 1: DEVELOPMENT DATA *continued...*

Consideration	Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Development Plan Merit Assessment Quantitative Guideline
Site Coverage (excluding common area)	49%	68%	68%	40%	70%
Site Coverage (including common area)			50%		N/A
Private Open Space	51m ² 100% uncovered	40m ² 100% uncovered	40m ² 100% uncovered	63m ² 100% uncovered	35m ²
Street Set-back	4.0-4.8m	N/A	N/A	N/A	4m
Side Set-back (ground level western side)	6.0m	6.0m	6.0m	3.0m	2.5m for Dwellings 2, 3 & 4 1.68m for Dwelling 1
Side Set-back (ground level western side)	3.0 - 3.5m	2.5 - 3.5m	2.5 - 3.5m	2.5m	
Side Set-back (upper level western side)	6.0m	6.0m	6.0m	6.7m	4.5m for Dwellings 2, 3 & 4 1.68m for Dwelling 1
Side Set-back (upper level eastern side)	4.5 - 5.2m	4.5 - 5.2m	4.5 - 5.2m	4.5m	
Rear Set-back (ground level southern side)	N/A	N/A	N/A	2.5m	2.5m
Rear Set-back (upper level southern side)	N/A	N/A	N/A	4.5m	4.5m
Occupant Car Parking Provision	2 spaces	2 spaces	2 spaces	2 spaces	2 spaces per dwelling
Visitor Car Parking Provision			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.

Five (5) representations were received in response to this notification, copies of which are contained in **Attachment D**. Three representors were opposed and two representors were supportive of the Application. Key issues raised by the opposing representors are, in summary:

- concern over two-storey construction;
- concern over loss of privacy for adjacent occupiers;
- concern over compromised living and visual amenity and the change to the established built form landscape;
- concern with the loss of access to northern light;
- concern that the proposed development will generate additional vehicular traffic; and
- concern with the proposed dwelling density.

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

*Steve and Anna-Maria Pizimolas; and
Mauro Totani.*

Through their planning consultant, Future Urban Group, 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% 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 18.0 metres. The subject land has a frontage width of 17.68 metres, representing a 1.8% shortfall, which was considered very minor and acceptable upon assessment and approval of the land division development application.

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 of an 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. These issues are discussed under the relevant headings in the preceding 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 combination of a contemporary and a relatively traditional design 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 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 development with the driveway on the western side of the residential flat building and the provision of a 4.5 – 5.2 meter setback at the upper level from the eastern side boundary, as well as a 4.0 – 4.8 metre front setback, would maintain a sense of space around the building and reflect the intent of the Residential Zone that a ‘suburban’ character be maintained.

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
Residential Zone PDC: 8
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.

The proposal is consistent with this policy, with Dwelling 1 being set back from the street 4.0 - 4.8 metres.

In terms of side and rear setbacks, City Wide Principle of Development Control 202 states that any single-storey component of a two-storey dwelling on a battleaxe, hammerhead or similar configuration allotment or site and a side or rear boundary of the parent development site, should be set back no less than 2.5 metres. City Wide Principle of Development Control 203 states that any two-storey component of a two-storey dwelling on a battleaxe, hammerhead or similar configuration allotment or site and a side or rear boundary of the parent development site, should be set back no less than 4.5 metres.

Principles 202 and 203 apply to Dwellings 2, 3 and 4, all of which achieve and/or exceed the 2.5 metre and 4.5 metre criteria.

Dwelling 1 is not located on a battleaxe, hammerhead or similar configuration allotment or site. As such, Residential Zone Principle of Development Control 8, which applies to dwellings fronting a public road, is relevant and provides a 900mm side back criteria for ground level and 900mm plus 1/3 of the increase in height above 3.0 meters for upper level. In this case, the upper level setback criteria for Dwelling 1 equates to 1.68 metres. Dwelling 1 is set back between 3.0 – 5.2 metres at ground level and between 4.5 – 6.0 metres at upper level. It therefore exceeds the minimum setback criteria for both levels.

In terms of site coverage, Principle of Development Control 7 of the Medium Density Policy Area states that the site coverage for dwellings within residential flat buildings should be designed with a maximum site coverage (inclusive of ancillary structures) of 70%. Each of the proposed dwellings have a site coverage ranging from 40% to 68%, consistent with Principle 7.

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, 235 & 236

City Wide Principle of Development Control 196 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 Applicant has provided shadow diagrams, to demonstrate the extent of overshadowing that would result from the proposed development during the winter solstice. The majority of shadowing of neighbouring properties that is likely to occur, is during the mid-morning period, over portions of the rear yard areas of 33 Gwynne Street (ie. over the existing outbuilding located to the rear of this property) and 35 Gwynne Street. By midday, the extent of shadowing to the rear yards of these two properties has substantially reduced and is only confined to the rear yard of 35 Gwynne Street. In terms of the mid-afternoon period, the majority of shadowing that is likely to occur over the portions of the rear yards of 35 and 37 Gwynne Street.

Accordingly, the shadow diagrams demonstrate that the proposed development would result in at least half of the private open space for the three directly adjacent properties to the south receiving direct sunlight for a minimum of two hours between 9:00am and 3:00pm on 21 June, in accordance with Principle 196.

A copy of the shadow diagrams is contained in **Attachment C9**.

In terms of privacy, it is proposed that all upper level windows contain fixed obscure glazing to a height of 1.7 metres above floor level, consistent with City Wide Principle of Development Control 235. If the Panel determine to approve the proposed development, it is recommended that a condition be imposed requiring that the upper floor dwelling windows on the eastern, southern, western be fixed and obscured.

With respect to the upper floor windows on the northern elevation of Dwelling 1, it is not recommend that a condition be imposed requiring that these windows contain fixed obscure glazing as these windows are adjacent a public road and any occupiers of this dwelling will only have an outlook into adjacent and neighbouring front yard areas

Overall, it is considered that the proposal adequately addresses any potential overlooking issues.

Private open space

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

City Wide PDCs: 222-225, 227, 229 & 230

City Wide Principle of Development Control 225 states (in part):

“Dwellings (other than residential flat buildings in the form of apartments within a multi storey building) should have associated private open space of sufficient area, shape and gradient to be functional and capable of meeting the likely needs of the occupant(s) (taking into consideration the location of the dwelling and the dimensions and gradient of the site) and should be in accordance with the following:

- (b) a dwelling with a site area of less than 250 square metres, a minimum of 35 square metres should be private open space, of which one portion should have an area of 16 square metres and a minimum dimension of 4 metres;”*

All of the proposed dwellings have site areas of less than 250m² and, as such, should have a minimum area of private open space of 35m².

The proposed dwellings have private open space areas of 51m², 40m², 40m² and 63m² for Dwelling 1, 2, 3 and 4 respectively. Accordingly, the proposed private open space provision is consistent with part (b) of Principle 225.

All of the ground level private open space areas are directly accessible from the main living areas of the respective dwellings. In terms of orientation, the private open space areas are oriented to the east (Dwelling 4 has a section of private open space that is south facing) which is not ideal as the yard areas will only have direct access to morning sunlight.

City Wide Principle of Development Control 229 states that 50% of the total private open space requirement provided at ground level should be open to the sky and developed in a manner to provide outdoor amenity, opportunities for landscaping and a reduction in stormwater runoff through the use of permeable surface treatments. All of the proposed private open space areas associated with each dwelling are ‘open to the sky’ which in turn accords with Principle 229.

Car parking/access/manoeuvring

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

City Wide Objectives: 38
City Wide PDC’s: 98, 101, 104, 118, 120, 122, 181, 198, 200 & 219
Table NPSP/8

City Wide Principle of Development Control 120 states that development should include on-site car parking in accordance with the rates prescribed in Table NPSP/8. In relation to residential flat buildings, Table NPSP/8 states that two (2) on-site car parking spaces should be provided for each three (3) bedroom dwelling, of which at least one (1) space should be covered. In addition, one (1) visitor space should be provided for every two (2) dwellings.

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 car parking space for the development, when considering the rates in Table NPSP/8. City Wide Principle of Development Control 122 states (in part):

“A lesser on-site car parking rate may be applied to applicable elements of a development in any of the following circumstances:

- (b) sites are located within 200 metres walking distance of a convenient and frequent service fixed public transport stop;”*

The subject land is situated between two bus stops (ie. one in front of 38 Shelley Street and one in front of the entrance to the Hungry Jack’s car park from Shelley Street). The bus service operating along Shelley Street is not a ‘high frequency’ service, as defined in the Development Plan as a ‘*route serviced every 15 minutes between 7.30am and 6.30pm Monday to Friday and every 30 minutes at night, Saturday, Sunday and public holidays until 10pm.*’. As such, the locality of the development site does not satisfy part (b) of Principle 122.

Although the shortfall of one on-site visitor parking space is a negative aspect of the application, occasional visitor cars parked on the street in front of the property are unlikely to detract from the amenity of other residents in the street to a significant degree, as the property fronts a relatively busy collector road and is situated within 35 metres of the Firlie Plaza shopping complex located at the junction of Shelley Street and Glynburn Road.

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 residential 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 July 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 85th 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.

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 fall of between 210 - 310mm from the southern rear boundary to the Shelley Street 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 350 - 400mm above existing adjacent ground level, Dwelling 2 is 310 – 390mm higher, Dwelling 3 is 140 – 260mm is higher than adjacent ground level and Dwelling 4, 180 - 270mm higher than adjacent ground level.

There is existing retaining walls along the eastern side boundary. The Applicant is proposing to introduce a relatively small section of retaining (ie. a 200mm high concrete plinth) within the south-eastern portion of the subject land.

The Applicant has indicated 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, which state:

“The combined height of a fence and a retaining wall should not exceed 2.4 metres (measured from the lower of the two adjoining natural ground levels).”

and

“A dwelling, other than a dwelling located within the 1-in-100 year Average Recurrence Interval floodplain, should be sited and designed so that the finished floor level of the dwelling is a suitable height above the adjacent top of kerb level, to enable the efficient gravity-fed drainage of stormwater from all impervious surfaces on the site, provided that the finished floor level of the dwelling is no more than 700 millimetres above the natural ground level at any point along the side and rear boundaries of the site.

In instances where this cannot be achieved, a lower floor level and alternative stormwater management system, such as pump and sump and/or soakage systems, should be provided. This alternative stormwater management system should take into consideration the secondary flood flows from the road reserve and provide adequate mitigation measures.”

A copy of the Civil Plan, which contains the proposed levels and stormwater sump locations, is contained in **Attachment C17**.

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.

The Council's Project Manager – Civil, has advised that the proposed levels and stormwater disposal is considered to be acceptable in principle, but the Applicant should be required to prepare a Stormwater Management Plan to ensure that stormwater disposal is maintained at pre-development levels.

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 contained in **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 subject land is orientated north-south. The proposed orientation of the ground level internal living areas and private open space, is a negative aspect of the proposal given that the yard areas are eastern facing.

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 orientation of the private open space is a negative aspect of the proposal however its functionality and relationship with internal living areas is a positive aspect.

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 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 reasonable access to sunlight 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 character.

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 155/770/18 by J&DE Homes PTY LTD to construct a two-storey residential flat building (containing four (4) dwellings), associated civil works and the implementation of landscaping, on the land located at 44 Shelley Street, Firle, 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 1882) prepared by Mavtect Designs and received by the Council on 1 August 2019.
- Site and Drainage Plan (Job Number 19/092) prepared by Austruct Consulting Engineers and dated 27 June 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. The portion of the upper floor windows on the eastern, southern and western elevations 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.)

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.

2. STAFF REPORTS

2.3 DEVELOPMENT APPLICATION 155/265/2019 – D’ANDREA ARCHITECTS – 16 REGENT PLACE, KENSINGTON

DEVELOPMENT APPLICATION:	155/265/19
APPLICANT:	D’Andrea Architects
SUBJECT SITE:	16 Regent Place Kensington (Certificate of Title: Volume: 6154, Folio: 761)
DESCRIPTION OF DEVELOPMENT:	single storey dwelling with double garage on a battleaxe allotment
ZONE:	Residential Historic (Conservation) Zone – Kensington 1 Policy Area – Norwood Payneham and St Peters (City) Development Plan (dated 21 March 2019)
PUBLIC NOTIFICATION CATEGORY:	Category 1

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 a single storey dwelling with double garage on a battleaxe allotment.

Staff do not have delegated authority to determine the Application, as it comprises the construction of a new dwelling in a 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:	Battleaxe
Frontage width:	6.35 metres
Depth:	10.8-54.2 metres
Area:	542m ² (371m ² exclusive of handle)
Topography:	fall from front to back of 290mm, and crossfall of 440mm from south east to north west
Existing Structures:	Vacant land
Existing Vegetation:	Mature trees and shrubs, none of which are regulated

The subject land is a vacant allotment located behind an existing single storey detached dwelling. This allotment was created through a delegated land division application 155/12/2018 approved on 26 April, 2018.

Vehicular access is gained via a 3.35m wide crossover in the south eastern corner of the allotment.

A copy of the approved land division is found as **Attachment E1**.

Locality Attributes

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

Regent Place is characterised by a mix of original character homes and more recent infill group dwellings sited on small to medium allotments, with compact siting characteristics. The locality to the east of the subject land is comprised of several group dwelling sites fronting both Regent Place and Thornton Street, with an example of a dwelling with similar siting characteristics to the proposal, located at 18B Regent Place, adjacent the subject site.

Dwellings fronting Regent Place are mostly original character homes, with the property located at 18 Regent Place listed in the Development Plan as a Local Heritage Place, and the properties located at 1, 2, 3, 5, 6, 8, 10, 12, 14, 16, 18 all listed in the Development Plan as Contributory Items.

A plan of the subject land and its surrounds is contained in **Attachment A1**.

Proposal in Detail

The Applicant seeks consent to construct a single storey dwelling with double garage on a battleaxe allotment.

The proposed dwelling contains three (3) bedrooms, each with an ensuite bathroom and walk in robe, a combined kitchen/dining/living room with direct links to a covered outdoor area and a double garage.

The proposed dwelling has a corrugated iron hipped roof, fascia and gutters in Colorbond Monument (grey), vertically proportioned windows and simple cantilevered verandah. Building materials include rendered brick, and feature stone, powder coated black commercial aluminium windows and a timber front door.

Landscaping includes the planting of a mixture of trees, shrubs and ground covers and is bordered by new 2.1 metre fencing with some under fence plinths to maintain site levels.

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	541.8m ² (371m ² exclusive of handle)	>400m ² average
Allotment Width	6.35-27.69m	N/A
Allotment Depth	10.8-54.2m	N/A
External Wall Height*	2.7-3m	N/A
Maximum Overall Height (to roof apex)*	5.2m	N/A
Floor Area	200m ²	N/A
Site Coverage	47%	N/A
Private Open Space	79.8m ² 14.72% of site area 75% uncovered	20% of site area -
Street Set-back	7.0m	N/A
Side Set-back	.6m – 2m south eastern boundary 1m north western boundary 2.5 north eastern boundary	2.5m

TABLE 1: DEVELOPMENT DATA *continued...*

Consideration	Proposed Dwelling	Development Plan Merit Assessment Quantitative Guideline
Rear Set-back	On boundary – 3m	2.5m
Car Parking Provision	2 Undercover	2 (1 covered)

** 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 B1**.

Notification

Pursuant to Schedule 9 Part 1, 2(a) of the *Development Regulations 2008*, the proposal has been identified and processed as a Category 1 form of development. As such, no public notification was undertaken.

State Agency Consultation

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

Discussion

The subject land is located within the Kensington 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:

- Kensington 1 Policy Area Desired Character Statement
- Kensington 1 Policy Area PDC's: 1, 2 & 4

- Residential H(C) Zone Desired Character Statement
- Residential H(C) Zone Objectives: 2, 4 & 6
- Residential H(C) Zone PDC's: 7 & 8

- City Wide Objectives: 8, 56 & 57
- City Wide PDC's: 3, 4 & 189

Residential Historic (Conservation) Zone Principle of Development Control 8 states:

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.*

Parts (b) and (c) are not applicable to the proposed development. With respect to part (a), the existing allotment is a vacant and underutilised and of a similar or larger size than surrounding allotments within the locality, and accordingly the proposal is considered consistent with Principle 8.

Streetscape/bulk/scale/height/character

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

Kensington 1 Policy Area Desired Character Statement

Kensington 1 Policy Area Objectives: 1

Kensington 1 Policy Area PDC's: 1 & 3

Residential Historic (Conservation) Zone Desired Character Statement

Residential H(C)Z Objectives: 1, 3 & 5

Residential H(C)Z PDC's: 1, 2, 3, 13-19, 22, 23, 25 & 26

City Wide Objectives: 18, 19 & 20

City Wide PDC's: 28-32, 37, 39 & 41

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.”*

Due to the siting of the dwelling on a battleaxe allotment, arguably Principle 16 is less relevant, as the dwelling will not be readily seen from the public realm. Nevertheless, the proposed dwelling does display aspects of character dwellings, in that it has a front verandah element, taller wall heights and a materials and finishes palette which complements the materials and finishes of dwellings typically found within a Historic (Conservation) Zone such that it is considered generally consistent with Principle 16.

The Desired Character Statement for the Residential Historic (Conservation) Zone states:

“New buildings and additions to buildings within this zone will reinforce the existing streetscape and historic building stock. New dwellings will be of a complementary nature which do not compete or stand out against the historic elements for streetscape prominence. They will take into careful consideration the scale of the surrounding dwellings. The roof pitch and basic roof form of surrounding houses will be repeated..... New development will complement and reinforce the traditional colours and materials such as stone, brick and rendered masonry. It will be set in a sympathetic landscaped setting and will emulate the general scale and form of traditional building elements such as fences, verandahs and hipped and gabled roofs, instead of attempting to reproduce the finer architectural detail of the historic building stock.”

It is considered that the proposed dwelling is consistent with the character of the locality, and is consistent with the relevant provisions of the development plan relating to streetscape, bulk, scale, height and character.

The dwelling has been reviewed by Council's Heritage Adviser, David Brown. In summary, Mr Brown is supportive of the proposed design from a heritage perspective, given the conservative and simple design balanced against the 40 metre setback from the Regent Place frontage.

Mr Brown considers that the proposed fencing is appropriate, subject to being of a corrugated profile. As such, if the Panel determines to grant consent to the application, it is recommended a condition is imposed requiring a corrugated profile for all new boundary fencing. Mr Brown's report is contained in **Attachment C1**.

It is considered that the proposed dwelling is consistent with the character of the locality and is consistent with the relevant provisions of the development plan relating to streetscape, bulk, scale, height and character.

Setbacks and Site Coverage

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

Residential H(C)Z PDC's:	11 & 12
City Wide PDC's:	202, 204-207 & 208

In terms setbacks, City Wide Principle of Development Control 202 provides the most direct guidance. It states:

The distance between any portion of a single-storey dwelling or any single-storey component of a two storey dwelling (including a verandah, garage or carport, which is an integrated part of the development) on a battleaxe, hammerhead or similar configuration allotment or site (including those accommodating group dwellings), and a side or rear boundary of the parent development site, should be no less than 2.5 metres.

Various elements of the dwelling encroach within the 2.5m setback stated in Principle 202, including the living room, garage and bedrooms 2 and 3

A private lane extends for 17.63m along the rear boundary of the allotment, where a large portion of the dwelling is proposed to be located on the boundary. The lane is 2.74m wide, resulting in the dwelling being separated from the rear boundaries of the properties at 1 and 3 Marchant Street, consistent with the intent of Principle 202.

The proposed garage is located 600mm from the south-eastern boundary of the allotment, for a length of 6.25 metres. This is located adjacent a dwelling that is located on a similar battleaxe arrangement, and displays compact siting characteristics, being located within 1 metre of the property boundary. Existing vegetation, fencing and screening reduces natural light to the one window located within this portion of the adjoining dwelling, such that the encroachment of the garage along this portion is not considered to result in any adverse amenity impacts to the occupants.

A flat roof form with a reduced ceiling height is proposed for the portion of the dwelling located 1 metre from the north-western boundary of the allotment, resulting in a wall height of 2.7m in order to reduce the visual impact of the portion of the dwelling located within the 2.5m setback area on the occupants of 14 Regent Place. It is considered that this level of visual impact could be reasonably anticipated for an outbuilding given the reduced height and flat roof form.

There are no quantitative site coverage guidelines within the Kensington 1 Policy Area or the Residential Historic (Conservation) Zone. In terms of qualitative guidance, Residential Historic (Conservation) Zone Principle of Development Control 12 and City Wide Principle of Development Control 208 state:

Residential Historic Conservation Zone Principle of Development Control 12

The site coverage of buildings resulting from the erection or alteration of, or addition to, a building, should be compatible with the site coverage of those buildings in the locality which contribute significantly to the historic character.

City Wide Principle of Development Control 208

Site coverage should ensure that sufficient space is provided for:

- (a) front, side and rear boundary setbacks that contribute to the desired character of the area;*
- (b) the required level of private open space and landscaping;*
- (c) pedestrian and vehicle access and vehicle parking;*
- (d) domestic storage;*
- (e) outdoor clothes drying;*
- (f) rainwater tank; and*
- (g) convenient storage of household waste and recycling receptacles.*

It is considered that the proposed level of site coverage of 47% (inclusive of the driveway handle) is consistent with Residential Historic (Conservation) Zone Principle of Development Control 12 and City Wide Principle of Development Control 208 due to the relatively high site coverage rates of the compact built form found within the locality.

Overshadowing/overlooking

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

City Wide PDC's: 11, 31, 195 & 196

As the proposed dwellings are single-storey with an appropriate finished floor level relative to existing ground level and complementary wall heights and roof pitches, they are unlikely to lead to any unreasonable overlooking or overshadowing of adjacent properties.

Private open space

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

City Wide PDC's: 222-225 & 229

City Wide Principle of Development Control 225 states:

“Dwellings (other than residential development in the form of apartments within a multi storey building) should have associated private open space of sufficient area, shape and gradient to be functional and capable of meeting the likely needs of the occupant(s) (taking into consideration the location of the dwelling and the dimensions and gradient of the site) and should be in accordance with the following:

- (a) a dwelling with a site area of 250 square metres or greater, 20 per cent of the site area should be private open space, of which one portion should be equal to or greater than 10 per cent of the site area and have a minimum dimension of 4 metres; or*
- (b) a dwelling with a site area of less than 250 square metres, a minimum of 35 square metres should be private open space, of which one portion should have an area of 16 square metres and a minimum dimension of 4 metres; and*
- (c) in either of the circumstances described above, have a maximum gradient of 1 in 10.”*

As the site area exceeds 250m², at least 20% of the site area should be dedicated as private open space, with one portion equal to or greater than 10 per cent of the site area and have a minimum dimension of 4 metres.

The dwelling is proposed to have 79.8m² of private open space, equating to 14.7% of the site area, which at variance with Principle 225. That said, there is additional private open space in the southern corner of the allotment which is not able to be included in the calculation, because it is 2.0-2.1m in width, rather than 2.5. If this area was included, the total amount of private open space would equate to 19% of the site area. It should also be noted that these calculations are based on the site area inclusive of the driveway.

The private open space is located in two areas with direct access from the living area. The northern space has a good orientation for solar access, while the covered alfresco area provides year round protection from the elements. While neither portion achieves a minimum dimension of 4 metres, the outdoor alfresco area features a bi-fold stacker door which enables integration between indoor and outdoor spaces. The usability of this area is enhanced by the fact that there is a further 21.2m² of space alongside the laundry, which while this area is not able to be counted as private open space due to having a width of less than 2.5m (it is 2-2.1m wide), it provides practical space for things which might otherwise be required to be placed in the true private open space, such as clothes drying, rainwater tanks, air conditioning units, bin storage etc. In this context, it is considered that the provision of private open space is acceptable.

Carparking/access/manoeuvring

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

Residential H(C) Zone PDC's:	32
City Wide Objective:	34
City Wide PDC's:	120, 123, 212 & 218

Table NPSP/8

The garage provides undercover parking spaces for 2 vehicles, in accordance with Table NPSP/8.

The internal dimensions of the proposed garages are inconsistent with City Wide Principle of Development Control 212, as they measure 5.6m by 6.0m (as opposed to 5.8m by 6.0m). This is considered to be a minor shortcoming of the application.

The site features a turnaround space for vehicles to access and egress the site in a forward direction, consistent with Principle of Development Control 189 (a).

Finished floor levels/flooding/retaining/fencing

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

City Wide PDC's:	53-58, 79, 164, 167-171
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The subject land is not located within a 1 in 100 year Average Recurrence Interval (ARI) flood plain.

Finished floor levels range between 140mm and 580mm above natural ground level. As a result, the Applicant proposes small under fence plinths to a maximum height of 230mm, which when combined with a 2.1 metre fence height, creates a maximum height of fencing and retaining wall of 2.33m.

The Applicants engineering documentation notes that stormwater can be directed to the kerb and water table through a sump and pump mechanism.

A copy of the site works and drainage plan is contained in **Attachment D1**.

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:

Residential H(C) Zone PDC's:	36 & 37
City Wide Objectives:	24
City Wide PDC's:	220 & 221

There are no regulated trees on the subject land or adjacent land that would be affected by the proposed development. A number of mature fruit trees are located within the rear yard.

The Applicant has provided landscaping plans which includes landscaping to the northern yards with a mixture of small shrubs, Magnolia's and a Manchurian Pear. Landscaping is also accommodated along the hammerhead handle, as detailed on the site plan marked **A1**. The inclusion of soft landscaping surrounding the dwelling and along the common driveway will provide an appropriate level of soft treatment to the dwellings consistent with City Wide Principle of Development Control 220.

Overall, the provision of landscaping is considered to be acceptable, consistent with City Wide Principles of Development Control 220 and 221.

Environmental Sustainability

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

City Wide Objectives:	23 & 42.
City Wide PDC's:	67-72, 147, 148, 151 & 159.

The proposed dwelling is well orientated on the subject land so as to provide solar access to the main living areas and the main areas of private open space.

The dwellings are proposed to have 500mm wide eaves which will provide solar protection. This is considered to be a positive and practical design approach with regard to reducing the need for artificial cooling during the summer months within the proposed dwelling.

The siteworks and drainage plan includes a 2000 litre rainwater tank to be used for retention/detention of stormwater on site. City Wide Principle of Development Control 161 states that new dwellings should be provided with a 2000 litre rain water tank in order to maximise the use of stormwater collected from roof areas. As such, if the Panel determines to approve the development, it is recommended that a condition be imposed requiring the Applicant to install a rainwater tank with a minimum 2000 litres of retention, and condition the application to maintain 1 in 5 ari flows.

Summary

The proposed detached dwelling is an appropriate land use at a suitable density within the Residential Historic (Conservation) Zone. The built form, when viewed from the street, will complement the historic dwellings within the locality, in terms of bulk, scale, architectural style and materials and will not compete for attention from historic dwellings given its 40 metre setback from Regent Place.

The side setbacks of the proposed dwelling is consistent with the predominant pattern of development within the locality as well as the relevant development plan provisions relating to dwellings sited on hammerhead allotments.

The overall site coverage of the dwellings is considered acceptable in the context of the locality.

The provision of private open space is considered to be acceptable, albeit that the amount of private open space provided below the relevant Development Plan standard.

On balance, 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 155/265/19 by D'Andrea Architects for a single storey dwelling with double garage on a battleaxe allotment, on the land located at 16 Regent Place, Kensington, 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:

- the plans, elevations and details prepared by D'Andrea Architects, received by the Council on 05 August 2019; and
- Site and Drainage Layout Plan prepared by Zafiris & Associates Pty Ltd (Job No 2190508) received by the Council on 12 August 2019.

Conditions

1. 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.
2. A rainwater tank with a storage capacity not less than 2 kilolitres (2000 litres) shall be installed and plumbed into 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.
3. New boundary fencing as indicated on the stamped plans shall be of a corrugated profile.
4. Stormwater from the subject land shall be collected and discharged to Regent Place via pump and sump arrangements in accordance with the following requirements:

Pump and Sump Configuration

- a) the pump system shall be designed to ensure that at a minimum the 1 in 20 year ARI event is safely discharged to the street watertable without overflowing onto neighbouring properties. This can be achieved by pumping the peak rainfall intensity duration in full to the street watertable or utilising onsite storage (above or below ground) and pumping a smaller flow rate;
- b) where the pump system relies on surface storage for flood peaks, ponding of water shall only occur for events having a 1 in 5 year ARI or greater;
- c) sufficient storage (above or below ground) shall be provided to safely contain runoff from the contributing catchments for a 10 year, 30 minute duration rainfall event in the event of power failure; and
- d) pump systems shall incorporate two pumps each capable of discharging the design flow (to cater for the failure of one of the pumps).

Notes to Applicant

1. The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.

2. 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.
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 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.
6. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

2. STAFF REPORTS

2.4 DEVELOPMENT APPLICATION 155/307/2019 – ASPEX BUILDING DESIGNERS – 32 PORTRUSH ROAD, PAYNEHAM

DEVELOPMENT APPLICATION:	155/307/19
APPLICANT:	Aspex Building Designers
SUBJECT SITE:	32 Portrush Road, Payneham (Certificate of Title - Volume: 5878, Folio: 504)
DESCRIPTION OF DEVELOPMENT:	Alterations and additions to an existing building and a change of use to consulting rooms with associated car parking and landscaping and the construction of an outbuilding for storage
ZONE:	Residential Zone – Norwood Payneham and St Peters (City) Development Plan (dated 21 March 2019)
PUBLIC NOTIFICATION CATEGORY:	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 for alterations and additions to an existing building and a change of use to consulting rooms, with associated car parking and landscaping and the construction of an outbuilding for storage.

Staff do not have delegated authority to determine the Application, as the proposed development is 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:	irregular
Frontage width:	25.3 metres
Depth:	43.59 metres
Area:	1330m ²
Topography:	essentially flat
Existing Structures:	detached dwelling and garage
Existing Vegetation:	mature trees and shrubs

The subject site has a primary frontage to Portrush Road and secondary frontage to Rosella Street, and contains a detached dwelling fronting Portrush Road and ancillary structures with a mostly vacant rear yard. The site has existing access to Portrush Road and Rosella Street, and is located within a Residential Zone.

Locality Attributes

Land uses:	Predominately residential, with some examples of commercial land uses fronting Portrush Road.
Building heights (storeys):	predominantly single storey
Streetscape amenity	Low due to mixed building stock and frontage to Portrush Road

The subject land is bounded by Residential allotments, and if approved and implemented, the proposal would be the first commercial land use in the locality on the eastern side of Portrush Road. There is an example of a commercial use (office) western side of Portrush Road adjacent the subject land, at 35 Portrush Road.

The wider locality comprises residential development of low to medium densities to the east, south and west of the subject land.

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

Proposal in Detail

The Applicant seeks consent for alterations and additions to the existing dwelling and a change of use to consulting rooms, with associated car parking and landscaping and the construction of an outbuilding for storage.

The proposed alterations and additions comprise the demolition of the existing lean-to addition and garage, and construct a new addition containing a reception, waiting room, accessible toilet and consulting room. Internally, the building will be renovated for use as a dentist practice, comprising a total of 4 consulting rooms.

Areas surrounding the existing dwelling are to be hard surfaced to create a parking area to accommodate 15 car parks, and a new outbuilding constructed for use as a store.

The area in front of the existing dwelling is to be landscaped in keeping with the surrounding residential properties, with driveway and car parking areas featuring a .600mm landscaped edge to all side and rear boundaries with the exception of the Rosella Street entrance.

Access is to be provided through the existing crossover to provide two way vehicle access from Portrush road, and an entrance only from Rosella Street. New 1.8 metre high good neighbour colourbond fencing is proposed along all side and rear boundaries of the allotment.

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

Notification

The proposal has been identified and processed as a Category 3 form of development, pursuant to Part 4, Subdivision 2 38 (2)(c) of the *Development Act 1993*.

No representations were received in response to this notification.

State Agency Consultation

As the application changed the nature of movement through an existing access to an arterial road, the application was referred to the Commissioner of Highways.

The Commissioner of highways response is contained in **Attachment C**.

Discussion

The subject land is located within the Residential 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 type and density of residential development that is envisaged within the Development Plan:

Residential Zone Desired Character Statement	
Residential Zone Objectives:	3
Residential Zone PDC's:	1 & 4
City Wide Objectives:	1, 7, 10, 26, 27 & 85-88
City Wide PDC's:	1, 3, 4, 12, 19, 80, 82-85 & 320-322

Principle of Development Control 1 of the Residential Zone states that small scale consulting rooms are envisaged in the zone, where (amongst other circumstances) it involves the re-use of an existing dwelling with a frontage to an arterial road.

The Desired Character Statement for the Residential Zone states (in part):

“Along arterial roads, some opportunity for the establishment of non-residential uses will be provided through the conversion of existing dwellings, small-scale purpose built buildings and on the ground floor of mixed-use buildings in close proximity to centres. Careful management of the building envelope and vehicle access/egress arrangements for this type of development will be required to ensure that it does not have an unreasonable impact on the amenity of residents located to the rear of arterial road sites and on local and arterial road networks.”

The site has a frontage to Portrush Road, which is an arterial road as identified within Map NPSP/1 (Overlay 1) Part A.

The Desired Character Statement for the Residential Zone states that non-residential development should not have an unreasonable impact on the amenity of residents in the local area. This is reiterated in Principle of Development Control 4 which states:

“Non-residential development should be of a nature and scale that:
(a) serves the local community;
(b) is consistent with the desired character of the locality; and
(c) does not detrimentally impact on the amenity of nearby residents.”

The proposal is for the conversion of an existing dwelling into consulting rooms located on an arterial road which is an envisaged form of development within the desired character statement, and is considered to serve the needs of the local community in accordance of part (a) and (b) of Principle of Development Control 4.

The potential for the proposal to detrimentally impact on the amenity of nearby residents (part (c)) is considered to relate to two potential impacts; noise and visual amenity.

During business hours, clients will utilise the rear parking area accessed from either Rosella Street or Portrush Road, and use the main entrance doors which are located within the rear carpark. Given the proximity of the site to Portrush Road and that customers utilising the rear parking area will be during business hours, it is considered that the impact to adjoining properties will be negligible.

The site plan includes screening and acoustic enclosures to pumps, filtration equipment and air conditioners on the northern side of the site to reduce impacts to the adjoining residential allotment at 30 Portrush road, in accordance with City Wide Principle of Development Control 84.

In terms of the streetscape presentation, the dental clinic proposes to maintain the same external appearance of existing dwellings found throughout the locality by maintaining a landscaped front garden. No signage is proposed as part of the application and as a result the development is not considered to result in an unreasonably compromised streetscape character.

The application contains lighting to the rear parking areas which has the potential to impact on adjoining allotments. If the panel determines to grant consent to the application, it is recommended a condition be imposed requiring the lighting to not unreasonably impact on adjoining allotments, to the reasonable satisfaction of the Council or its delegate.

The proposed development is considered to be acceptable from a land use perspective, as the proposed development is considered to be reasonably consistent with Residential Zone PDC 4, insofar as the development serves the local community; is reasonably consistent with the desired character of the locality; and will not have an unreasonable impact on the amenity of nearby residents.

Streetscape/bulk/scale/height/character/overlooking

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

Residential Zone Desired Character Statement	
Residential Zone Objectives:	3
Residential Zone PDC's:	6, 8
City Wide Objectives:	8, 18, 22 & 25
City Wide PDC's:	28, 30, 37, 40, 59, 63, 83 & 224

The proposed addition results in an increase in floor area by 7.75m² and maintains the side setback of the existing dwelling, with a total height of 3.6 metres. The finished floor levels of the addition is to match the existing dwelling, which is 50-120mm above natural ground level. Given the site is relatively flat (570mm variance from the front of site to rear) the proposed addition presents minimal overlooking potential when combined with the proposed 1.8 metre colorbond fencing.

The outbuilding maintains wall heights of 2.7 metres, and is domestic in size with a floor area of 84.6m², and is set off boundaries between .900 and .930 metres.

The alterations and additions to an existing building and a change of use to consulting rooms (dental clinic), with associated car parking and landscaping and the construction of an outbuilding for storage is not considered to result in an unreasonably compromised streetscape character in the context of the existing locality, with the proposed built form bulk and scale reflective of its location within a residential zone.

Car-parking/access/manoeuvring

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

City Wide Objectives:	34
City Wide PDC's:	95, 96, 98, 104, 113, 120 & 122

Table NPSP/9

The site has access from both Rosella Street and Portrush Road through existing driveway crossovers. The Rosella Street access is to be an entrance only, with the Portrush Road crossover providing two way movements through its 6x6 metre crossover.

The proposal provides 15 car parking spaces including 1 accessible parking space. Three of the parking spaces have been designated for use by staff, with the remaining spaces available for customers. Guidance on parking rates is provided by City Wide Principle of Development Control 120 which states:

“Development should provide off-street vehicle parking in accordance with rates contained in Tables NPSP/8 and 9.”

Table NPSP/9 sets a rate of 4 parking spaces per consulting room, with the proposed floor plan indicating a provision of 4 consulting rooms to create a requirement of 16 parking spaces.

Guidance on the provision of parking discounts is found in City Wide Principle of Development Control 122, which states:

"lesser on-site car parking rate may be applied to applicable elements of a development in any of the following circumstances:

- (a) development includes affordable housing or student accommodation; or*
- (b) sites are located within 200 metres walking distance of a convenient and frequent service fixed public transport stop; or*
- (c) mixed use development including residential and non-residential development has respective peak demands for parking occurring at different times; or*
- (d) the proposed development is on or adjacent to the site of a heritage place, or includes retention of a desired traditional building and its features, which hinders the provision of on-site parking or the most effective use of the spaces within the site; or*
- (e) the parking shortfall is met by contribution to a Car Parking Fund (where one is available); or*
- (f) the development qualifies for certification under the Green Energy rating program, or similar program; or*
- (g) where it can be demonstrated that it would not result in a greater demand for on-street car parking on existing streets in the locality."*

The subject land is within 50 metres of Bus Stop 137 east side (6 services) and 60 metres of Bus Stop 137 (4 services) west side on Portrush Road, in line with part (b) of Principle 122. Given the proximity of public transport, the parking shortfall of 6.25% is not considered to result in additional on street parking.

The car parking area is proposed to be hard surfaced (bitumen), with notes indicating that wheel stopping and line marking to be provided. If the panel determines to grant consent to the application, it is recommended a condition be applied requiring wheel stopping devices and line marking to be undertaken prior to occupation of the premises.

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:

City Wide Objectives:	24
City Wide PDC's:	73-78

The application includes indicative landscaping areas on the proposed site plan, which includes a landscaped and irrigated front garden maintained to the existing dwelling. New landscaping is to be incorporated alongside and rear boundaries in the form of 600mm landscaping strips, however detail on the density and height of the plants is unknown, except that remaining vegetation is not to be removed as part of the demolition of the dwelling.

Given that the primary planning purpose of the landscape areas is to provide separation buffers, it is not considered necessary in this instance to require that a detailed landscape plan be prepared for the approval of the Council.

Accordingly, should the panel elect to grant planning consent to the application, it is recommended that a condition be imposed, requiring all areas nominated as landscaping or garden areas on the approved plans to 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.

No street trees are impacted by the proposal as no new crossovers are proposed, however the limited vegetation within the side and to the rear of the dwelling will be removed to make way for vehicle access and parking requirements.

The demolition plan is contained in **Attachment B2 and B3**.

Environmental Sustainability

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

City Wide Objectives:	42, 46
City Wide PDC's:	149

The proposed built form represents a significant increase in hard surfacing areas of the rear car park areas. Guidance on stormwater management is found through City Wide Principle of Development Control 160 which states:

A development which includes:

- (a) three or more dwellings;*
- (b) the replacement of one dwelling with three or more dwellings on one site, or on separate sites resulting from the land division of the original site; or*
- (c) in the case of a non-residential development, an impervious surface area that is greater than the pre-development state;*

should incorporate an on-site stormwater detention system (either above or below ground) to ensure that stormwater discharged from the site and/or combined sites does not exceed the capacity of the existing or planned 1 in 5 year Average Recurrence Interval stormwater system and increase the risk of flooding to downstream properties or add any significant pollutant load to the downstream stormwater system.

Accordingly, it is recommended that should the panel elect to grant planning consent to the application, that a condition be imposed, requiring stormwater and engineering calculations detailing pre-development and post-development levels in 1 in 5 year ARI events to be provided, to the satisfaction of Council or its Delegate, prior to the granting of Development Approval.

Summary

The proposed change of use of a dwelling to a non-residential use is an envisaged form of development within a residential zone, provided that it does not have an unreasonable impact on the amenity of the surrounding residential allotments.

The proposed change of use application manages these impacts through the maintaining a suburban feel to adjoining allotments through its streetscape presentation and maintenance of building setbacks and minimising noise intrusion through acoustic treatments to fixed noise sources.

While there is a single parking space shortfall, this represents a minor variance against the total number of parking spaces provided for the development, and is not considered to have an impact on the surrounding residential locality given the proximity of the site to an arterial road and public transport.

The proposal involves a significant increase in hard surface areas for the rear carpark and outbuilding which can be managed through the conditioning of onsite detention.

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 155/307/19 by Aspex Building Designers for alterations and additions to an existing building and a change of use to consulting rooms, with associated car parking and landscaping and the construction of an outbuilding for storage; on the land located at 32 Portrush Road, Payneham; 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:

- the site plan (Revision C), prepared by Aspex Building Designers, received by the Council on 7 August 2019; and
- demolition plan, elevations, floor plan and elevations (Revision A + B), received by the Council on 7 August 2019.

Conditions

1. 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.
2. 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.
3. 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.
4. 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.
5. Stormwater and engineering calculations detailing pre-development and post-development levels in 1 in 5 year ARI events shall be provided by the Applicant, confirming that the detention storage provided is adequate and conforms to the Council's Urban Services requirements, prior to the granting of Development Approval. 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 discharged without jeopardising the safety and integrity of Portrush Rad. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's expense.
6. All of the 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.
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. At no time shall any goods, materials or waste be stored in designated car parking areas, driveways, manoeuvring spaces or landscaping.

Notes to Applicant

1. The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA on 8204 2004.

2. 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.
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 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.
6. The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.

2. STAFF REPORTS

2.5 DEVELOPMENT APPLICATION 155/D026/2019 – GIMENEZ INVESTMENTS PTY LTD – 11A PHILLIS STREET, MAYLANDS

DEVELOPMENT APPLICATION:	155/D026/2019
APPLICANT:	Gimenez Investments Pty Ltd
SUBJECT SITE:	11A Phillis Street, Maylands (Certificate of Title Volume: 5591 Folio:456)
DESCRIPTION OF DEVELOPMENT:	Torrens Title Land Division creating two (2) additional allotments
ZONE:	Residential Character Zone – Evandale/Maylands/Stepney Policy Area Norwood, Payneham and St Peters (City) Development Plan (dated 28 April 2016)
PUBLIC NOTIFICATION CATEGORY:	Category 1

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 a Torrens Title land division creating two (2) additional allotments.

Staff do not have delegated authority to determine the Application, as it comprises a Land Division which is inconsistent with the relevant Policy Area requirements. In particular the proposed allotment sizes and frontage widths of two of the allotments, are less than that anticipated within the Evandale/Maylands/Stepney Policy Area. In addition, it involves the creation of an allotment which would accommodate a group dwelling, which is not an anticipated land use within the policy area. 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:	24.39 metres
Depth:	61.25 metres
Area:	1,494m ²
Topography:	slightly sloping
Existing Structures:	dwelling, outbuildings
Existing Vegetation:	regulated tree, mature trees, other vegetation

The subject land contains a single storey villa style dwelling located in the front north-western corner of the allotment, with a carport and outbuilding located behind. The dwelling comprises two separate semi-independent accommodation units. They are not considered separate dwellings, as they are not entirely self-contained. In particular, they share a rear yard and car parking facilities. This appears to be a very long-standing arrangement.

The balance of the subject land is vacant and devoid of vegetation of any note.

Locality Attributes

Land uses:	predominantly residential
Building heights (storeys):	predominantly single storey
Streetscape amenity	moderate - high

The majority of dwellings within Phillis Street are traditional single storey detached dwellings, however there are also semi-detached dwellings at 14-16 Phillis Street, 26-28 Phillis Street and 30-32 Phillis Street and group dwellings at 10-12 Phillis Street and 4 Phillis Street.

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

Proposal in Detail

The Applicant seeks consent for a Torrens Title land division creating two (2) additional allotments. All three propose allotments have frontages to Phillis Street.

Allotment 13 has a frontage of 10.83m and is intended to accommodate the existing dwelling. It is proposed to be together with a right of way over the 'handle' of Allotment 12 to allow vehicular access to parking at the rear of the allotment.

Allotment 11 has a frontage of 9.77m and is intended to accommodate a dwelling fronting Phillis Street. It is also proposed to be together with a right of way over the 'handle' of Allotment 12 to allow vehicular access to parking at the rear of the allotment.

Allotment 12 is a 'battle-axe' allotment with a frontage of 4m to Phillis Street and widens out to the full width of the subject land at a point 42.37m back from Phillis Street, to accommodate a dwelling at the rear.

The proposed plan of division is contained in **Attachment B**.

The Applicant has lodged a separate development application (155/354/19) for the construction of dwellings on proposed Allotments 11 and 12 and which indicates that the existing dwelling on allotment 13 is to remain.

The manner in which each of the dwellings shown in DA 155/354/10 are defined is not clear-cut.

The dwellings on Allotments 11 and 13 could either be defined as detached dwellings or group dwellings, depending on whether they are considered to be on sites held exclusively by those dwellings; which in turn depends on how the 'site' of each dwelling is considered. A site is defined as a building and its curtilage. There are legal authorities which suggest that the driveway 'handle' of Allotment 12 is part of the sites of the dwellings on Allotments 11 and 13, and other legal authorities which suggest otherwise.

Having considered the various legal authorities, it is considered that the most appropriate approach is to consider the dwellings on Allotments 11 and 13 as detached dwellings. With respect to Allotment 13 in particular, if the owner of that property chooses to continue the current arrangement of two semi-independent accommodation units, then that could occur pursuant to existing use rights.

If the same approach is taken to the 'site' of the dwelling on Allotment 12, then that site would not have a frontage to a public road (as the 'handle' would not be taken to form part of the site of the dwelling). Alternatively, if the 'handle' was taken to be part of its site, it would not be held exclusively by that dwelling. Accordingly, this dwelling would be best described as a group dwelling.

A copy of the plans associated with DA 155/354/10 is contained in **Attachment C**.

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	Allotment 11	Allotment 12	Allotment 13	Development Plan Merit Assessment Quantitative Guideline
Future Dwelling Type	detached	group	detached	detached dwellings are anticipated. group dwellings are not anticipated
Site Area	411m ²	630m ²	460m ²	500m ²
Allotment Width	9.77m	4.0m – 24.39m	10.83m	12m
Allotment Depth	42.37m	61.25m	42.46m	N/A

Notification

The proposal has been identified and processed as a Category 1 form of development. As such, no public notification was undertaken.

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 Zone and specifically within the Evandale/Maylands/Stepney 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 and Density

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

Evandale/Maylands/Stepney Policy Area Objectives: 1
 Evandale/Maylands/Stepney Policy Area Desired Character Statement
 Evandale/Maylands/Stepney Policy Area Principles of Development Control: 1, 2

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

City Wide Objectives: 1, 2, 7, 15, 16, 17, 56, 57
 City Wide Principles of Development Control: 1, 2, 3, 21, 23, 24, 185, 186, 188, 189

The proposed allotment size and configuration is similar to nearby developments at 10-12 Phillis Street and 4 Phillis Street. However, these existing developments were approved under a previous version of the Development Plan. The current Residential Character Zone policies were introduced in July 2015.

The Evandale/Maylands/Stepney Policy Area states, in part:

“Group dwellings may be proposed in Evandale and Payneham and dwellings on battle-axe or hammerhead configuration allotments may be proposed in Maylands, Evandale and Payneham providing that, in both cases, such development complements the existing streetscape character and is designed to maintain relatively spacious siting characteristics between buildings.”

In support of the above statement, Evandale/Maylands/Stepney Policy Area Principle of Development Control 2 provides minimum site area and frontage widths for detached dwellings, semi-detached dwellings and detached Dwellings on hammerhead allotments for Maylands, however site area and frontage width requirements for group dwellings are only provided for Evandale and Payneham.

As explained in the ‘*Proposal in Detail*’ section of this report, a future dwelling on proposed allotment 12 would be defined as a group dwelling. If, on the other hand, the land division created a site which was exclusively for the dwelling at the rear (for instance if the dwellings on Allotments 11 and 13 had no rights over the ‘handle’ of Allotment 12), it would be a ‘hammerhead allotment’ accommodating a detached dwelling, which is envisaged in the Policy Area.

These policies primarily seek development which results in low densities at the rear of allotments with spacious siting around the building, as this is the predominant development pattern in the broader Maylands area. A group dwelling can take the form of more than one dwelling in the middle and/or rear of the site which is likely to result in less space around the dwellings and less opportunities for landscaping.

As the proposed land division is seeking only one allotment at the rear, the development has similar characteristics, and thus similar potential planning impacts, to a detached dwelling in a hammerhead development configuration. The notable difference between these development types is the establishment of shared access and car parking, which is anticipated to be of limited amenity impact to adjoining properties. Additionally, a development with a single shared driveway is likely to have a lesser streetscape impact than a development of two detached dwellings which would require two separate driveways.

In light of the above, it is considered that a group dwelling development with similar characteristics to a detached dwelling on hammerhead allotment may be appropriate in Maylands, subject to the size of the allotment and siting of the dwelling.

Evandale/ Maylands/Stepney Principle of Development Control 2 states that detached dwellings on hammerhead allotments in Maylands should be provided with a site area of 450m² exclusive of the driveway ‘handle’ and the allotment should have a driveway handle width of 4 metres and an overall allotment width of 15 metres. Proposed Allotment 12 has an area exclusive of the common area of 460m², a driveway ‘handle’ width of 4.0 metres and an overall width of 24.39 metres, all of which are consistent with the requirements for a detached dwelling.

Therefore, as a group dwelling development on Allotment 12 would have similar characteristics to an anticipated detached dwelling hammerhead development, this aspect of the proposed land division is considered appropriate.

As explained in the ‘*Proposal in Detail*’ section of this report, dwellings on proposed allotments 11 and 13 would be defined as detached dwellings. Evandale/Maylands/Stepney Policy Area Principle of Development Control 2 provides minimum site area and frontage widths for detached dwellings in Maylands of 500m² and 12m respectively. Where a double garage facing the street is proposed, the frontage requirement increases to 12.5m.

From a frontage perspective, this means that the subject land could be divided through the middle to create two allotments, each with a frontage width of 12.2m, satisfying the frontage criteria for detached dwellings. The streetscape outcome of such a division, would be two detached dwellings fronting the street, each with their own separate driveways and crossovers to the street.

Proposed Allotments 11 and 13 have frontages of 9.77m and 10.93m respectively and are therefore narrower than specified in Principle 2. That said, the streetscape outcome is the same as or better than the outcome resulting from the hypothetical scenario described above. In this context, the shortfall in frontage width of Allotments 11 and 13 is considered acceptable.

With respect to site area, Allotments 11 and 13 have site areas of 411 and 460m² respectively and are therefore lesser in area than the 500m² specified in Principle 2. On average, the shortfall is approximately 13%. The proposed site areas are similar to or greater than many other dwellings in the locality, including dwellings at 1/4 and 2/4 Phillis Street, which are approximately 350m² each, 1/10-12 and 2/10-12 Phillis Street, which are approximately 310m² each, 14 and 16 Phillis Street which are 400m² each.

The extent to which the site areas are consistent with other dwellings in the locality is of lesser relevance in the context that new policy has recently been introduced, than would otherwise be the case. However, the culmination of those dwellings listed in the locality creates a character of a density which is compatible with that which is proposed and is therefore of some relevance.

On balance, the shortfall in site area of Allotments 11 and 13 is considered acceptable.

streetscape/bulk/scale/height/character

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

Evandale/Maylands/Stepney Policy Area Objectives: 1

Residential Character Zone Principles of Development Control: 8, 11

City Wide Objectives: 8, 18, 19, 20

City Wide Principles of Development Control: 201

The existing villa at the front of the allotment is indicated as being retained which would assist in preserve the existing streetscape character. While there is no demolition control over the dwelling (ie. demolition can occur as of right), the land division at least facilitates its retention.

The plans in DA 155/354/19 illustrate a single storey dwelling for the rear allotment, consistent with City Wide Principle of Development Control 201, which states that dwellings located in hammerhead style developments should be single storey. A future dwelling at the rear of the allotment is likely to have little to no impact on the streetscape.

The plans in DA 155/354/19 also illustrate a single storey dwelling for Allotment 11, consistent with Residential Character Zone Principle of Development Control 6.

Setbacks and Site Coverage

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

Evandale/Maylands/Stepney Policy Area Principles of Development Control: 3

City Wide Principles of Development Control: 202

City Wide Principle of Development Control 202 states:

“The distance between any portion of a single-storey dwelling or any single-storey component of a two storey dwelling (including a verandah, garage or carport, which is an integrated part of the development) on a battleaxe, hammerhead or similar configuration allotment or site (including those accommodating group dwellings), and a side or rear boundary of the parent development site, should be no less than 2.5 metres.”

The plans in DA 155/354/19 illustrate 2.5m setbacks from side and rear boundaries for the dwelling on Allotment 12, consistent with City Wide Principle 202.

Evandale/Maylands/Stepney Policy Area Principle of Development Control 3 provides site coverage criteria of 50% for dwellings fronting public roads (therefore applying to dwellings on Allotments 11 and 13 only). The plans in DA 155/354/19 illustrate the dwellings and garages on Allotments 11 and 13 occupying 58% and 44% of their respective sites. Whilst the site coverage is slightly high for the dwelling on Allotment 11, the allotments are considered to be of adequate size to cater for dwellings which are reasonably compatible with the site coverage criteria.

Private open space

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

City Wide Principles of Development Control: 222-225 229

City Wide Principle of Development Control 225(a) states that private open space should equate to 20% of site area per dwelling. The plans in DA 155/354/19 illustrate that this can be achieved, with the Dwelling on Allotment 11 having an area equal to 20% and the other two dwellings having a greater percentage.

Carparking/access/manoeuvring

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

City Wide Objectives: 34

City Wide Principles of Development Control: 101, 113, 117, 120, 122, 123, 189, Table NPSP/8

The proposed development relies on vehicular access from a common driveway area. City Wide Principle of Development Control 189 states (in part):

“Residential allotments or sites in the form of a battleaxe, hammerhead or similar configuration, (including those accommodating group dwellings), should:

- (d) in relation to the driveway servicing dwellings to the rear of the allotment or site:
 - (i) have a driveway ‘handle’ length of no more than 35 metres and a width of no less than 4 metres and not more than 6 metres;*
 - (ii) the driveway ‘handle’ should have a vehicle carriageway of no less than 3 metres in width for a site that accommodates up to two dwellings and no less than 6 metres in width for at least the first 6 metres and 5 metres in width thereafter, for a site that accommodates three or more dwellings(Refer to Figure 4). A reduced paved area width of not less than 2.8 metres may be considered if any existing dwelling is retained; and*
 - (iii) the driveway ‘handle’ should incorporate a combined total width of 1 metre of landscaping along the length of the driveway ‘handle’ unless the driveway abuts unfenced areas of landscaping”**

Given that the common driveway is proposed to service three (3) dwellings, the access driveway should have a minimum width of six (6) metres comprising of a 5.0 metre paved area and a 1.0 metre landscaping strip to comply with the above provision.

The proposed land division does not accord with part (d)(ii) of Principle 189, in that the ‘handle’ of Allotment 12 is not 6m wide so as to facilitate the stated driveway carriageway width and landscaping width criteria.

If the driveway was to service only two (2) dwellings, the ‘handle’ width of 4.0m as proposed would be sufficient. The difference in the frequency of vehicle movements between a scenario where two dwellings are using the driveway and a scenario where three dwellings are using the driveway, is not considered significant and the reduced width is not considered to be problematic in this instance. It is noted that the verge width between the property boundary and the kerb in Phillis Street is quite wide at approximately 4.0m, improving the ability for vehicles entering and leaving the site simultaneously to do so conveniently.

In terms of the provision of car parking spaces, the plans in DA 155/354/19 illustrate that each future dwelling can be provided with parking in accordance with the rates in Table NPSP/8.

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 Principles of Development Control: 10, 20, 21(e), 148, 164

The property is not within a recognised floodplain.

The subject land has a gentle gradient from east to west (back to front) which would enable stormwater to be readily drained from all proposed allotments.

The proposed plan of division would require a slight widening of the existing driveway crossover, however this would not encroach excessively upon adjacent street trees.

Summary

The proposed land division would result in an allotment configuration and allotment size which is similar to other group dwelling and semi-detached development within the immediate locality. That said, the proposed development does not result in allotment sizes, frontage widths, or in the case of Allotment 12 dwelling type, which are anticipated within the Evandale/Maylands/Stepney Policy Area.

Each of the quantitative shortfalls are relatively minor and the separate development application for the development of the proposed allotments demonstrates that the proposed land division would result in a form of development which is entirely compatible with the character and amenity of the locality.

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/D026/2019 by Gimenez Investments Pty Ltd for a Torrens Title Land Division creating two (2) additional allotments on the land located at 11A Phillis Street Maylands, subject to the following relevant plans, drawings, specifications and other documents:

Relevant Plans

- Plan of division, Drawing Number 19931.2-DIV, Version 2, prepared by John C Bested & Associates, received by the Council on 14 June 2019.

Conditions

1. The existing sheds and carport shall be demolished prior to Section 51 Clearance being issued by the Council.

3. **OTHER BUSINESS**
(Of an urgent nature only)
4. **CONFIDENTIAL REPORTS**
Nil
5. **CLOSURE**