

Council Assessment Panel Agenda & Reports

19 December 2022

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
175 The Parade, Norwood SA 5067

Telephone 8366 4555
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au
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City of
Norwood
Payneham
& St Peters

14 December 2022

To all Members of the Council Assessment Panel:

- Mr Terry Mosel (Presiding Member)
- Ms Jenny Newman
- Mr Mark Adcock
- Mr Ross Bateup
- Ms Christel Mex

NOTICE OF MEETING

I wish to advise that pursuant to Clause 7.4 of the Terms of Reference, the next Ordinary Meeting of the Norwood Payneham & St Peters Council Assessment Panel, will be held in the Council Chambers, Norwood Town Hall, 175 The Parade, Norwood, on:

Monday 19 December 2022, 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



Geoff Parsons
ASSESSMENT MANAGER

City of Norwood Payneham & St Peters
175 The Parade, Norwood SA 5067

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City of
Norwood
Payneham
& St Peters

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VENUE Council Chambers, Norwood Town Hall

HOUR

PRESENT

Panel Members

Staff

APOLOGIES

ABSENT

- 1. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT PANEL HELD ON 21 NOVEMBER 2022**

2. STAFF REPORTS

2.1 DEVELOPMENT NUMBER 22015169 – MARTINO COLLICELLI – 98 FIFTH AVENUE, JOSLIN

DEVELOPMENT NO.:	22015169
APPLICANT:	Martino Collicelli
ADDRESS:	98 FIFTH AV JOSLIN SA 5070
NATURE OF DEVELOPMENT:	Two-level alterations and additions to an existing detached dwelling and the construction of an inground swimming pool
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Historic Area • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Frontage (Minimum frontage for a detached dwelling is 18m) • Minimum Site Area (Minimum site area for a detached dwelling is 600 sqm) • Maximum Building Height (Levels) (Maximum building height is 1 level) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	12 May 2022
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	The version applicable at 12 May 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Nenad Milasinovic Senior Urban Planner
REFERRALS STATUTORY:	N/A
REFERRALS NON-STATUTORY:	Heritage Advisor

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DETAILED DESCRIPTION OF PROPOSAL:

The applicant proposes to undertake two-level additions to an existing single-level detached dwelling and to construct an inground swimming pool.

The ground level includes a double garage, an open-plan living/dining/kitchen area and laundry/wet areas.

An alfresco area is proposed adjacent the living area at the rear (northwest) of the new ground level dwelling addition. The upper level includes three bedrooms and a study nook.

The proposed additions to the dwelling would increase the total floor area from 148m² to 318m² (ie. 255m² at ground level and 63m² at upper level).

An inground swimming pool is proposed directly adjacent to rear of the alfresco area and it will be setback 1.8 metres from the north-eastern side boundary of the subject land.

SUBJECT LAND & LOCALITY:

Site Description

Location reference: 98 FIFTH AV JOSLIN SA 5070

Title ref.: CT 5354/294 **Plan Parcel:** D2301 AL6 **Council:** City of Norwood Payneham & St Peters

Shape:	rectangular
Frontage width:	21.34 metres
Depth:	47.88 metres
Area:	1,021.76m ²
Topography:	an average fall from front (southeast) to rear (northwest) of approximately 700mm.
Existing Structures:	single level bungalow
Existing Vegetation:	lawned areas, established trees and low plants within both the front and rear yard areas.

The subject land is located on the north-western side of Fifth Avenue, Joslin, approximately 93 metres southwest of the junction of Lamber Road and Fifth Avenue.

The subject land contains an interwar dwelling in the form of a bungalow. Vehicular access is via a driveway along the south-western side boundary.

Locality

The locality is characterised by predominantly single-storey detached dwellings. The bungalow on the subject land is one of 19 dwellings (ie. the other 18 being 76, 76A, 78, 80, 84, 85, 86, 88, 89, 90, 91, 92, 94, 96, 97, 99, 100 and 101 Fifth Avenue) in the locality that are identified in the Planning and Design Code Plan as Representative Buildings; the majority of which are located on the north-western side of Fifth Avenue.

The locality is largely characterised by a relatively regular pattern of large allotments with well-established street trees. Inter-war dwellings, in particular bungalows, are the predominant dwelling types along this section of Fifth Avenue up until the junction of Fifth Avenue and Lambert Road. In this context, the locality is considered to have a high level of residential amenity and heritage value.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
 Swimming pool, spa pool or associated safety features: Code Assessed - Performance Assessed
 Dwelling addition: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
 Code Assessed - Performance Assessed
- **REASON**
 P&D Code

PUBLIC NOTIFICATION

- **REASON**
 The building height exceeds the maximum building height Technical Numeric Variation (TNV) of 1 building level.
- **LIST OF REPRESENTATIONS**

Seven (7) representations were received during the public notification period. Since the conclusion of the public notification period, the owners of 96 Fifth Avenue, Joslin, have written to the Council's Planning staff on 11 October 2020 advising that they wish to withdraw their opposition to the proposed development and do not wish to be heard by the Panel.

Given Name	Family Name	Address	Wishes To Be Heard	In Support
Tho	Tran	135 Sixth Avenue, Joslin	Yes	No
Phillip	Brunning	26 Wakeham Street, Adelaide	Yes	No
John and Lucia	Hatch	100 Fifth Avenue, Joslin	Yes (Represented by Phillip Brunning)	No
Jill	Johnson	96 Fifth Avenue, Joslin	Yes	No
Bradley	Johnson	96 Fifth Avenue, Joslin	No	No
Lucy	Fitzgerald	94 Fifth Avenue, Joslin	No	No
Rick	Underwood	141 Sixth Avenue, Joslin	No	Yes

- **SUMMARY**
 The key issues raised by the representors are, in summary:
 - The development is two-level within a one level area;
 - The development will impact the historic character of the immediate area; and
 - The proposal results in potential overlooking and loss of privacy for neighbouring occupiers.

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

- Heritage Advisor – Supportive of the amended design response that is before the Panel for its consideration.

PLANNING ASSESSMENT

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

Land Use

The development is proposed within the Established Neighbourhood Zone. Desired Outcome 1 and Performance Outcome 1.1 state the following:

DO 1 – A neighbourhood that includes a range of housing types, with new buildings sympathetic to the predominant built form character and development patterns.

PO 1.1 Predominantly residential development with complementary non-residential activities compatible with the established development pattern of the neighbourhood.

The development principally comprises alterations and additions to an existing dwelling. The land use is clearly envisaged by the zoning. The impacts on neighbourhood character etc. are addressed in further detail under the headings below.

Building Height

Performance Outcome 4.1 of the Established Neighbourhood Zone states:

“Buildings contribute to the prevailing character of the neighbourhood and complements the height of nearby buildings.”

The Designated Performance Feature associated with PO 4.1, is for building height to be no greater than a specified height, according to the relevant Technical Numeric Variation (TNV). In the case of the subject land, the relevant TNV is:

“Maximum building height is 1 level”

This 1 level TNV is applied to all properties located within the Heritage Area Overlay and the suburb of Joslin.

Performance Outcome 10.2 of the Established Neighbourhood Zone states:

“The appearance of development as viewed from public roads is sympathetic to the wall height, roof forms and roof pitches of the predominant housing stock in the locality.”

Performance Outcome 2.2 of the Historic Area Overlay states:

“Development is consistent with the prevailing building and wall heights in the historic area.”

Performance Outcome 1.1 of the Historic Area Overlay states:

“All development is undertaken having consideration to the historic streetscapes and built form as expressed in the Historic Area Statement.”

Performance Outcome 3.1 and the corresponding DTS/DPF 3.1 of the Historic Area Overlay state respectively:

“Alterations and additions complement the subject building, employ a contextual design approach and are sited to ensure they do not dominate the primary facade.”

And

“Alterations and additions are fully contained within the roof space of an existing building with no external alterations made to the building elevation facing the primary street.”

Historic Area Statements are contained within the Planning and Design Code, to describe the prevailing character of the relevant area, thereby assisting in the application of relevant policy; most notably PO 1.1. The Historic Area Statement applicable to this development application states the following in relation to building height:

“Single-storey, two-storeys in some locations.”

There are two ways in which the height policies which are set out above could possibly be interpreted:

- Approach 1 Despite the zone level TNV of 1 level building height, the more specific Heritage Area Overlay envisages sensitively designed two storey dwellings (ie. 2nd level at the rear), by virtue of noting that PO 3.1 of the Historic Area Overlay that *“a contextual design approach and are sited to ensure they do not dominate the primary facade”*; or
- Approach 2 The zone level TNV is 1 level building height and nothing in the Historic Area Overlay states that a 2 level building is appropriate, so therefore the entire dwelling should be 1 level.

With this in mind, Performance Outcome 4.1 of the Established Neighbourhood Zone and other relevant policies (including PO 10.2) could be achieved in some circumstances, despite a building exceeding the TNV of 1 building level.

Two level development does not feature in the prevailing character of the locality of the subject land. Despite this, it is considered that there are circumstances which result in the proposed two-level component achieving Performance Outcomes 4.1 and 10.2 of the Established Neighbourhood Zone. Specifically, the second level has been designed in a manner which reduces the visual prominence of the upper level; not only from Fifth Avenue but also from adjacent properties.

In particular, the upper level is setback approximately 5.4 metres behind the ridgeline of the bungalow and is setback 7.1 and 6.5 metres from the north-eastern and south-western side boundaries respectively. The upper level has no windows to the front (south-eastern) and side (north-eastern and south-western) elevations with the only window areas to the rear elevation (north-western), which will be screened in entirety by vertically fixed aluminium battens. In this context, it is considered that the upper level component will not read readily as a second level, not only from the street, but also from adjoining properties.

Accordingly, the proposed dwelling is considered to achieve the relevant Performance Outcomes in relation to height, despite exceeding the TNV of one building level.

Setbacks

Performance Outcome 3.1 of the Established Neighbourhood Zone states:

“Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.”

The Designated Performance Feature for PO 3.1 is that development does not result in site coverage exceeding 50%.

The proposed development would result in 37% site coverage which in turn is consistent with the quantitative criteria detailed in the Designated Performance Feature.

Performance Outcome 7.1 of the Established Neighbourhood Zone states:

“Dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties.”

The Designated Performance Feature for PO 7.1 is that side boundary walls occur only on one side boundary and satisfy (i) or (ii) below:

- i. side boundary walls adjoin or abut a boundary wall of a building on adjoining land for the same or lesser length and height
- ii. side boundary walls do not:
 - A. exceed 3.2m in height from the lower of the natural or finished ground level
 - B. exceed 8m in length
 - C. when combined with other walls on the boundary of the subject development site, exceed a maximum 45% of the length of the boundary encroach within 3m of any other existing or proposed boundary walls on the subject land.
 - D.

In terms of boundary development, the proposed dwelling addition includes a garage boundary wall on the south-western side boundary. The wall is to be 6.4 metres in length and 3.2 metres in height above natural ground level. In this regard, the boundary wall achieves the Designated Performance Feature.

In relation to side setbacks, Performance Outcome 8.1 of the Established Neighbourhood Zone states:

“Buildings are set back from side boundaries to provide:

- a) *separation between buildings in a way that complements the established character of the locality*
- b) *access to natural light and ventilation for neighbours.”*

The Designated Performance Feature for PO 8.1 is that (other than boundary walls), building walls are set back no less than 900mm for ground level walls and in the case of upper level walls, a distance of 900mm plus one-third of the wall height above 3 metres.

The wall heights for the proposed addition are to vary between 3.1 and 6.8 metres at ground and upper level respectively.

Aside from the proposed garage boundary wall on the south-western side boundary, the ground level wall of the addition is to be setback 6.5 metres. At the ground level on the north-eastern side, the 1 metre (ie. except for a 2.0 metre length of wall associated with pizza oven within the alfresco area that is only setback 200mm) the north-western side boundary.

At the upper level, the proposed addition is set back 6.5 metres from the south-western side boundary and 7.1 metres from the north-eastern side boundary. Applying the criteria in the Designated Performance Feature, the required upper level setbacks are 1.98 metres. The proposed upper level side setbacks exceed the 1.98 metre quantitative requirement.

Aside from the relatively small section of external wall area associated with the enclosed pizza oven, the side setbacks at ground and upper level are consistent with the criteria detailed in Designated Performance Feature 8.1.

Design & Appearance

Performance Outcome 10.1 of the Established Neighbourhood Zone states:

“Garages and carports are designed and sited to be discrete and not dominate the appearance of the associated dwelling when viewed from the street.”

The Designated Performance Feature for PO 10.1, is for garages and carports facing a street to be

- a) set back at least 0.5m behind the building line of the associated dwelling;
- b) set back at least 5.5m from the boundary of the primary street; and
- c) have a total garage door / opening width not exceeding 30% of the allotment or site frontage, to a maximum width of 7m.

The proposed garage component is:

- a) set back approximately 13.6 metres behind the existing building line of the bungalow;
- b) set back approximately 22 metres from the boundary of the primary street; and
- c) has a total garage door / opening width of 4.8 metres, equating to 22% of the site frontage.

Accordingly, this aspect of the proposal is consistent with the above detailed Designated Performance Feature.

Historic Area Overlay Performance Outcome 2.1 and 2.2 state respectively:

“The form and scale of new buildings and structures that are visible from the public realm are consistent with the prevailing historic characteristics of the historic area.”

And

“Development is consistent with the prevailing building and wall heights in the historic area.”

The proposal involves removing a lean-to addition to the bungalow in order to integrate the proposed addition to the rear of the original portion of the bungalow.

At the closest point, the ground level addition is to be setback approximately 18 metres from the front property boundary whereas the garage component is setback some 22 metres from the front boundary. The upper level component is setback approximately 19 metres from the front property boundary, is positioned relatively centrally directly behind the existing bungalow and is setback 5.4 metres behind the existing ridge line of the bungalow. The street (southeast) facing elevation of the upper level component has a width of 7.7 metres whereas the existing bungalow has a width of approximately 14 metres. Whilst the upper level component is taller than the ridge line of the bungalow, the upper level will not be seen readily when viewed within a streetscape context which in turn is consistent with PO 2.1 of the Historic Area Overlay.

In terms of wall heights, the ground level walls of the proposed addition are commensurate to that of the existing bungalow as detailed in **Attachment 1**, Drawing numbers PD08 and PD10. As such, this aspect of the proposal is consistent with PO 10.2.

Heritage

Desired Outcome 1 of the Historic Area Overlay states:

“Historic themes and characteristics are reinforced through conservation and contextually responsive development, design and adaptive reuse that responds to existing coherent patterns of land division, site configuration, streetscapes, building siting and built scale, form and features as exhibited in the Historic Area and expressed in the Historic Area Statement.”

As the subject land is located within a Heritage Area Overlay, the Application was referred to the Council's Heritage Advisor, David Brown. Mr Brown has concluded that the proposed addition will have minimal impact both on the Representative Building and the streetscape given that it is situated behind the existing bungalow with the upper level set back behind the pitched roof of the original dwelling.

With this in mind, the proposed dwelling addition is considered to result in an appropriate design response when assessed against the heritage assessment provisions of the Heritage Area Overlay.

A copy of Mr Brown's report is contained in **Attachment 7**.

Landscaping and Private Open Space

A large Golden Elm tree is located within the rear yard area of the subject land. The tree has a circumference in excess of 4 metres however, it is located within ten metres of the existing bungalow. As such, is not identified as regulated tree pursuant to Regulation 3F(4) of the *Planning, Development and Infrastructure (General) Regulations 2017*.

The applicant is proposing to retain the Golden Elm tree as part of the proposed development with the rear of the ground level addition, when measured at the closest point, situated approximately 2.8 metres from the tree. Whilst it is acknowledged that the Gold Elm tree can be removed without the need for Development Approval from the Council, it is recommended that an advisory note be included that recommends that the Applicant seek arboricultural advice in order to minimise impact upon the health and integrity of the tree during the course of the construction of the dwelling addition.

Performance Outcome 21.1 and Designated Performance Feature 21.1 of the Design in Urban Areas section of the General Development Policies (which in turn reference Table 1), require that 60m² of private open space is located behind the building line for a site exceeding 300m².

The proposed development includes in the order of 430m² of private open space behind the building line.

Performance Outcome 22.1 states:

Soft landscaping is incorporated into development to:

- a) *minimise heat absorption and reflection*
- b) *contribute shade and shelter*
- c) *provide for stormwater infiltration and biodiversity*
- d) *enhance the appearance of land and streetscapes.*

The Designated Performance Feature for PO 22.1 in relation to sites greater than 450m² area is that development incorporates soft landscaping with a minimum dimension of 700mm, at a rate of 25% of the site area, with at least 30% of the land between the primary street boundary and the building line being soft landscaped.

The proposal includes 41% (ie. 279m² within the rear yard and 142m² within the front yard) of the site area dedicated to soft landscaping which in turn exceeds the 25% criteria prescribed in the Designated Performance Feature.

The second part of the Designated Performance Feature is also achieved, with approximately 80% of the land between the building line and street boundary being dedicated/retained to soft landscaping.

Traffic Impact, Access and Parking

Performance Outcome 5.1 and Designated Performance Feature 5.1 of the Transport, Access and Parking section of the General Development Policies (which in turn reference Table 1 General Off-street Parking Requirements), require a detached dwelling with two (2) or more bedrooms to have

two (2) spaces, one (1) of which is to be covered. The proposal achieves this, with two (2) spaces provided within the proposed garage and up to additional four (4) in the existing driveway area.

Overlooking

The owners of the dwellings at 135 and 141 Sixth Avenue have expressed concerns regarding overlooking from the upper level rear (north-western) facing windows of the second level component. In this respect, Performance Outcome 10.1 of the General Development Policies section of the P&D Code states:

“Development mitigates direct overlooking from upper level windows to habitable rooms and private open spaces of adjoining residential uses in neighbourhood-type zones.”

The Designated Performance Feature for this for upper level windows is:

Upper level windows facing side or rear boundaries shared with a residential use in a neighbourhood-type zone:

- a) *are permanently obscured to a height of 1.5m above finished floor level and are fixed or not capable of being opened more than 125mm*
- b) *have sill heights greater than or equal to 1.5m above finished floor level*
- c) *incorporate screening with a maximum of 25% openings, permanently fixed no more than 500mm from the window surface and sited adjacent to any part of the window less than 1.5 m above the finished floor level.*

The upper level windows are to be covered by, and situated approximately 700mm behind, 100mm x 50mm vertically fixed aluminium battens that are spaced 50mm apart. In this context, a person standing within the upper level bedroom areas would be able to obtain only interrupted views of the neighbouring property directly to the rear at 139 Sixth Avenue.

However, given the potential result in loss of visual privacy for the occupiers at 139 Sixth Avenue and if the Panel determine to approve the proposal, it is recommended that a condition be imposed requiring that these window areas be fixed and obscured below 1.5 metres above the internal upper floor level in accordance with the Designated Performance Feature.

CONCLUSION

The proposed dwelling addition is inconsistent with the Planning and Design Code in that the addition incorporates a second level, whereas the subject land is located within a single level area.

That said, the upper level is largely hidden behind the existing gable-ended roof and as such, will not be easily seen when viewed within a streetscape context. Furthermore, the upper level will not read readily as a second level when viewed from adjoining land given the generous setbacks combined with windows on only one of the four elevations which in turn are screened by vertically fixed battens.

On balance, the proposal is considered to be sufficiently in accordance with the Planning and Design Code to merit consent.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 22015169, by Martino Collicelli is granted Planning Consent subject to the following reasons/conditions/reserved matters:

CONDITIONS

Planning Consent

1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.
2. The upper floor windows to Bedroom 3 and Bedroom 4 shall either have sill heights of 1500mm above floor level or be treated to a height of 1500mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person within the room to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained at all times.
3. All stormwater from buildings and paved areas shall be disposed of in accordance with recognised engineering practices in a manner and with materials that does not result in the entry of water onto any adjoining property or any building, and does not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into either the adjacent street kerb & water table or a Council underground pipe drainage system.
4. 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 within the next available planting season after the occupation of the premises to the reasonable satisfaction of the Assessment Manager and such plants, as well as any existing plants which are shown to be retained, 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.
5. That the associated filter pump be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries.

ADVISORY NOTES

Planning Consent

Advisory Note 1

The Applicant is advised to seek the expertise and advice of a suitably qualified arborist to determine whether the dwelling additions herein approved, will have an adverse impact upon the health and structural integrity of the non-regulated Golden Elm tree. The Applicant is further encouraged to take protective and preventative measures where possible to minimise any damage to the Golden Elm tree during and post construction.

Advisory Note 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.

Advisory Note 3

The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.

The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.

Advisory Note 4

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 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 pursuant to the Local Government Act 1999 prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 6

The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.

Advisory Note 7

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

Advisory Note 8

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

Advisory Note 9

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 10

No work can commence on this development unless a Development Approval has been obtained. If one or more Consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.

2. STAFF REPORTS

2.2 DEVELOPMENT NUMBER 22033306 – STEVE BROUWER – 10 FLINDERS STREET, KENT TOWN

DEVELOPMENT NO.:	22033306
APPLICANT:	Steve Brouwer
ADDRESS:	10 FLINDERS ST KENT TOWN SA 5067
NATURE OF DEVELOPMENT:	Two-storey alterations and additions (creating a habitable area at the upper level) to an existing freestanding garage (located adjacent Little Wakefield Street)
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Future Road Widening • Historic Area • Heritage Adjacency • Local Heritage Place • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Transport Routes • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Site Area (Minimum site area is 200 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	29 Sep 2022
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	The version applicable at 29 September 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Nenad Milasinovic Senior Urban Planner
REFERRALS STATUTORY:	N/A
REFERRALS NON-STATUTORY:	Heritage

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ATTACHMENT 4:	Representation Map		

DETAILED DESCRIPTION OF PROPOSAL:

The applicant is seeking to undertake two-level alterations and additions to an existing two-vehicle freestanding garage (located adjacent Little Wakefield Street), in order to create a habitable area at the upper level. The upper level includes an open-plan studio/plan living area, kitchen and toilet. An external staircase provides access and egress to the upper level via the north-western internal facing elevation. The internal total floor area of the upper level area is in the order of 31m².

BACKGROUND:

By way of background, Development Application 21002237, comprising two-storey alterations and additions (creating a habitable area at the upper level) to an existing freestanding garage (located adjacent Little Wakefield Street), was granted Planning Consent on 22 June 2021 and subsequently Development Approval on 3 May 2022. As part of that Application, a proposed boundary wall measuring 6.5 metres in height, which would ordinarily require it to be publicly notified, was determined by the Council's Planning staff as not being notifiable on the basis that it was *"of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development"*.

Having become aware of the Application, the owner of the directly adjoining property at 8 Flinders Street, Kent Town, has filed a review application in the Environment Resources & Development Court in relation to this Application alleging that the Council's Assessment Manager did not have the authorisation to approve the Application and seeking orders that the Planning Consent and Development Approval granted to the Application be quashed.

With this all this in mind, the owner of the subject land has lodged a fresh Development Application (ie. 22033306) which is the subject of this report, on a *without prejudice basis* that if the Panel determine to grant Planning Consent, then it will likely result in the review application proceedings initiated by the adjoining land owner being ultimately discontinued on the basis that they will be irrelevant, as that Development Authorisation (21002237) would not be relied upon.

SUBJECT LAND & LOCALITY:

Site Description

Location reference: 10 FLINDERS ST KENT TOWN SA 5067

Title ref.: CT 5093/98 **Plan Parcel:** F100133 AL11 **Council:** City of Norwood Payneham & St Peters

Shape:	rectangular
Frontage width:	12.8 metres
Depth:	48.5 metres
Area:	620.8m ²
Topography:	essentially flat
Existing Structures:	single-level semi-detached dwelling and a freestanding garage (adjacent Little Wakefield Street)
Existing Vegetation:	lawned areas along with established shrubs and mature trees located within the front and rear yard areas

The subject land contains one of a pair of double-fronted bluestone Victorian semi-detached dwellings that are identified as Local Heritage Places. The land is bound by Flinders Street and Little Wakefield Street.

Locality

Along Flinders Street, the locality is characterised by a mix of dwelling styles from both the late nineteenth and early twentieth centuries, mostly within established garden settings. Front fences of various sizes and materials are a common feature and the street is lined with mature exotic trees.

The Flinders Street locality is considered to have a high level of historic character, however, it is considered that the locality has a moderate level of residential amenity, which is strongly influenced by the high traffic volumes along Flinders Street and the associated noise impacts.

Little Wakefield Street does not display any significant heritage character and the built form fronting the street comprises an inconsistent mix of fencing, garages, car park areas and some residential development addressing the street. The residential amenity along Little Wakefield Street is considered to be moderate only, influenced mainly by the lack of footpaths and street trees.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Other - Residential - Two-storey alterations and additions (creating a habitable area at the upper level) to an existing freestanding garage (located adjacent Little Wakefield Street): Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
P&D Code - not of a minor nature.
- **LIST OF REPRESENTATIONS**

One (1) representation was received during the public notification period.

Given Name	Family Name	Address	Position	Wishes To Be Heard
Patrick	Coombes	URPS Suite 12/154 Fullarton Road ROSE PARK SA 5067	Opposed	Yes

- **SUMMARY**

The key issues raised by the representor are, in summary:

- Inappropriate design response in relation to the historic character of the area and the Local Heritage Place (LHP) on the land;
- Inappropriate use of materials;
- Insufficient side boundary setback; and
- Loss of privacy.

AGENCY REFERRALS

- Nil

INTERNAL REFERRALS

- Heritage – supportive in terms of both the impact on the Local Heritage Place and surrounding heritage listed properties as well as streetscape impact that the proposal is considered to make.

PLANNING ASSESSMENT

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

Land Use

Desired Outcome 1 for the Established Neighbourhood Zone is:

“A neighbourhood that includes a range of housing types, with new buildings sympathetic to the predominant built form character and development patterns.”

Performance Outcome 1.1 for the Established Neighbourhood Zone seeks:

“Predominantly residential development with complementary non-residential activities compatible with the established development pattern of the neighbourhood.”

The Designated Performance Feature associated with PO 1.1, is for development to comprise one or more of the following:

- a. Ancillary accommodation
- b. Community facility
- c. Consulting room
- d. Dwelling
- e. Office
- f. Recreation area
- g. Shop.

Designated Performance Feature 11.1 states in part:

Ancillary buildings and structures:

(a) are ancillary to a dwelling erected on the same site

Ancillary accommodation is defined within the Planning and Design Code as:

Means accommodation that:

- (a) is located on the same allotment as an existing dwelling;*
- (b) contains no more than 2 bedrooms or rooms or areas capable of being used as a bedroom; and*
- (c) is subordinate to and shares the same utilities of the existing dwelling.*

The proposal is to create a living area above the existing freestanding garage, containing effectively a form of ancillary accommodation that is subordinate to and shares the same utilities of the existing dwelling on the subject land. The upstairs habitable area meets the definition of ancillary accommodation, and is envisaged by PO 1.1, therefore the proposed land use is envisaged within the zone.

Building Height

Performance Outcome 10.2 of the Established Neighbourhood Zone states:

“The appearance of development as viewed from public roads is sympathetic to the wall height, roof forms and roof pitches of the predominant housing stock in the locality.”

Performance Outcome 2.2 of the Historic Area Overlay states:

“Development is consistent with the prevailing building and wall heights in the historic area.”

Performance Outcome 11.1 of the Established Neighbourhood Zone states:

“Residential ancillary buildings and structures are sited and designed to not detract from the streetscape or appearance of buildings on the site or neighbouring properties.”

While Designated Performance Feature 11.1 states in part:

“Ancillary buildings and structures:

- (h) have a wall height or post height not exceeding 3m above natural ground level, and where located to the side of the associated dwelling, have a wall height or post height no higher than the wall height of the associated dwelling*
- (i) have a roof height where no part of the roof is more than 5m above the natural ground level”*

The Established Neighbourhood Zone does not specifically reference a level limit for outbuildings/ancillary accommodation, rather the height limit is based on wall and roof heights which in turn is guided by DPF 11.1, which envisages wall heights of up to 3 metres and a roof height of up to 5 metres. The proposed development has a concealed roof and as such, has an overall height of 6.5 metres when measured from adjacent ground level to the top of the new walls above the existing freestanding garage. The merits (or otherwise) and impacts of the proposed wall heights exceeding the 3 metre criteria detailed in DPF 11.1(h) will be discussed under the relevant sections of this report.

Setbacks, Design & Appearance

Historic Area Overlay PO 2.4 states:

“Development is consistent with the prevailing front and side boundary setback pattern in the historic area.”

Performance Outcome 3.1 for the Established Neighbourhood Zone is:

“Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.”

Designated Performance Feature 3.1 states:

*“Development does not result in site coverage exceeding:
Maximum Site Coverage is 50 per cent”*

Designated Performance Feature 11.1 states (in part):

- (b) “Ancillary buildings and structures:
have a floor area not exceeding 60m²”*
- “(e) if situated on a boundary (not being a boundary with a primary street or secondary street), a length not exceeding 8m unless:*

- (i) *a longer wall or structure exists on the adjacent site and is situated on the same allotment boundary and*
 - (ii) *the proposed wall or structure will be built along the same length of boundary as the existing adjacent wall or structure to the same or lesser extent”*
- (h) *have a wall height or post height not exceeding 3m above natural ground level (and not including a gable end), and where located to the side of the associated dwelling, have a wall height or post height no higher than the wall height of the associated dwelling*

In terms of site coverage, the proposed development does not increase the existing extent of site coverage of approximately 27%, which is currently well under the 50% threshold stipulated by DPF 3.1.

The existing freestanding garage is set back 6.8 metres from the north-eastern side boundary. With respect to the south-western side boundary, the freestanding garage is situated on this boundary and spans a length of 6 metres. Taking into account the screening to the landing area of the external stair case, the upper level spans a length of 7 metres along the south-western side boundary. In this regard, the length of boundary development is consistent with part (e) which allows boundary development along a side boundary for a length of up to 8 metres.

The combined wall height of both the freestanding garage and the proposed addition is in the order of 6.5 metres which in turn exceeds the 3 metre wall height criteria detailed in part (h) of DPF 11.1.

That said, it is considered that the extent of proposed boundary development along the south-western side boundary and the potential visual impact of the proposed two-storey form on the directly adjacent residential occupiers is acceptable in the context of the existing built form within the locality. More specifically, there are several examples of two-storey residential buildings in the Little Wakefield Street locality, some of which have single-storey and/or two-storey walls located on side boundaries. This includes the two-level building located within the rear area of 8 Flinders Street which is situated on the south-western side boundary of the property and has a boundary wall that is 7.8 metres in length and that is between 6.1 – 8.1 metres in height. In this context, the extent of proposed boundary is consistent with the compact siting characteristics of the existing building stock in the locality and as such, this aspect of the proposal is consistent with is considered to be reasonably consistent with PO 3.1 in that the development reflects the established built form character and pattern within the area.

In terms of floor area, the proposed upper level has a floor area in the order of 31.8m², which is less than the 60m² envisaged in part (b) of DPF 11.1.

Design, Appearance & Heritage

Historic Area Overlay PO 4.1 states:

“The form and scale of new buildings and structures that are visible from the public realm are consistent with the prevailing historic characteristics of the historic area.”

Historic Area Overlay PO 4.1 states:

“Ancillary development, including carports, outbuildings and garages, complements the historic character of the area and associated buildings.”

Performance Outcome 3.1 for the Established Neighbourhood Zone states:

Residential ancillary buildings and structures are sited and designed to not detract from the streetscape or appearance of buildings on the site or neighbouring properties.

The proposed upper level addition displays a contemporary design response comprising a distinctly rectilinear form and incorporating a concealed roof. The upper level addition is clad in Revolution Roofing ‘Maxline’ standing-seem cladding (colour ‘Nexstar Monolith’). The cladding material and the

dark grey colour assists the upper level to read visually as 'roof language' and to appear as a recessive structure when viewed from surrounding properties and the adjacent laneway.

The built form character of Little Wakefield Street is inconsistent with the typical character of an Established Neighbourhood Zone and within that, a Historic Area Overlay. With regard to bulk and scale, it is considered that the proposed two-level form will sit comfortably adjacent to the 9.2 metre wide and 8.1 metre high two-level building located within the rear yard area of 8 Flinders Street and the adjacent two-level residential flat buildings (ie. 7 and 9 Wakefield Street) fronting the south-eastern side of Little Wakefield Street. It should also be noted that the proposed building fronting Little Wakefield Street will not be readily seen from Flinders Street and will not in any way compromise the Flinders Street streetscape.

The Council's Heritage Advisor, David Brown, has advised that the proposed built form will not have any adverse impact on the Local Heritage Place on subject land nor compromise the Desired Outcome of the Heritage Area Overlay, as it will not be obtrusive from Flinders Street and is not located directly adjacent any heritage listed places.

A copy of Mr Brown's advice is contained in **Attachment 7**.

With this in mind, the proposed design and appearance of the outbuilding is therefore considered to satisfy Historic Area Overlay PO 2. 1 and 4.1, and Established Neighbourhood Zone PO 11.1.

Overlooking

The upper level contains windows on rear Little Wakefield Street elevation and the north-western internal facing elevation. The window to the rear elevation has a sill height of 900mm when measured above the internal floor area. Given that the proposed development is situated directly opposite a covered car parking area associated with the units located within the residential flat building at 9 Wakefield Street, there is no overlooking potential into the yard areas of these dwellings as they are situated to the north-eastern and south-western sides of this residential flat building.

In terms of the internal (northwest) facing window area, this has a sill height of 1.8 metres which in turn exceeds the 1.5 metre requirement detailed in Design in Urban Areas Designated Performance Feature 10.1(b). In addition to this, the proposal is to incorporate 1.8 metre high perforated steel mesh screening to the south-western side and north-western side above the floor level of the external stair landing in order to preclude any overlooking into the rear yard area of 8 Flinders Street. In this instance, it is considered that a precautionary condition should be applied to the application such that the proposed 1.8 metre high perforated screening treatment can be reviewed by the Council's Planning staff so that it can be determined that it sufficiently provides privacy when a person is standing within the associated stair landing area. A condition has been applied as part of the staff recommendation.

Accordingly, it is considered that the proposed development will not have any unreasonable impacts, in terms of loss of privacy on the occupiers of adjoining land.

CONCLUSION

The application seeks planning consent for two-level alterations and additions (creating a habitable area at the upper level) to an existing freestanding garage adjacent to the Little Wakefield Street frontage of the subject land. From an external viewpoint, the outbuilding generally satisfies assessment provisions that relate to wall heights, setbacks and is clad in a material which compliments the locality and the dwelling it relates to. The application has undergone a heritage referral, which has confirmed that the proposal presents minimal impact to the Local Heritage Place on the land and the adjoining and nearby heritage listed properties as well as the Flinders Street streetscape. The proposal is considered to generally satisfy the provisions of the Planning and Design Code, and warrants consent.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 22033306, by Steve Brouwer is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.
2. The south-western and north-western sides of the external stair landing area shall be treated to a height of 1.8 metres above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person occupying the stair landing area, to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained at all times.
3. All stormwater from buildings and paved areas shall be disposed of in accordance with recognised engineering practices in a manner and with materials that does not result in the entry of water onto any adjoining property or any building, and does not affect the stability of any building and in all instances the stormwater drainage system shall be directly connected into either the street kerb & water table and not into the rear laneway.

ADVISORY NOTES

Planning Consent

Advisory Note 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.

Advisory Note 2

The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.

The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.

Advisory Note 3

The Applicant is advised that construction noise is not allowed:

1. on any Sunday or public holiday; or
2. after 7pm or before 7am on any other day

Advisory Note 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 pursuant to the Local Government Act 1999 prior to any works being undertaken.

Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 5

The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.

Advisory Note 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.

Advisory Note 7

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

Advisory Note 8

Consents issued for this Development Application will remain valid for the following periods of time:

1. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;
2. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;
3. Works must be substantially completed within 3 years of the date on which Development Approval is issued.

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. Whether or not an extension of time will be granted will be at the discretion of the relevant authority.

Advisory Note 9

No work can commence on this development unless a Development Approval has been obtained. If one or more Consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.

2. STAFF REPORTS

2.3 REVIEW OF ASSESSMENT MANAGER'S DECISION – DEVELOPMENT NUMBER
 22030882 – ALAN RAMSAY – 15 & 15A ALFRED STREET, NORWOOD

DEVELOPMENT NO.:	22030882
APPLICANT:	Alan Ramsay
ADDRESS:	15 ALFRED ST NORWOOD SA 5067 15A ALFRED ST NORWOOD SA 5067
NATURE OF DEVELOPMENT:	Variation to Development Application 155/648/14: Comprising deletion of Condition of Consent 2 (ie. remove the 1.7 metre high privacy screening requirement to the Alfred Street facing balconies of both dwellings)
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Frontage (Minimum frontage for a detached dwelling is 9m; semi-detached dwelling is 8m; row dwelling is 6m; group dwelling is 18m; residential flat building is 18m) • Minimum Site Area (Minimum site area for a detached dwelling is 250 sqm; semi-detached dwelling is 250 sqm; row dwelling is 250 sqm; group dwelling is 250 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	21 Sep 2022
RELEVANT AUTHORITY:	Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	Lodgement date 21 September 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	No
RECOMMENDING OFFICER:	Geoff Parsons Manager Development Assessment / Assessment Manager
REFERRALS STATUTORY:	None applicable
REFERRALS NON-STATUTORY:	None applicable

CONTENTS:

ATTACHMENT 1: Council Assessment Panel Review of Decisions of the Assessment Manager	ATTACHMENT 5: Application Documentation – DA 22030882
ATTACHMENT 2: Application to Assessment Panel and accompanying correspondence	ATTACHMENT 6: Decision Notification Form – DA 155/648/2014
ATTACHMENT 3: Decision Notification Form – DA 22030882	ATTACHMENT 7: Plans – DA 155/648/2014
ATTACHMENT 4: Delegated Assessment Report – DA 22030882	ATTACHMENT 8: PD Code Rules Applicable at Lodgement

INTRODUCTION

Section 202(1)(b)(I)(A) of the *Planning, Development and Infrastructure Act 2016* provides an applicant with a right to apply to the Council Assessment Panel for a review of the Assessment Manager's decision relating to a prescribed matter.

A prescribed matter is defined as follows:

Prescribed matter, in relation to an application for a development authorisation, means -

- (a) any assessment, request, decision, direction or act of a relevant authority under this Act that is relevant to any aspect of the determination of the application; or
- (b) A decision to refuse to grant the authorisation; or
- (c) The imposition of conditions in relation to the authorisation; or
- (d) Subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in relation to the authorisation.

To assist with undertaking a review under Sections 201-203 of the *Planning, Development & Infrastructure Act 2016*, the Council Assessment Panel adopted a procedure to guide the consideration of an application for such at its meeting held on 10 February 2021. A copy of that Policy is provided in **Attachment 1**.

PROPOSAL

The application to which the review relates is Development Application 22030882. This application sought Planning Consent for a variation to DA 155/648/14. Specifically, the variation sought was as follows:

Variation to Development Application 155/648/14: Comprising deletion of Condition 2 (i.e. remove the 1.7 metre high privacy screening requirement to the Alfred Street facing balconies of both dwellings).

Development Application 22030882 was refused Planning Consent under delegation from the Assessment Manager. It is that determination that is the subject of this review.

Clause 6 in the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* stipulates that the Panel may:

- Affirm the Assessment Manager's decision on the Prescribed Matter;
- Vary the Assessment Manager's decision on the Prescribed Matter; or
- Set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.

In addition, the Council Assessment Panel may defer its decision in accordance with clauses 5.6 and 5.7 of the *Council Assessment Panel Review of the Assessment Manager Policy*.

Draft resolutions for each option have been included at the appropriate point within this report.

Panel Members should familiarise themselves with Clause 5 in the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* which provides guidance on how the review hearing should be conducted, in particular clause 5.1 which states:

5.1 On review, the CAP will consider the Prescribed Matter afresh.

BACKGROUND

Development Application 155/648/2014 sought Development Approval for the following:

Demolition of a detached dwelling and associated outbuildings; and the construction of a pair of semi detached dwellings with associated freestanding garages, driveways, fencing and landscaping.

Development Plan Consent was granted on 17 November 2014 and Development Approval was granted on 17 November 2016.

The Development Plan Consent was subject to a number of conditions. Condition 2 read:

2. The east facing first floor terrace balcony, herein approved, shall be screened to a minimum height of 1.7 metres above the finished floor level of the terrace, in order to prevent views of the private open space and swimming pool at 103 Osmond Terrace.

The development then proceeded to construction.

On 16 June 2022, following an enquiry from a resident, the Council wrote to the owner noting that its officers had undertaken an inspection of the property and discovered that condition 2 (amongst other elements) had not been complied with. The correspondence requested the owner proceed to screen the street facing balconies in accordance with the requirements specified in condition 2 (noting some screening had been completed including 1.7 metre high screens to the sides of each balcony that face each other i.e. north and south).

Development Application 22030882 was then lodged on the Planning Portal to seek Planning Consent for a variation to DA 155/648/2014 to remove condition 2 and the associated requirement for screening of the street facing balconies. As outlined above, that Application was refused and the rationale provided was as follows:

The Variation Development Application does not accord with Design in Urban Areas Performance Outcome 10.2 as the upper level balconies are not treated with permanently fixed screening to a height of not less than 1.7 metres above the finished floor level, in order to prevent overlooking into the private open space area of 103 Osmond Terrace, Norwood.

DOCUMENTS FOR REVIEW

In accordance with clause 4 of the *Council Assessment Panel Review of Decisions of the Assessment Manager* a number of different materials have been included as attachments to this agenda, as follows:

- Attachment 1 – Council Assessment Panel Review of Decisions of the Assessment Manager
- Attachment 2 – Application to Assessment Panel and accompanying correspondence
- Attachment 3 – Decision Notification Form – DA 22030882
- Attachment 4 – Delegated Assessment Report – DA 22030882
- Attachment 5 – Application Documentation – DA 22030882
- Attachment 6 – Decision Notification Form – DA 155/648/2014
- Attachment 7 – Plans – DA 155/648/2014
- Attachment 8 – PD Code Rules Applicable at Lodgement

REVIEW OF ASSESSMET MANAGER DECISION

The applicant, via the correspondence provided for in **Attachment 2**, has provided a valid and clear argument as to why the decision of the Assessment Manager (namely, the refusal of DA 22030882) should be set aside.

To assist the Panel in their consideration of this matter, and in accordance with the 4.1.3 of the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* I have set out the rationale for the Assessment Manager's decision below.

Development Application 155/648/2014 resulted in the imposition of condition 2 which required the effective screening of the street-facing balconies of the semi-detached dwellings to prevent overlooking into the private open space and yard area of 103 Osmond Terrace, Norwood. No appeal was lodged against that condition.

Upon becoming aware that the condition had not been complied with, the Council requested that it be complied with, which resulted in the lodgement of DA 22030882 to remove the condition.

DA 22030882 was correctly assessed against the relevant policies contained within the applicable version of the Planning and Design Code in place at the time of lodgement. Ultimately it was determined that the Application should be refused based on its variance with Performance Outcome 10.2 of the Design in Urban Areas module of the Code. The Performance Outcome and associated Designated Performance Feature appear below:

<p>PO 10.2 Development mitigates direct overlooking from balconies to habitable rooms and private open space of adjoining residential uses in neighbourhood type zones.</p>	<p>DTS/DPF 10.2 One of the following is satisfied:</p> <ol style="list-style-type: none"> 1. the longest side of the balcony or terrace will face a public road, public road reserve or public reserve that is at least 15m wide in all places faced by the balcony or terrace <p>or</p> <ol style="list-style-type: none"> 2. all sides of balconies or terraces on upper building levels are permanently obscured by screening with a maximum 25% transparency/openings fixed to a minimum height of: <ol style="list-style-type: none"> 1. 1.5m above finished floor level where the balcony is located at least 15 metres from the nearest habitable window of a dwelling on adjacent land <p>or</p> <ol style="list-style-type: none"> 2. 1.7m above finished floor level in all other cases
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In Part 1 of the Planning and Design Code, guidance is provided to relevant authorities on the purpose and use of performance outcomes and designated performance features, as follows:

Performance outcomes are policies designed to facilitate assessment according to specified factors, including land use, site dimensions and land division, built form, character and hazard risk minimisation.

Designated performance features in order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the corresponding performance outcome (a designated performance feature of DPF). A DPF provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome, and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies.

(my underlining)

It is considered that conformity with a DPF or otherwise, while helpful in providing a guide to a relevant authority, should not detract from the need for the relevant authority to assess the development against the relevant performance outcomes.

Performance outcome 10.2 is clear in its objective to: *mitigate direct overlooking from balconies to habitable rooms and private open space of adjoining residential uses in neighbourhood type zones.*

This can be achieved in any number of different ways, including by screening to a certain height, setbacks, vegetation, design and layout etc. In this context the corresponding DPF provides some guidance as to what may be suitable.

The applicant, via the planning report submitted with DA 22030882, suggests that the Performance Outcome is satisfied by a combination of several elements, namely:

- The setback between the balconies and the private open space of 103 Osmond Terrace;
- The presence of mature, deciduous trees in the road reserve adjacent to 103 Osmond Terrace;

- The solid, rear fencing along the boundary of 103 Osmond Terrace with Alfred Street;
- One (1) metre high solid balustrading along the balconies of 15 and 15A Alfred Street;
- The size and function of the balconies (i.e. they do not provide an area of ample, usable outdoor space)

The report goes on to state that the current configuration of 103 Osmond Terrace, with its rear yard and private open space facing a public road, would undoubtedly result in a lower level of privacy than might otherwise be the case. The report also notes that the incorporation of screening would detract from the streetscape appearance of the semi-detached dwellings at 15 and 15A Alfred Street, and prevent passive surveillance of the street, which is important from a crime prevention perspective.

The arguments made are reasonable but a different view was taken by the Assessment Manager. The assessment of the proposal determined that the lack of privacy screening to adjoining properties (103 Osmond Terrace, in particular) was unreasonable.

In coming to this decision, it is relevant to consider the meaning of several terms used in Performance Outcome 10.2:

- Adjoining – The PO references the term “adjoining” in terms of the types of residential uses that should not be affected (to a significant extent) by direct overlooking. The term *adjoining* is not directly defined, but the term *adjoining owner* is defined in the PDI Act as:

Adjoining owner means the owner of land that abuts (either horizontally or vertically) on the land of a building owner.

The term *adjoin* is defined by the Oxford Dictionary as *be next to and joined with*.

In the planning context a broader definition of the term adjoining is preferred. It is suggested that it could be interpreted to mean *next to* and in a situation where properties are separated by a road, street or thoroughfare, it is contended that a property could still be considered to be next to and adjoining the subject land.

- Direct overlooking – This term is not currently defined (although it is noted it is intended to be as part of the Technical and Miscellaneous Code Amendment). In the absence of any specified definition, it could be interpreted that the term refers to views being able to be readily and easily obtained of adjoining or nearby land.

In making the decision to refuse DA 22030882, the following factors were considered pertinent:

1. The situation is somewhat unique in that there is a mixed built form in Alfred Street where some dwellings front Alfred Street and others have their private open space facing Alfred Street. This mixture of layouts can result in direct overlooking into private open space areas in some circumstances whereas in others it would be almost completely avoided;
2. Direct overlooking of the private open space area of 103 Osmond Terrace (in particular) (a piece of adjoining land) is possible and readily attainable from the balconies of 15 and 15A Alfred Street, Norwood. In coming to this conclusion Council Officers conducted an inspection from one of the dwellings and the associated balcony;
3. Given the height of the balconies, the fence along the rear boundary of 103 Osmond Terrace is not sufficient to prevent direct overlooking;
4. The narrow width of Alfred Street means that the setback alone is not sufficient to prevent direct overlooking from the balconies of 15 and 15A Alfred Street;
5. The street trees currently located in the road reserve adjacent the rear boundary of 103 Osmond Terrace are deciduous and accordingly do not provide for adequate prevention of direct overlooking from the balconies of 15 and 15A Alfred Street (noting however that during warmer months, foliage would be present on the trees and this would provide a layer of visual screening);
6. The current 1 metre high solid balustrading on the balconies of 15 and 15A Alfred Street does not provide sufficient visual screening to prevent direct overlooking.

For those reasons it is the view of the Assessment Manager that Performance Outcome 10.2 of the Design in Urban Areas module is not satisfactorily addressed and the proposal remains at variance with it.

For the sake of clarity, it is not the Assessment Manager's determination that views must be completely screened to a height of 1.7 metres, but that some form of additional screening is required in order to minimise and / or mitigate direct overlooking of the rear yard of 103 Osmond Terrace, Norwood. DA 22030882 however is seeking to provide no additional screening, and accordingly the application could not be supported.

CONCLUSION

This report outlines the rationale for the decision of the Assessment Manager, as required by clause 4.1.3 of the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy*. The attachments provide all of the other relevant information and details as required by clause 4.1.

The Council Assessment Panel must determine whether to affirm the decision of the Assessment Manager, vary it, set it aside and substitute its own decision or defer consideration of the matter for more information.

Relevant options for the consideration of the Panel are outlined below.

RESOLUTION OPTIONS

Resolution to affirm the decision of the Assessment Manager

The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application 22030882 is not seriously at variance with the Planning and Design Code, but that it does not warrant Planning Consent for the following reason:

- *The application does not accord with Design in Urban Areas Performance Outcome 10.2 as the upper level balconies are not treated with permanently fixed screening to a height not less than 1.7 metres above the finished floor level, in order to prevent overlooking into the private open space area of 103 Osmond Terrace, Norwood.*

Resolution to vary a decision of the Assessment Manager

The Council Assessment Panel resolves to vary the decision of the Assessment Manager in relation to Development Application 22030882 by including the following reasons for refusal:

- *[insert additional / alternate reasons]*

Resolution to set aside a decision of the Assessment Manager

The Council Assessment Panel resolves to set aside the decision of the Assessment Manager to refuse Planning Consent to Development Application 22030882 and substitute the following decision:

- *Development Application 22030882 is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that Planning Consent is granted to the application subject to the following conditions and notations:*
 1.
 2.
 3.
 4.

Resolution to defer review hearing

The Council Assessment Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to refuse Planning Consent to Development Application 22030882 until:

- *The next ordinary meeting of the Panel;*
- *The next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided;*
- *Until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)].*

2. STAFF REPORTS

2.4 SCHEDULE OF COUNCIL ASSESSMENT PANEL MEETINGS FOR 2023

PURPOSE OF REPORT

The purpose of the report is to obtain the Panel's endorsement of the draft Schedule of Meetings of the Council Assessment Panel for the period January 2023 to December 2023.

BACKGROUND

Pursuant to Clause 7.1 of the Terms of Reference, ordinary meetings of the City of Norwood Payneham & St Peters Council Assessment Panel (CAP) will be held at such times and places as determined by the CAP.

The CAP previously determined the times and places of meetings up until December 2022, corresponding with the end of the calendar year. As a new calendar year is shortly to commence, it is necessary for the CAP to consider its meeting dates and times for 2023 to ensure we maximise the opportunity to secure a quorum for each meeting.

DISCUSSION

In the past, ordinary meetings of the Council Assessment Panel have been held commencing at 7.00pm on the third Monday of each month, unless otherwise determined by the Panel. In the event of a public holiday and / or the re-scheduling of a Council meeting which clashes with a scheduled Panel meeting, the Council has previously resolved that Panel meetings be held on the third Wednesday of the month.

A draft Schedule of Meetings for this period has been prepared for consideration by the Panel based on this practice of conducting Panel meetings on the third Monday of the month. A copy of the draft Schedule is attached (**Attachment A**).

This Schedule has worked well in the past and in order to ensure consistency with the Elected Member on the Panel, staff and the community, it is recommended that this schedule be followed, unless the time and date is such that one or more Members of the Panel is unable to attend the scheduled meetings on a regular basis.

The venue of the Council Chambers / Mayor's Parlour is also recommended, as it is considered conducive to the format and operation of a typical Panel meetings, and has the necessary IT equipment.

Please note, no part of this report or the attached schedule would prevent a special meeting of the Panel being called, in accordance with clauses 7.10 and 7.11 of the Terms of Reference.

CONCLUSION

Determination of the times and places for ordinary meetings of the Panel, will ensure compliance with the requirements of the Terms of Reference and enables administration to communicate these dates and times to the community.

COMMENTS

Nil.

RECOMMENDATION

1. That the Council Assessment Panel meetings for the 2023 calendar year be held in accordance with the Schedule of Council Assessment Panel Meetings attached to this report.

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