

# Council Assessment Panel Minutes

**15 May 2023**

## **Our Vision**

*A City which values its heritage, cultural diversity,  
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable  
and socially cohesive, with a strong community spirit.*

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City of  
Norwood  
Payneham  
& St Peters

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**VENUE** Council Chambers, Norwood Town Hall

**HOUR** 7:00 PM

**PRESENT**

**Panel Members** Mr Terry Mosel  
Mr Mark Adcock  
Mr Ross Bateup  
Ms Jenny Newman  
Cr Christel Mex

**Staff** Geoff Parsons, Manager Development Assessment  
Kieran Fairbrother, Senior Urban Planner  
Nenad Milasinovic, Senior Urban Planner  
Tala Aslat, Planning Assistant

**Staff**

**APOLOGIES**

**ABSENT**

1. **COMMENCEMENT AND WELCOME**

2. **APOLOGIES**

3. **CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT  
PANEL HELD ON 20 MARCH 2023**

**Seconded and carried**

4. **DECLARATION OF INTERESTS**

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 22030333 – DOMENIC CONDINA – 126 PORTRUSH ROAD, PAYNEHAM

<b>DEVELOPMENT NO.:</b>	22030333
<b>APPLICANT:</b>	Domenic Condina
<b>ADDRESS:</b>	126 PORTRUSH RD PAYNEHAM SOUTH SA 5070
<b>NATURE OF DEVELOPMENT:</b>	A change of use of the existing dwelling to consulting rooms and a change of use of the existing outbuilding to a wholesale bakery
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• General Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Affordable Housing</li> <li>• Major Urban Transport Routes</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Traffic Generating Development</li> <li>• Urban Tree Canopy</li> </ul>
<b>LODGEMENT DATE:</b>	22 Oct 2022
<b>RELEVANT AUTHORITY:</b>	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	22 Oct 2022
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Kieran Fairbrother Senior Urban Planner
<b>REFERRALS STATUTORY:</b>	Nil
<b>REFERRALS NON-STATUTORY:</b>	Gayle Buckby, Manager, Traffic & Integrated Transport

**CONTENTS:**

<b>APPENDIX 1:</b>	<b>Relevant P&amp;D Code Policies</b>	<b>ATTACHMENT 5:</b>	<b>Representations</b>
<b>ATTACHMENT 1:</b>	<b>Application Documents</b>	<b>ATTACHMENT 6:</b>	<b>Response to Representations</b>
<b>ATTACHMENT 2:</b>	<b>Subject Land Map</b>	<b>ATTACHMENT 7:</b>	<b>Internal Referral Advice</b>
<b>ATTACHMENT 3:</b>	<b>Zoning Map</b>	<b>ATTACHMENT 8:</b>	<b>Applicant's Responses</b>
<b>ATTACHMENT 4:</b>	<b>Representation Map</b>		

## DETAILED DESCRIPTION OF PROPOSAL:

The last approved land use rights attached to the subject site was as a detached dwelling. However, the land has not been used in that manner since at least 2015 (see "Background" section below for more detail). Accordingly, the land arguably does not currently enjoy any use rights. The applicant seeks to change this to use the main building (the previous dwelling) as a consulting room practice, and the outbuilding for a wholesale bakery business.

The consulting room is operated by a sole general practitioner (GP) and therefore only one (1) consulting room is required for this use. The wholesale bakery is operated by the same person. Deliveries and pick-ups associated with the bakery are managed entirely onsite (in the car park), as is waste pick-up for both land uses. No retail sales occur on-site with respect to wholesale bakery business.

The proposed hours of operation are as follows:

- Consulting Room – Tuesday to Friday, 7am to 6pm
- Wholesale Bakery – Monday, Tuesday and Friday, 7am – 6pm

## BACKGROUND:

The premises have been used as consulting rooms since in or around 2015. Google Street View images show signage associated with the business present in December 2015, and aerial imagery shows the rear car park established sometime between August 2014 and February 2015.

More recently, the wholesale bakery operations commenced onsite, of which the Council was notified by the Eastern Health Authority in July 2022. It was as a result of this notification that the unauthorised land uses became apparent; both in respect of the consulting room and the wholesale bakery business.

It is well-established in planning law that an unauthorised use of land constitutes a breach of the *Planning, Development and Infrastructure Act 2016*, and a new breach is committed each consequent day that the unauthorised use continues. Accordingly, the Council – as a designated authority under that Act – is not time-barred from undertaking enforcement action in respect of an unauthorised land use. Thus, to avoid such action being undertaken, the development application currently before the Panel seeks to regularise these land uses by way of planning consent, and ultimately development approval.

The Panel should note that in making its assessment it should consider the application afresh (in other words, as if the proposed land uses have not already been taking place on the land), and from there consider if the proposal is appropriate and sufficiently accords with the Planning & Design Code.

## SUBJECT LAND & LOCALITY:

### Site Description:

**Location reference:** 126 PORTRUSH RD PAYNEHAM SOUTH SA 5070

**Title ref.:** CT  
5169/445

**Plan Parcel:** F100352  
AL17

**Council:** THE CITY OF NORWOOD PAYNEHAM AND  
ST PETERS

The subject land is located on the eastern side of Portrush Road (a State-maintained Road), and more specifically at the southeast corner of the intersection between Portrush Road and Coorara Avenue (a local collector road) (see **Attachment 2**). The subject land contains a 1930s single-storey dwelling which has not been used as a dwelling since at least 2015. The land is serviced by a double-width crossover on Coorara Avenue, towards the rear of the site, approximately 43 metres from the intersection of Coorara Avenue and Portrush Road. The crossover can be accessed by both east- and west-bound traffic on Coorara Avenue. The rear of the site is characterised by a concrete car park, and contains an outbuilding and garage, connected by a small lean-to addition. The Portrush Road frontage of the site is characterised by the dwelling façade and a landscaped front yard, which is bound along both frontages by a 1.6m high brick masonry wall with a steel gate.

## Locality

The locality is considered to be comprised predominantly of the area extending approximately 150m north and south of the subject site, and approximately 80m east and west of the subject site (see **Attachment 2**). Within this locality is a mixture of residential and non-residential land uses, with the latter predominantly contained to those sites with frontages to Portrush Road. Notably, some of the non-residential land uses within the locality include an educational establishment, a veterinarian practice, consulting rooms, offices, restaurants and other shops.

## CONSENT TYPE REQUIRED:

Planning Consent

## CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**  
Consulting room: Code Assessed - Performance Assessed  
Other - Commercial/Industrial - Bakery: Code Assessed - Performance Assessed  
Outbuilding: Accepted
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code; Undefined land use

## PUBLIC NOTIFICATION REQUIRED

Yes

- **REASON**  
  
P&D Code – Wholesale bakery is an undefined land use term  
P&D Code - Consulting room does not satisfy DPF 1.4 of the General Neighbourhood Zone
- **LIST OF REPRESENTATIONS**

Given Name	Surname	Address	Position	Wishes to be heard?
Hariander	Rewal	2 Coorara Avenue PAYNEHAM SOUTH	Opposed	Yes
Sumit	Sharma	1 Coorara Avenue PAYNEHAM SOUTH	Opposed	No
Brijesh	Mangla	94 Portrush Road PAYNEHAM SOUTH	Opposed	No
Jiuyong	Li	6 Coorara Avenue PAYNEHAM SOUTH	Opposed	Yes
Sana	Ali	4 Coorara Avenue PAYNEHAM SOUTH	Opposed	No
Raffaele	Izzillo	3 Coorara Avenue PAYNEHAM SOUTH	Opposed	No

- **SUMMARY**

The main concerns raised by the representors can be summarised as follows:

- Increased traffic through Coorara Avenue, which is already a busy street containing a bus route;
- The current lack of on-street parking availability will only be exacerbated by the proposed change of use; and
- The potential for odour generation from the wholesale bakery operations.

## **AGENCY REFERRALS**

Nil

## **INTERNAL REFERRALS**

Manager, Traffic and Integrated Transport

## **PLANNING ASSESSMENT**

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in **Appendix 1**.

### **Land Use**

The Planning & Design Code defines a consulting room as:

*“a building or part of a building (not being a hospital) used in the practice of a profession by a medical, veterinary or dental practitioner, or a practitioner in any curative science, in the provision of medical services, mental, moral or family guidance, but does not involve any overnight accommodation other than for animals that are recovering from surgery, medical care or in for observation as part of a veterinary practice.”*

The Planning & Design Code does not provide a specific definition for the wholesale bakery. Nonetheless, food manufacturing is considered a form of industry, which is defined as:

*“the carrying on, in the course of a trade or business, of any process... for, or incidental to:*  
(a) *the making or any article, ship or vessel...*  
The use may include:  
(a) *selling by wholesale of good manufactured on site...”*

More particularly, the proposed wholesale bakery can be considered a form of light industry (this is discussed under “Environmental Factors” below), which means:

*“an industry where the process carried on, the materials and machinery used, the transport of materials, goods or commodities to and from the land on or in which (wholly or in part) the industry is conducted and the scale of the industry does not:*  
(a) *detrimentally affect the amenity of the locality or the amenity within the vicinity of the locality by reason of the establishment or bulk of any building or structure, the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, spilled light, or otherwise howsoever;*  
or  
(b) *directly or indirectly cause dangerous or congested traffic conditions on any nearby road.*

Desired Outcome 1 of the General Neighbourhood Zone seeks, in addition to residential development:

*“Employment and community service uses [that] contribute to making the neighbourhood a convenient place to live without compromising residential amenity.”*

Performance Outcome (PO) 1.1 of the Zone seeks:

*“Predominantly residential development with complementary non-residential uses that support an active, convenient, and walkable neighbourhood.”*

The corresponding Designated Performance Feature for Performance Outcome 1.1 specifically states consulting room as an envisaged land use within the Zone.

Performance Outcome 1.2 of the Zone further states:

*“Non-residential development located and designed to improve community accessibility to services, primarily in the form of:*

*(a) small scale commercial uses such as offices, shops and consulting rooms ...*

As such, small scale consulting rooms are considered, in principle, to be an appropriate form of land use within the General Neighbourhood Zone. “Small scale” is not defined in the Planning & Design Code, and so an assessment of whether the proposed use is small scale must be undertaken by reference to the surrounding built form and density. The proposed consulting room involves the change of use of an existing dwelling, with no building work proposed. Appointments typically run for 15-30 minutes, although on occasions there may be shorter or longer appointments. Notwithstanding this, bookings are required and “walk-ins” are not accepted. The gross leasable floor area of the consulting room use has been calculated at 48m<sup>2</sup>. The site’s existing built form is commensurate with and consistent with the surrounding residential development pattern; being a single-storey detached dwelling on a large allotment, with sufficient spacing around the building for natural light, ventilation, private open space and plantings. In this context, the proposed consulting room use can be considered small-scale.

The wholesale bakery business operates predominantly from the outbuilding in the rear car park area, but with access to the common tenancy areas within the main building (storage, lunch room, toilets). The total floor area for this use has accordingly been calculated at 45m<sup>2</sup>, and is considered small-scale also in this context.

Performance Outcome 1.4 of the Zone states:

*“Commercial activities improve community access to services [and] are of a scale and type to maintain residential amenity.”*

The subject site has a frontage to Portrush Road, which is a State-Maintained Road and a dedicated major urban transport route. Vehicle access to the site is obtained via Coorara Avenue. Both Portrush Road and Coorara Avenue service high-frequency public transport routes, and carry high levels of daily traffic, resulting in convenient community access to both the consulting room and wholesale bakery uses.

## **Environmental Factors**

Performance Outcome 1.2 of the Interface Between Land Uses module (General Development Policies) states:

*“Development adjacent to a site containing a sensitive receiver ... is designed to minimise adverse impacts.”*

Performance Outcome 2.1 of the Interface Between Land Uses module states:

*“Non-residential development does not unreasonably impact the amenity of sensitive receivers... through its hours of operation having regard to [several factors] (see **Appendix 1**)”*

Sensitive receiver is defined as, among other things, land uses for residential purposes.



The wholesale bakery will employ two (2) bakers with baking commencing at 7am. Food production will occur in the outbuilding, with the cooking to occur in ovens only, to which an exhaust flue is installed which faces towards to the rear (east) of the property. The food production is not anticipated to create any adverse impact by way of noise, or have the potential to emit any harmful or nuisance-generating air pollution or odour. For the Panel's benefit, please note that the Eastern Health Authority have advised that the bakery business is compliant with relevant Food Safety Standards, which they will be expected to continue to comply with should planning consent be granted to this proposal.

The consulting room is a low-impact facility, operating with no noise emissions except by way of vehicle movements into and out of the site.

Performance Outcome 1.2 of the Transport, Access and Parking module states:

*“Development is designed to discourage commercial and industrial vehicle movements through residential streets and adjacent other sensitive receivers.”*

In this instance, only one consulting room will be used, and so the expected number of vehicle movements for the site is expected to be very low. Notwithstanding, as previously mentioned, Portrush Road is a major urban transport route, with regular heavy vehicle traffic throughout the day, and so any vehicle movements into the subject land will not be discernible from vehicle movements along Portrush Road. Accordingly, despite being at odds with Performance Outcome 1.2, this departure is not considered to have any adverse effect on surrounding residential amenity.

Similar to the consulting room, when pick-ups or deliveries occur on the site, the noise generated from such traffic is unlikely to be discernible from the traffic moving along Portrush Road.

The proposed hours of operation for both land uses are considered appropriate and consistent with Performance Outcome 2.1. It is further worth noting that these hours also satisfy the corresponding Designated Performance Feature (see p 32 of **Appendix 1**).

In summary, both land uses are considered to be low-impact uses that will not generate any adverse impacts to the amenity of neighbouring residential land uses.

### **Traffic Impact, Access and Parking**

Performance Outcome 3.1 of the Transport, Access and Parking module states:

*“Safe and convenient access minimises the impact or interruption on the operation of public roads.”*

Access and egress for the site will be accommodated via the existing crossover on Coorara Avenue, located approximately 40 metres away from the Portrush Road/Coorara Avenue intersection. Access into the site will be possible from both east- and west-travelling traffic along Coorara Avenue, maximising opportunity for access and minimising the impact on the road. Because the crossover is located over 40 metres from Portrush Road and the proposed land uses will not generate excessive vehicle traffic, the continued use of the existing crossover for access/egress is considered reasonable and consistent with the above Performance Outcome.

Performance Outcome 5.1 of the Transport, Access and Parking module requires sufficient on-site vehicle parking to be provided to meet the needs of the proposed development. The corresponding Designated Performance Feature states:

*“Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using...*

- (a) *Transport, Access and Parking Table 1 – General Off-Street Car Parking Requirements”*

Table 1 prescribes a rate of 4 car parking spaces per consulting room. The wholesale bakery is a form of industry, for which Table 1 prescribes a rate of 1.5 spaces per 100m<sup>2</sup> of total floor area. Consequently, the theoretical parking demand created by the proposed development is 4.5 car parking spaces – four for the consulting room and 0.5 for the wholesale bakery.

The site plan provided by the applicant demonstrates the provision of five (5) car parking spaces on the site, which includes one (1) accessible car parking space; which meets the requirements of Table 1 and therefore satisfies Performance Outcome 5.1 above.

Performance Outcome 6.7 of the Transport, Access and Parking module states:

*“On-site visitor parking spaces are sited and designed to be accessible to all visitors at all times.”*

Performance Outcome 1.3 of the Transport, Access and Parking module states:

*“... loading areas and designated parking spaces are separated from passenger vehicle car parking areas to ensure efficient and safe movement and minimise potential conflict.”*

Performance Outcome 1.4 of the Transport, Access and Parking module states:

*“Development is sited and designed so that loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.”*

The application was referred to the Council’s Manager, Traffic & Integrated Transport when the application was originally lodged (see **Attachment 7**), which included two (2) extra car parks in the area between the outbuilding and the dwelling on the site (thus providing seven parks in total). The purpose of the referral was to obtain an assessment on the functionality of the car parking area and the access and egress arrangements. The feedback provided as a result of the referral led to the amended car parking layout which is in **Attachment 1**, which inherently involved the removal of two car parking spaces and the relocation of the accessible car parking space to the southern side of the car park so that the required adjacent shared space could be provided.

Council’s Manager, Traffic & Integrated Transport is satisfied that the car park provides sufficient space for all vehicles to enter and exit in a forward direction, with sufficient space north of the outbuilding to provide for manoeuvrability. It is suggested that the car parking space numbered 2 on the provided Site Plan (see **Attachment 1**) becomes a dedicated pick-up/delivery space during the bakery’s operational hours, and be appropriately signed as such. This will avoid the potential for cars to park ad-hoc within the car parking area while picking up bakery goods, resulting in the potential for the queueing of vehicles back onto Coorara Avenue by any vehicle unable to conveniently enter the car park. This suggestion is reflected in Condition 7 (below), in turn enabling performance of the land uses consistent with Performance Outcomes 1.3 and 1.4 above.

## CONCLUSION

The proposed development involves a unique mix of land uses, which requires an individual assessment of each land use to ensure each is appropriate for the subject land and locality, as well as a combined assessment to ensure both uses are compatible with one another. Both uses are considered to be appropriate land uses within the General Neighbourhood Zone; able to exist in harmony with the surrounding residential development. Neither the consulting room or the wholesale bakery will produce emissions of any kind that are capable of causing a nuisance to neighbouring residential dwellings, or adversely affect the amenity of the surrounding area in any way. The site adequately caters for the theoretical parking demand of both land uses, and safe and convenient access and egress can be obtained through the existing crossover which is sufficiently separated from Portrush Road to avoid any interruption to the public road network.

Although a consulting room and a wholesale bakery do not typically operate on the same site, this arrangement is likely to only continue while the current operator of both businesses occupies the subject land. Notwithstanding, they are both considered compatible with one another, similar to the way cafes and consulting rooms might exist together within a retail or community complex. The proposed development is considered to sufficiently accord with the Planning & Design Code in terms of land use compatibility; traffic, access and parking; and environmental factors.

## 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 22030333, by Domenic Condina is granted Planning Consent subject to the following reasons/conditions/reserved matters:

## CONDITIONS

### Planning Consent

#### Condition 1

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

#### Condition 2

Only one (1) consulting room is permitted to be used on the premises at all times.

#### Condition 3

The hours of operation of the premises shall be restricted to following times:

- Consulting Room - Tuesday to Friday: 7am to 6pm
- Wholesale Bakery:
  - Operating hours - Monday, Tuesday and Friday: 7am to 6pm
  - Pick-up and deliveries – Monday, Tuesday and Friday: 12pm to 6pm

#### Condition 4

All car parking spaces shall be line marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.

#### Condition 5

Wheel stopping devices 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.

#### Condition 6

All of the car parking spaces, driveway and vehicle manoeuvring areas shall be constructed of concrete, paving bricks or bitumen and drained in accordance with recognised engineering practices prior to occupation of the premises.

#### Condition 7

The car parking space numbered 2 on the Site Plan herein approved shall be reserved for pick-ups and deliveries associated with the wholesale bakery, so as not to interrupt the operation of the car park for the consulting room while operating in accordance with the hours approved in Condition 3.

Appropriate identification and directional signage shall be installed for this parking space. Such signage shall be maintained in good repair at all times to the reasonable satisfaction of the Assessment Manager or its delegate.

#### Condition 8

All loading and unloading of vehicles shall be carried out entirely upon the subject land.

#### Condition 9

All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Assessment Manager.

## ADVISORY NOTES

### Planning Consent

#### Advisory Note 1

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 2

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

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

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

#### Advisory Note 3

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

#### Advisory Note 4

The Food Standards Code under Division 2 – General requirements four Notification states:

- “(1) A food business must, before the food business commences any food handling operations, notify the appropriate enforcement agency of the following information –
- (a) contact details for the food business including the name of the food business and the name and business address of the proprietor of the food business;
  - (b) the nature of the food business; and
  - (c) the location of all food premises of the food business that are within the jurisdiction of the enforcement agency.
- (2) When complying with subclause (1), the proprietor of the food business must answer all questions asked by the appropriate enforcement agency in relation to the matters listed in subclause (1) in the form approved from time to time by the relevant authority under the Act.
- (3) The food business must notify the appropriate enforcement agency of any proposed change to the information specified in subclause (1) before the change occurs.
- (4) A food business that exists at the time of the commencement of this clause must provide the appropriate enforcement agency with the information specified in subclause (1) within three months of the commencement of this clause.”

Under requirements of *The Food Act 2001* there are penalties imposed for non-compliance with food business notification requirements. All food related businesses operating within the Eastern Health Authority boundaries must complete and submit a food business notification by either:

- Contacting an Environmental Health Officer at the Eastern Health Authority directly on (08) 8132 3600 and requesting a form to be either posted or faxed to you; or
- Notifying via the South Australian Department of Health website online at:  
<http://www.dh.sa.gov.au/pehs/Food/food-notification.htm>

Advisory Note 5

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 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.

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Mr Jiuyong addressed the Council Assessment Panel from 7:05pm until 7:10pm  
Mr Condina addressed the Council Assessment Panel from 7:11pm until 7:12pm  
Dr Mbu addressed the Council Assessment Panel from 7:12pm until 7:16pm

**MOVED**

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 22030333, by Domenic Condina is granted Planning Consent subject to the following reasons/conditions/reserved matters:

**CONDITIONS**

**Planning Consent**

*Condition 1*

*The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).*

*Condition 2*

*Only one (1) consulting room is permitted to be used on the premises at all times.*

*Condition 3*

*The hours of operation of the premises shall be restricted to following times:*

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*Condition 4*

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*Condition 7*

*The car parking space numbered 2 on the Site Plan herein approved shall be reserved for pick-ups and deliveries associated with the wholesale bakery, so as not to interrupt the operation of the car park for the consulting room while operating in accordance with the hours approved in Condition 3.*

*Appropriate identification and directional signage shall be installed for this parking space. Such signage shall be maintained in good repair at all times to the reasonable satisfaction of the Assessment Manager or its delegate.*

*Condition 8*

*All loading and unloading of vehicles shall be carried out entirely upon the subject land.*

*Condition 9*

*All refuse and stored materials shall be screened from public view to the reasonable satisfaction of the Assessment Manager.*

**ADVISORY NOTES**  
**Planning Consent**

*Advisory Note 1*

*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.*

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

*Advisory Note 4*

*The Food Standards Code under Division 2 – General requirements four Notification states:*

- “(1) A food business must, before the food business commences any food handling operations, notify the appropriate enforcement agency of the following information –*
- (a) contact details for the food business including the name of the food business and the name and business address of the proprietor of the food business;*
  - (b) the nature of the food business; and*
  - (c) the location of all food premises of the food business that are within the jurisdiction of the enforcement agency.*
- (2) When complying with subclause (1), the proprietor of the food business must answer all questions asked by the appropriate enforcement agency in relation to the matters listed in subclause (1) in the form approved from time to time by the relevant authority under the Act.*

- (3) *The food business must notify the appropriate enforcement agency of any proposed change to the information specified in subclause (1) before the change occurs.*
- (4) *A food business that exists at the time of the commencement of this clause must provide the appropriate enforcement agency with the information specified in subclause (1) within three months of the commencement of this clause.”*

*Under requirements of The Food Act 2001 there are penalties imposed for non-compliance with food business notification requirements. All food related businesses operating within the Eastern Health Authority boundaries must complete and submit a food business notification by either:*

- *Contacting an Environmental Health Officer at the Eastern Health Authority directly on (08) 8132 3600 and requesting a form to be either posted or faxed to you; or*
- *Notifying via the South Australian Department of Health website online at:  
<http://www.dh.sa.gov.au/pehs/Food/food-notification.htm>*

*Advisory Note 5*

*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 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.*

**Seconded and carried**

**5.2 DEVELOPMENT NUMBER 23000133 – STRATA CORPORATION 3852 – 21 WAKEFIELD STREET, KENT TOWN**

<b>DEVELOPMENT NO.:</b>	23000133
<b>APPLICANT:</b>	Strata Corporation 3852
<b>ADDRESS:</b>	21 WAKEFIELD ST KENT TOWN SA 5067
<b>NATURE OF DEVELOPMENT:</b>	Variation to Development Application ID 22032626 comprising internal layout changes and the addition of a second storey to the supported accommodation
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Established Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Historic Area</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Traffic Generating Development</li> <li>• Urban Tree Canopy</li> </ul> <p><b>Technical Numeric Variations (TNVs):</b></p> <ul style="list-style-type: none"> <li>• Minimum Site Area (Minimum site area is 200 sqm)</li> <li>• Maximum Building Height (Levels) (Maximum building height is 2 levels)</li> </ul>
<b>LODGEMENT DATE:</b>	11 Jan 2023
<b>RELEVANT AUTHORITY:</b>	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	11 Jan 2023
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Kieran Fairbrother Senior Urban Planner
<b>REFERRALS STATUTORY:</b>	Nil
<b>REFERRALS NON-STATUTORY:</b>	Nil

**CONTENTS:**

<b>APPENDIX 1:</b>	Relevant P&D Code Policies	<b>ATTACHMENT 5:</b>	Representations
<b>ATTACHMENT 1:</b>	Application Documents	<b>ATTACHMENT 6:</b>	Response to Representations
<b>ATTACHMENT 2:</b>	Subject Land Map	<b>ATTACHMENT 7:</b>	Approval Documents (DA: 22032626)
<b>ATTACHMENT 3:</b>	Zoning Map		
<b>ATTACHMENT 4:</b>	Representation Map		



## DETAILED DESCRIPTION OF PROPOSAL:

The proposed development seeks to vary a previous approval (ID: 22032626) through the addition of a second level to the supported accommodation unit and some internal changes. Specifically, the proposal seeks to create a separate living area for an overnight assistant who may attend the supported accommodation unit, consistent with new directions issued by the National Disability Insurance Agency (NDIA).

## BACKGROUND:

On 6 December 2022, the applicant received planning consent for development application 22032626, for “alterations and additions to an existing residential flat building and a partial change of use to supported accommodation” on the subject site (see **Attachment 7**). This application was publicly notified but no representations were received opposed to the development and accordingly the decision to grant planning consent was a delegated decision of the Assessment Manager.

Shortly after, the NDIA issued new directions with respect to onsite overnight assistance (OOA) that states: “the OOA needs to be a full apartment which would generally consist of a bedroom, living room, kitchen and bathroom. A studio-style apartment cannot be used for OOA” (see **Attachment 6**). As a result, the applicant submitted the variation proposal currently before the Panel, which seeks to construct a second-level addition to create a separate living area for any overnight assistant.

## SUBJECT LAND & LOCALITY:

### Site Description:

**Location reference:** 21 WAKEFIELD ST KENT TOWN SA 5067

**Title ref.:** CT  
5044/859

**Plan Parcel:** S3852  
UCCP

**Council:** THE CITY OF NORWOOD PAYNEHAM AND  
ST PETERS

Shape:	rectangular
Frontage width:	20 metres
Depth:	48.1 metres
Area:	960m <sup>2</sup>
Topography:	relatively flat
Existing Structures:	four-level residential flat building, red brick front fencing and a concrete car park at the rear
Existing Vegetation:	minimal landscaping in the form of raised garden beds in the front yard

The subject land is bordered by a two-storey detached dwelling to the north and a three-storey residential flat building to the south, and bound by Wakefield Street to the east and Little Wakefield Street to the west.

### Locality

Wakefield Street is predominantly characterised by residential development, with a decent variety of dwelling types including detached dwellings, group dwellings and residential flat buildings. These buildings range in height from single-storey dwellings to the four-storey residential flat building seen on the subject land. Directly across the road from the subject land is a four-storey student accommodation building.

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:**  
New housing  
Dwelling addition: Code Assessed - Performance Assessed  
Supported accommodation: Code Assessed - Performance Assessed  
Dwelling alteration or addition
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code

## PUBLIC NOTIFICATION

- **REASON**  
Supported accommodation not exempt in Table 5
- **LIST OF REPRESENTATIONS**  
One (1) representation was received during the public notification period.

Given Name	Family Name	Address	Position	Wishes to be heard?
Richard	Spalvins	25 Wakefield Street KENT TOWN SA 5067	Opposed	Yes

- **SUMMARY**  
The key concerns raised by the representor are:
  - Reduced solar access to living areas and solar panels;
  - Diminished visual outlook;
  - Concerns of overlooking; and
  - Reduced property value

## AGENCY REFERRALS

Nil

## INTERNAL REFERRALS

Nil

## PLANNING ASSESSMENT

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

## Building Height & Setbacks

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 corresponding Designated Performance Feature (DPF)/Technical and Numeric Variation (TNV) sets a maximum building height of 2 levels.

Performance Outcome 2.2 of the Historic Area Overlay states:

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

The existing residential flat building on the subject land is four storeys in height, and therefore already taller than the two-storey limit set by DPF 4.1. It is important to note that other buildings on Wakefield Street are also taller than two stories, including a four-storey student accommodation building directly opposite the subject land and a three-storey residential flat building on the allotment immediately southwest of the subject land. Notwithstanding, the proposed addition is a second-level addition, consistent with PO 4.1 of the Zone and PO 2.2 of the Historic Area Overlay.

Performance Outcome 8.1 of the 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 second-level addition is 5.8 metres high, extending for a length of 9 metres, and is proposed to be setback 900mm from the adjacent side boundary shared with 25 Wakefield Street. Travelling in a northwest direction, the first 5.6 metres of this addition will be adjacent the neighbouring dwelling addition at 25 Wakefield Street that is located on the shared boundary (see **Figure 1**). Of the neighbouring addition, approximately 4.1m is comprised of a solid brick wall, with the final 1.5m of length constituting a covered balcony/deck area. Thus, approximately half of the proposed addition will not be readily visible from the neighbouring dwelling.

The outlook from the rear of the internal living areas of the dwelling at 25 Wakefield Street and the covered balcony/deck area is focussed towards the rear of their property (northwest), over their rear yard area. There is substantial vegetation along their southwest boundary, beginning approximately 3m from the edge of the covered balcony/deck area, as seen in Figure 1 below. As a result, any views that the neighbouring dwelling has of the subject land are considered, for the most part, to be peripheral, and it is considered that the proposed second-level addition will not create an unreasonable outlook in this context. Because the proposed addition is located west and southwest of the neighbouring dwelling, its impact on access to natural light is considered minimal (further discussion of this point is in the “Overshadowing” section below) and overall, the proposed addition is considered to sufficiently accord with PO 8.1 of the Zone.



Figure 1: Extent of neighbouring boundary development at 25 Wakefield Street, Kent Town

### Overshadowing & Overlooking

The proposed addition is not considered to have any overshadowing impacts for the dwelling at 25 Wakefield Street (representor's land) because of the orientation of the sites and proposed building; the subject land being located southwest of the adjacent dwelling and its private open space. If any solar impact is to occur as a result of the proposed development it would be late in the afternoon, when the sun is setting in the west. Consequently, the neighbouring allotment will continue to receive sufficient direct sunlight in accordance with Performance Outcomes 3.1 and 3.2 of the Interface Between Land Uses module (see pp 35-36 of **Appendix 1**).

Performance Outcome 3.3 of the Interface Between Land Uses module states:

*“Development does not unduly reduce the generating capacity of adjacent rooftop solar energy facilities taking into account [various factors] ...”*

The representor raised concerns about the impact of the proposal on solar panels on their land. Based on the latest aerial image available to planning staff on “Metro Maps” (dated 27 February 2023), the representor does not appear to have any rooftop solar panels on their dwelling. It is unknown whether the representor has any freestanding solar collectors situated anywhere else on their land. PO 3.3 above only concerns the impact of development on existing solar energy facilities, and therefore is not considered applicable to the current application. Notwithstanding, taking into account the possibility for the representor to install rooftop solar panels in the future, it is likely that such solar facilities would be positioned and oriented on north-facing aspects of the dwelling's roof in order to maximise the generating capacity of those panels. Thus, the proposed development is not considered to impact the generating capacity of any future solar panels at 25 Wakefield Street because of its relative location.

Performance Outcome 10.1 of Design in Urban Areas 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 corresponding DPF suggests that upper-level windows with a sill height of 1.5m above the internal floor level, or otherwise obscured to the same height, may be considered to satisfy PO 10.1. This requirement is considered appropriate in these circumstances. The upper-level windows facing the side boundary consist of one high-level window with a 1.5m sill height, and two lower-set windows that will be constructed with obscure glazing.

### **Design & Appearance**

Performance Outcome 10.2 of the 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 2.5 of the Historic Area Overlay states:

*“Materials are either consistent with or complement those within the historic area.”*

Performance Outcome 3.1 of the Historic Area Overlay states:

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

The second level addition is proposed to be constructed of salvaged red bricks, of a type and colour consistent with the existing building. As a result, the addition is considered to be complementary too and compatible with the existing building, and will be a discrete addition from Little Wakefield Street, consistent with the above Performance Outcomes.

### **Heritage**

The subject site is located within the Historic Area Overlay, but the subject building is not recognised as a local heritage place or a representative building. Further, the subject site does not abut the site of any local heritage places or State heritage places. Because the proposed addition is located behind the building line of the existing building and therefore not visible from Wakefield Street, and has been contextually designed to respond to the existing building, a referral to the Council’s Heritage Advisor was not considered necessary.

## **CONCLUSION**

Overall, the proposed development sufficiently aligns with the Planning and Design Code and is considered worthy of planning consent. The addition has been contextually designed to blend in with the existing building through the employment of similar materials and colours, with appropriate measures being undertaken to prevent any unreasonable overlooking opportunities from arising. Despite a reduced setback to the northeast boundary, the addition is not considered to produce any unreasonable outlook for the adjoining neighbour, and will not produce any unreasonable overshadowing concerns either due to its relative orientation.

## **RECOMMENDATION**

It is recommended that the Council Assessment Panel/SCAP 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 23000133, by Strata Corporation 3852 is granted Planning Consent subject to the following conditions:

## CONDITIONS

### Planning Consent

#### Condition 1

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any), noting that all previous stamped plans and documentation, including conditions previously granted Planning Consent for Development Application ID No 22032626 are still applicable except where varied by this authorisation.

## ADVISORY NOTES

### Planning Consent

#### Advisory Note 1

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

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

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

#### Advisory Note 2

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

#### Advisory Note 3

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

#### Advisory Note 4

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

#### Advisory Note 5

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

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

#### Advisory Note 6

The Applicant is advised that construction noise is not allowed:

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

#### Advisory Note 7

The Applicant is advised that 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 8

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

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Mr Brunning addressed the Council Assessment Panel from 7:28pm until 7:32PM

Mr Spalvins addressed the Council Assessment Panel from 7:33 until 7:34pm

Mr Kwiatkowski addressed the Council Assessment Panel from 7:35pm until 7:39pm

## **MOVED**

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 23000133, by Strata Corporation 3852 is granted Planning Consent subject to the following conditions:

### **CONDITIONS**

#### **Planning Consent**

##### *Condition 1*

*The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any), noting that all previous stamped plans and documentation, including conditions previously granted Planning Consent for Development Application ID No 22032626 are still applicable except where varied by this authorisation.*

##### *Condition 2*

*The second level of the development herein approved shall only be used in association with the ground floor supported accommodation and shall not be used as a place of separate residence.*

### **ADVISORY NOTES**

#### **Planning Consent**

##### *Advisory Note 1*

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

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



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

*Advisory Note 2*

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

*Advisory Note 3*

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

*Advisory Note 4*

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

*Advisory Note 5*

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

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

*Advisory Note 6*

*The Applicant is advised that construction noise is not allowed:*

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

*Advisory Note 7*

*The Applicant is advised that 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 8*

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

**Seconded and carried**



**5.3 DEVELOPMENT NUMBER 22041659 - LOU FANTASIA PLANNING/ SMART INVESTORS GROUP PTY LTD – 233 PAYNEHAM ROAD, JOSLIN**

<b>DEVELOPMENT NO.:</b>	22041659
<b>APPLICANT:</b>	Lou Fantasia Planning Smart Investors Group Pty Ltd
<b>ADDRESS:</b>	233 PAYNEHAM RD JOSLIN SA 5070 233 PAYNEHAM RD JOSLIN SA 5070
<b>NATURE OF DEVELOPMENT:</b>	Change of use to an office with associated car parking and landscaping
<b>ZONING INFORMATION:</b>	<b>Zones:</b> • General Neighbourhood <b>Overlays:</b> • Airport Building Heights (Regulated) • Affordable Housing • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Transport Routes • Urban Tree Canopy
<b>LODGEMENT DATE:</b>	19 Dec 2022
<b>RELEVANT AUTHORITY:</b>	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	19 Dec 2022
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Kieran Fairbrother Senior Urban Planner
<b>REFERRALS STATUTORY:</b>	Commissioner of Highways
<b>REFERRALS NON-STATUTORY:</b>	Gayle Buckby, Manager, Traffic & Integrated Transport

**CONTENTS:**

<b>APPENDIX 1:</b>	Relevant P&D Code Policies	<b>ATTACHMENT 5:</b>	Representations
<b>ATTACHMENT 1:</b>	Application Documents	<b>ATTACHMENT 6:</b>	Response to Representations
<b>ATTACHMENT 2:</b>	Subject Land Map	<b>ATTACHMENT 7:</b>	Prescribed Body Responses
<b>ATTACHMENT 3:</b>	Zoning Map	<b>ATTACHMENT 8:</b>	Internal Referral Advice
<b>ATTACHMENT 4:</b>	Representation Map	<b>ATTACHMENT 9:</b>	Applicant's Responses

## DETAILED DESCRIPTION OF PROPOSAL:

The subject land currently has land use rights as a dwelling, which is currently comprised of two individual tenancies. The proposal seeks to change the use of the subject land from dwelling to offices. The application does not seek to undertake any building work to the existing building, only to repurpose the rooms commensurate to the proposed use. The application proposes to provide seven (7) on-site car parking spaces, with one-way vehicular movement through the site being achieved through the use of two separate crossovers. Information provided by the applicant states that the expected hours of operation for the office use will be Monday to Friday, 10am to 6pm.

## BACKGROUND:

The subject land is comprised of two allotments: Certificate of Title Volume 5463 Folio 971 and Certificate of Title Volume 5463 Folio 790 (see "Subject Land and Locality" below). The latter of these allotments has a Right of Way over the adjacent land to the northwest at 235 Payneham Road, Joslin (Certificate of Title Volume 6140 Folio 503), whereas the former allotment does not.

The application proposes vehicle movement through the site in the form of:

- access into the former allotment (CT 5463/971);
- travel into the latter allotment (CT 5463/970), and
- egress via the neighbouring allotment which contains the Right of Way (CT 6140/503).

To ensure that this proposed access/egress arrangement is feasible (and lawful) the Council sought legal advice from its solicitors. For the benefit of the Panel's assessment, it should be noted that the advice received was that so long as the two allotments that comprise the subject land remain under the ownership of the same person/entity, then this access/egress arrangement is lawful. If ownership of one allotment was to change hands without the other, then Rights of Way between the two allotments that comprise the subject land would have to be established for the lawful movement of vehicles to continue to occur. That being said, given the existing configuration of these two allotments, it is doubtful that this situation would occur.

## SUBJECT LAND & LOCALITY:

### Site Description:

**Location reference:** 233 PAYNEHAM RD JOSLIN SA 5070

<b>Title ref.:</b> CT 5463/790	<b>Plan Parcel:</b> F135789 AL38	<b>Council:</b> THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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**Location reference:** 233 PAYNEHAM RD JOSLIN SA 5070

<b>Title ref.:</b> CT 5463/971	<b>Plan Parcel:</b> F135790 AL39	<b>Council:</b> THE CITY OF NORWOOD PAYNEHAM AND ST PETERS
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Shape:	irregular
Frontage width:	19.05 metres
Depth:	28.85 – 53.59 metres
Area:	780m <sup>2</sup>
Topography:	relatively flat
Existing Structures:	single-storey dwelling, single-car garage, carport and fencing
Existing Vegetation:	nil

The site currently enjoys access and egress from an existing 4m-wide crossover adjacent the southeast boundary of the site and via the Right of Way over the neighbouring land at 235 Payneham Road. The subject land was last used as a dwelling comprising two tenancies. At some time in 2021, the dividing fences between the two residential tenancies in the rear was removed, and the majority of the soft landscaping that existed on the site was removed and replaced with in-situ concrete. The dwelling still exists on the site, as does a carport adjacent the southern boundary and a garage adjacent the northern boundary. A 1.8m Colorbond fence extends the length of the front boundary.

## Locality

Due to the subject land's location and zoning, an extended locality has been considered for the purposes of this report. Specifically, the considered locality is bound by Llandower Avenue and Lambert Road to the north, First Avenue to the west, Winchester Street and Bakewell Road to the south and extending 80m east of Payneham Road (see **Attachment 2**). This locality has been chosen to ensure adequate consideration is given to the mixture of land uses and zoning around the subject land.

West of the subject land, First Avenue is comprised predominantly of single-storey detached dwellings on larger allotments, that enjoy a high level of amenity. Payneham Road, on the other hand, is characterised by a mixture of residential and non-residential land uses. The western side of Payneham Road is predominantly characterised by non-residential uses such as shops, offices, consulting rooms, a pharmacological compounding facility and an aged care facility; with a few residential dwellings, two of which are either side of the subject land. The eastern side of Payneham Road is predominantly characterised by dwellings in the form of residential flat buildings, but does also contain a motor repair station, an office, a personal service establishment and some shops.

## CONSENT TYPE REQUIRED:

Planning Consent

## CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**  
Office: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code

## PUBLIC NOTIFICATION

- **REASON**  
Table 5 of the General Neighbourhood Zone - application fails to satisfy DPF 1.4 of the Zone.
- **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Position	Wishes to be heard?
Carmine	Del Giacco	237 Payneham Road JOSLIN	Support, with concerns	Yes
Yu & Zengshun	Guo  Li	189 Portrush Road MAYLANDS (owners of unit 2, 235 Payneham Road, Joslin)	Opposed	No
Russell	Tulloch	88 First Avenue ST PETERS	Support, with concerns	No

- **SUMMARY**

The main concerns raised by the representors can be summarised as follows:

- Concerns in respect of vehicles damaging the fence adjoining 237 Payneham Road;
- Concerns regarding the use of the right of way for non-residential vehicle movements; and
- Concerns about tree plantings impeding on clothes lines and their root systems causing damage to adjoining buildings.

## **AGENCY REFERRALS**

- Commissioner of Highways

The Commissioner of Highways is supportive of the proposal.

## **INTERNAL REFERRALS**

- Gayle Buckby, Manager, Traffic & Integrated Transport

## **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 of the General Neighbourhood Zone seeks, among other things:

*“... employment and community uses [that] contribute to making the neighbourhood a convenient place to live without compromising residential amenity.”*

In respect of envisaged land use types within the Zone, Performance Outcome 1.1 seeks *“predominantly residential development with complementary non-residential uses”*. The corresponding Designated Performance Feature (DPF) specifically states offices as an envisaged land use within the Zone.

Performance Outcome 1.2 of the Zone further states:

*“Non-residential development located and designed to improve community accessibility to services, primarily in the form of:  
(a) Small scale commercial uses such as offices, shops and consulting rooms...”*

Consequently, a small-scale office land use is considered, in principle, to be an appropriate form of land use within the zone. “Small scale” is not defined in the Planning & Design Code, and so an assessment of whether the proposed use is small scale must be undertaken by reference to the surrounding built form and density. The proposed office involves the change of use of an existing dwelling, with no changes to the building or total floor area. The gross leasable floor area of the office use has thus been calculated at 178m<sup>2</sup>. The site’s existing built form is commensurate with and consistent with the surrounding residential development pattern; being a single-storey detached dwelling on a large allotment, with sufficient spacing around the building for natural light, ventilation, private open space and plantings. In this context, the proposed office use can be considered small-scale.

Performance Outcome 1.3 of the Zone states:

*“Non-residential development [is] sited and designed to complement the residential character of and amenity of the neighbourhood.”*

Performance Outcome 1.4 of the Zone states:

*“Commercial activities improve community access to services [and] are of a scale and type to maintain residential amenity.”*

The subject site has a wide frontage on an arterial road along which a high-frequency public transport service operates, resulting in effective community access to the services offered by any future office use. Being located on an arterial road, the proposed change of use will not diminish the residential character of the neighbourhood because non-residential uses are anticipated on arterial roads, rather than local roads. Further, as earlier identified, the western side of Payneham Road is predominantly characterised by non-residential land uses, and so the proposed change of use will better align with the character of Payneham Road, without prejudicing those areas of the Zone dominated by residential land uses (for example, First Avenue to the rear).

Performance Outcome 1.2 of the Interface Between Land Uses module (General Development Policies) states:

*“Development adjacent to a site containing a sensitive receiver ... is designed to minimise adverse impacts.”*

Performance Outcome 2.1 of the Interface Between Land Uses module states:

*“Non-residential development does not unreasonably impact the amenity of sensitive receivers... through its hours of operation having regard to [several factors] (see **Appendix 1**)”*

Sensitive receiver is defined as, among other things, land uses for residential purposes.

Offices are typically quiet, low-impact land uses, generally not considered to create any interface issues with adjacent and surrounding residential land uses. The proposed office use expects to employ 5 persons, with limited client visits to the office, which is consistent with what one might expect from an office use of this size. The proposed hours of operation of 10am to 6pm, Monday to Friday is consistent with the corresponding DPF to PO 2.1 (above) – which allows for operating hours of 7am to 9pm, Monday to Friday and 8am to 5pm on Saturday. Accordingly, the proposed office is unlikely to negatively affect the amenity of surrounding residential land uses and is therefore considered compatible with these uses.

### **Traffic Impact, Access and Parking**

The application was referred to the Commissioner of Highways because the subject site is located within the Urban Transport Routes Overlay and involves a change in the nature, number and/or frequency of vehicle movements in and out of the site. The policies contained within the Urban Transport Routes Overlay are designed to ensure the provision of safe and efficient access to and from urban transport routes, which in turn maintains the safe and efficient operation of those routes for all road users (see **Appendix 1** for the full list of policies).

As part of the referral process, the Commissioner of Highways requested changes to be made to the development proposal. Specifically, the Commissioner of Highways requested that the adjoining driveway which contains the right of way (at 235 Payneham Road) be altered to provide a 6m x 6m access/egress apron that safely caters for two-way vehicle movement. Notwithstanding the fact that the applicant is not proposing to use this driveway for vehicle access (only egress), the applicant agreed to amend the plans by widening the existing crossover and driveway into the subject land to create the requested 6m x 6m apron.

Following this amendment, the Commissioner of Highways is supportive of the proposal and has directed the imposition of five (5) conditions on any planning consent.

While the aforementioned amendment to the proposal satisfied the concerns of the Commissioner of Highways, it should be noted that the widening of this driveway and crossover into the subject land has no real effect. The applicant is not proposing to utilise this driveway and crossover as an access point, and Condition 8 imposed by the Commissioner of Highways (below) reinforces that this cannot occur. Further, the neighbouring dwellings at 235 Payneham Road are not able to lawfully use this extended part of the driveway without a right of way being established over this area for their use; something which has not been intimated to the assessing officer as an intention of the applicant/landowner. As such, the neighbouring

dwellings will continue to utilise their existing 4.5m-wide driveway for access and egress – as has historically been the case – and the proposed office use will utilise this driveway for egress purposes only. Despite this, the proposal is considered to accord with Performance Outcomes 1.1 and 2.1 of the Urban Transport Routes Overlay (see p 16 of **Appendix 1**).

In respect of access specifically, vehicles will enter the site via the existing crossover located adjacent the southwest corner of the site. Vehicles will then travel through the carport structured adjacent the building, and through to the rear car parking area. One accessible parking space is provided in front of the building. Egress for all vehicles will be via the right of way over 235 Payneham Road's common driveway, with all vehicles being able to exit in a forward direction. The application was internally referred to the Council's Manager, Traffic & Integrated Transport who expressed satisfaction with the proposed vehicle movements into, throughout, and out of the site.

In respect of car parking, Designated Performance Feature 5.1 of the Transport, Access and Parking module (General Development Policies) states:

*“Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using...*

*(a) Transport, Access and Parking Table 1 – General Off-street Car Parking Requirements*

For offices, Table 1 prescribes a rate of 4 parking spaces per 100m<sup>2</sup> of gross leasable floor area (GLFA).

The applicant has described the land use as being “administrative offices with limited client visits” that “won't attract pedestrian foot traffic”. The floor plan provided aligns with this description insofar as it does not identify any dedicated general public areas. Consequently, the GLFA has been calculated as the whole of the building, at 178m<sup>2</sup>.

At a rate of 4 spaces per 100m<sup>2</sup> of GLFA, the car parking demand for the proposed development is seven (7) spaces. The proposal demonstrates sufficient on-site parking to meet this demand, including:

- one (1) stacked car parking space at the rear of the site as a dedicated staff parking space;
- one (1) accessible car parking space between the building and the front boundary; and
- one (1) parallel car parking space adjacent the northeast elevation of the building.

With respect to the parallel car parking space, Australian Standard AS/NZS 2890.1-2004 “Parking facilities” is relevant. This Standard states that, for a car parking space adjacent to a wall or other obstruction, 300mm of clearance should be provided to each side of the car adjacent an obstruction, to allow for door openings. This car parking space is required to be 2.4m wide where no obstruction is present. However, because one side of the park will be enveloped by the building wall, and the other side by landscaping, the car parking space should be 3.0m wide to comply with the above standard. This can be achieved by reducing the width of the landscaping strip adjacent this parking space by 200mm, an adjustment which can be required by way of a condition should the Panel decide to grant planning consent to the proposal.

Finally, some of the representors raised concerns regarding the impact that the increased use of the right of way for non-residential vehicle movements may have on those adjoining dwellings that currently utilise this common driveway. This driveway currently services eight (8) group dwellings at 235 Payneham Road, and has also been utilised by one of the tenancies at 233 Payneham Road in recent years. The proposed office use is expected to employ five (5) staff members on-site, generating ten (10) vehicle movements per day (five in, five out). The number of anticipated client vehicle movements is not clear. Nonetheless, based on the small-scale nature of the proposed use, the increased use of the right of way is considered to be reasonable. It is not anticipated that these movements will have a detrimental impact on the occupiers of the adjoining dwellings at 235 Payneham Road.

## CONCLUSION

The General Neighbourhood Zone, while predominantly seeking residential development, does permit small scale non-residential uses such as offices, provided they are sited and designed to improve community access to services and are of a suitable size and scale to not significantly impact on the surrounding residential amenity. The western side of Payneham Road is typified by a myriad of non-residential uses and the proposed office use aligns well with this established character. Safe and convenient access to the office is made possible through the effective utilisation of existing access and egress points, with sufficient off-street car parking provided to meet the daily needs of the site. The proposed hours of operation and expected number of vehicle movements is not considered to detrimentally affect the amenity of neighbouring residential land uses and consequently the proposal can be expected to operate harmoniously within this locality.

## RECOMMENDATION

It is recommended that the Council Assessment Panel/SCAP 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 22041659, by Lou Fantasia Planning and Smart Investors Group Pty Ltd is granted Planning Consent subject to the following conditions:

### CONDITIONS

#### Planning Consent

##### Condition 1

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

##### Condition 2

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.

##### Condition 3

The landscaping strip situated adjacent the northeast boundary of the site shall be reduced in width by 200mm, for the length of the adjacent car parking space (5.4 metres), to provide sufficient room for door openings for any vehicle parked in this space.

##### Condition 4

All car parking spaces shall be line marked or delineated in a distinctive fashion, with the marking maintained in a clear and visible condition at all times.

##### Condition 5

Wheel stopping devices 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.

##### Condition 6

Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.

### Conditions imposed by Commissioner of Highways under Section 122 of the Act

#### Condition 7

All access to/from the development shall be gained in accordance with the site plan produced by D'LA Design Studio, Proposed Site Plan, dated 26.01.2023. The entry and exit points shall be suitably signed and line-marked to reinforce the desired traffic flow.

#### Condition 8

All vehicles shall enter and exit the site in a forward direction.

#### Condition 9

All off-street car parking shall be designed in accordance with *AS/NZS 2890.1:2004* and *AS/NZS 2890.6:2009*.

#### Condition 10

Any infrastructure within the road reserve that is demolished, altered, removed or damaged during the construction of the project shall be reinstated to the satisfaction of the relevant asset owner, with all costs being borne by the applicant.

#### Condition 11

Stormwater run-off shall be collected on-site and discharged without impacting the adjacent road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's cost.

### ADVISORY NOTES

#### Planning Consent

##### Advisory Note 1

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 2

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

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

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

##### Advisory Note 3

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

##### Advisory Note 4

The Applicant should be aware that the access, internal manoeuvring, car parking areas and egress arrangements only function so long as both allotments that comprise 233 Payneham Road are retained under the same ownership, and rights of way continue to exist over the common driveway for the dwellings at 235 Payneham Road. Should any of these circumstances change, new rights of way may have to be established and/or alternative access arrangements pursued through a variation to the Planning Consent / Development Approval in order for the land use to lawfully continue.



Advisory Note 5

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

Advisory Note 6

The 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 7

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 8

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 9

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 10

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

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Mr Fantasia addressed the Council Assessment Panel from 7:53pm until 7:59pm

**MOVED**

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
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## **CONDITIONS**

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*Advisory Note 10*

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

**Seconded and carried**

**5.4 DEVELOPMENT NUMBER 23006526 – JUDITH JONES – 59 FREDERICK STREET, MAYLANDS**

<b>DEVELOPMENT NO.:</b>	23006526
<b>APPLICANT:</b>	Judith Jones
<b>ADDRESS:</b>	59 FREDERICK ST MAYLANDS SA 5069
<b>NATURE OF DEVELOPMENT:</b>	Single-level alterations and additions to an existing single-level detached dwelling
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Established Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Historic Area</li> <li>• Hazards (Flooding - General)</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Urban Tree Canopy</li> </ul> <p><b>Technical Numeric Variations (TNVs):</b></p> <ul style="list-style-type: none"> <li>• Minimum Frontage (Minimum frontage for a detached dwelling is 15m; semi-detached dwelling is 9m)</li> <li>• Minimum Site Area (Minimum site area for a detached dwelling is 300 sqm; semi-detached dwelling is 300 sqm)</li> <li>• Maximum Building Height (Levels) (Maximum building height is 1 level)</li> <li>• Site Coverage (Maximum site coverage is 50 per cent)</li> </ul>
<b>LODGEMENT DATE:</b>	27 Mar 2023
<b>RELEVANT AUTHORITY:</b>	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Nenad Milasinovic Senior Urban Planner
<b>REFERRALS STATUTORY:</b>	N/A
<b>REFERRALS NON-STATUTORY:</b>	N/A

**CONTENTS:**

<b>APPENDIX 1:</b>	<b>Relevant P&amp;D Code Policies</b>	<b>ATTACHMENT 5:</b>	<b>Representations</b>
<b>ATTACHMENT 1:</b>	<b>Application Documents</b>	<b>ATTACHMENT 6:</b>	<b>Response to Representations</b>
<b>ATTACHMENT 2:</b>	<b>Subject Land Map</b>		
<b>ATTACHMENT 3:</b>	<b>Zoning Map</b>		
<b>ATTACHMENT 4:</b>	<b>Representation Map</b>		

## DETAILED DESCRIPTION OF PROPOSAL:

The applicant proposes to undertake a single-level addition to the rear of an existing single-level detached dwelling.

The proposed addition comprises an overall area in the order of 45m<sup>2</sup> and is to include an open-plan kitchen and dining area along with laundry and bathroom areas.

The proposed addition to the existing dwelling would increase the total floor area from 74m<sup>2</sup> to 119m<sup>2</sup> (ie. 74m<sup>2</sup> existing and 45m<sup>2</sup> proposed).

## BACKGROUND:

By way of background, Development Application 21038423, comprising single-level alterations and additions to an existing detached dwelling, was granted Planning Consent on 17 December 2021 and subsequently Development Approval on 24 May 2022. As part of that Application, a proposed boundary wall measuring 3.3 metres and 8.7 metres in height and length respectively, 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 57 Frederick Street, Maylands, 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. 23006526) 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 (21038423) would not be relied upon.

## SUBJECT LAND & LOCALITY:

### Site Description:

**Location reference:** 59 FREDERICK ST MAYLANDS SA 5069

**Title ref.:** CT  
5805/907

**Plan Parcel:** F135022  
AL71

**Council:** THE CITY OF NORWOOD PAYNEHAM AND  
ST PETERS

Shape: rectangular

Frontage width: 7.9 metres

Depth: 39.6 metres

Area: 314m<sup>2</sup>

Topography: essentially flat

Subject Land: The subject land is currently occupied by a modest two-bedroom single-fronted cottage, which is identified as a Representative Building. A driveway area is located adjacent the northern side of the existing cottage. A mature street tree is located adjacent the south-western corner of the subject land. In terms of vegetation, turf and low plants occupy the front and rear yards, with established trees (none of which are identified as regulated) located within the north-eastern portion of the property.

## Locality

The locality is characterised by single-level detached dwellings, most being identified as Representative Buildings Items within the Heritage Area Overlay - the most notable exceptions being the contemporary two-level dwelling directly to the south at 57 Frederick Street and the dwelling further to the south of the subject land (on the corner of Clifton and Frederick Streets) at 2A Clifton Street. Residential amenity is considered to be moderate to high, influenced mainly by the original built form, relatively wide nature of Frederick Street and well established street trees and vegetation.

## CONSENT TYPE REQUIRED:

Planning Consent

## CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**  
Dwelling addition: Code Assessed - Performance Assessed
  
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed

## PUBLIC NOTIFICATION

- **REASON**

The dwelling addition incorporates a boundary wall that exceeds 8 metres in length and exceeds 3.2 metres in height (measured from the lower of the natural or finished ground level).

- **LIST OF REPRESENTATIONS**

A total of eight (8) representations were received during the public notification period, seven (7) in support and one (1) in opposition.

Since the conclusion of the public notification period, one of the owners of 74 Frederick Street, Maylands, have advised the Council's Planning staff they do not wish to be heard by the Panel in support of their representation.

Given Name	Family Name	Address	Wishes To Be Heard	In Support
Felicity	Niemann	Level 5/400 King William Street, Adelaide	Yes	No
Cam	Flower	18 Bennett Street, Maylands	No	Yes
Angelik	Van Den Berg	74 Frederick Street, Maylands	No	Yes
Andrew	Van Den Berg	74 Frederick Street, Maylands	Yes	Yes
Sam	Lomax	27 Harcourt Road, Payneham	No	Yes
Benjamin	Thoman	82 Frederick Street, Maylands	No	Yes
Dianne	Jones	PO Box 383, Stepney	No	Yes
Lesley	Donnison	80 Frederick Street, Maylands	No	Yes

- **SUMMARY**

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

- Inconsistent and incoherent with Historic Area Overlay
- Visual Impact, material & building siting; and
- Overshadowing Impacts

Mr Greg Vincent of Masterplan Town & Country Planners, has been engaged by the representor to address the Panel in support of their representation.

## **AGENCY REFERRALS**

- Nil

## **INTERNAL REFERRALS**

- Nil

## **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 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 one (1) level TNV is applied to all properties located within the Heritage Area Overlay and this includes a large extent of Frederick Street.



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.”*

The development comprises a single level addition (with a concealed roof area) integrated into the rear of the existing single level cottage. The dwelling addition has wall heights that are either less and/or commensurate with the wall heights of the original cottage.

In this context, Performance Outcome 4.1 of the Established Neighbourhood Zone and other relevant policies (including PO 10.2) is considered to be achieved in relation to building height.

### **Setbacks, Design & Appearance**

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 development results in 38% 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.*

In terms of boundary development, the dwelling addition includes a boundary wall on the southern side boundary. The wall is to be 8.7 metres in length and 3.3 metres in height above natural ground level. In this regard, the boundary wall does not achieve the Designated Performance Feature.

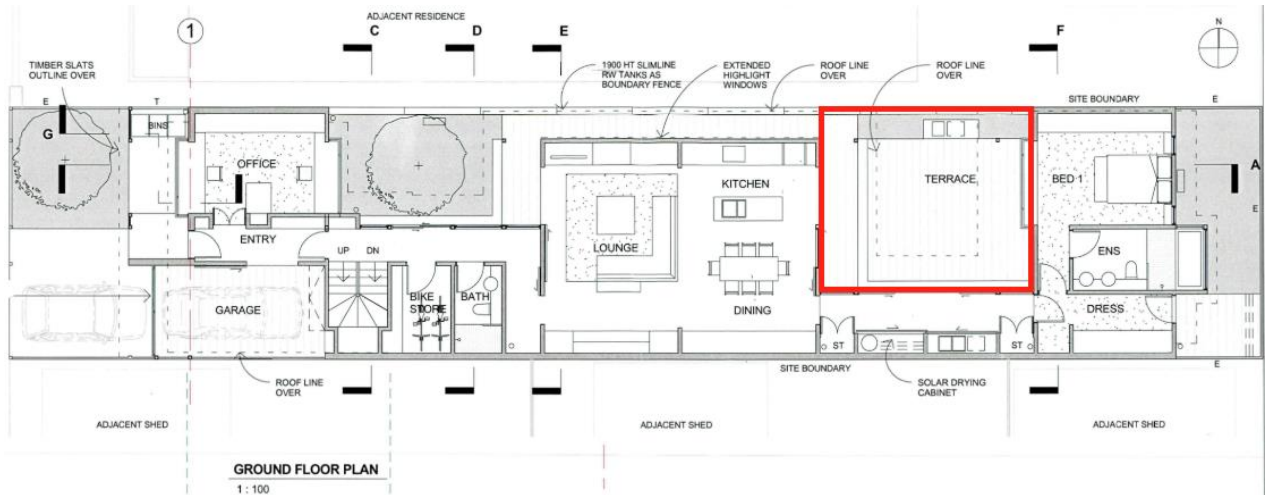
The established built form pattern within the locality includes several examples of dwellings and/or ancillary structures built on side property boundaries. More specifically, these examples include:

- 57 Frederick Street – includes three sections of boundary walls (ie. two sections on the northern side boundary both comprising 4.5 metres in length and varying height between 2.9 – 3.1 metres; and 27 metres in length and 3 metres in height along the southern side boundary);
- 61 Frederick Street – includes an attached carport abutting the northern side boundary and spanning a length of approximately 10 metres;
- 63 Frederick Street – includes an attached carport abutting the northern side boundary and spanning a length of approximately 13.5 metres;
- 72 Frederick Street – includes an attached carport abutting its secondary frontage boundary for an approximate length of 11 metres;
- 78 Frederick Street – includes an attached carport abutting the southern side boundary that spans a length of approximately 9 metres;
- 94 Frederick Street – includes an attached carport abutting the northern side boundary that spans a length of approximately 14 metres as well as a dwelling addition built to the southern side boundary which spans a length in the order of 8.5 metres;

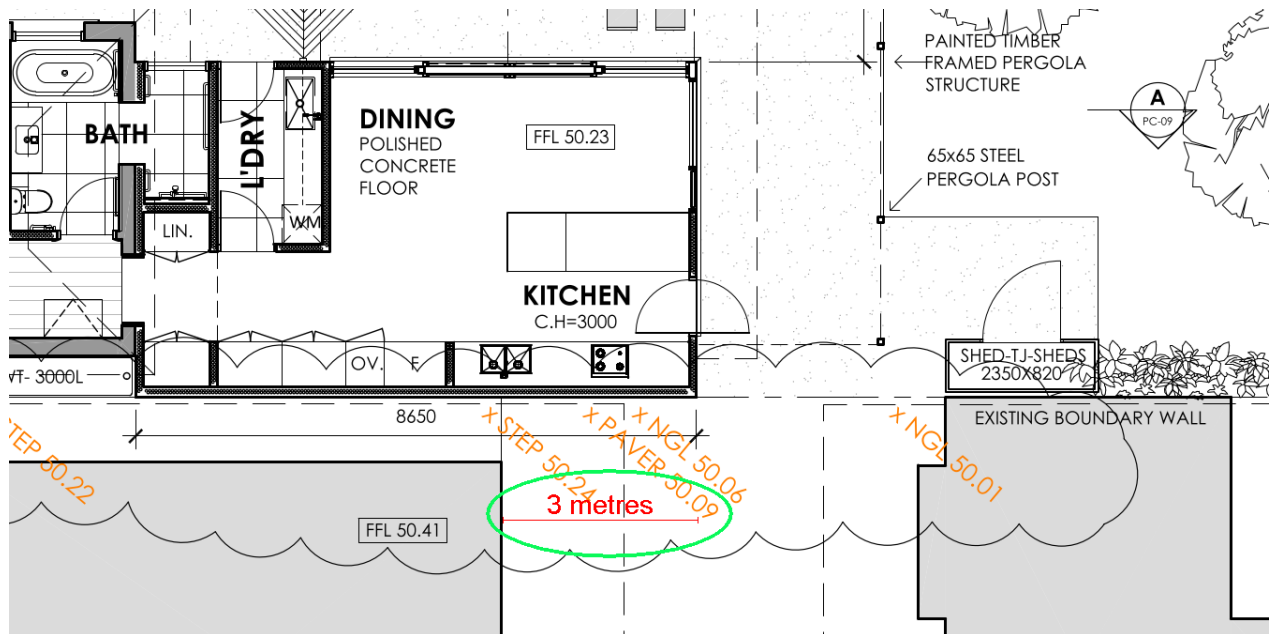
In this context, it is considered that the proposal for a dwelling addition built on one of the side boundaries is consistent with the established development pattern within the locality. Furthermore, the boundary addition is acceptable from a streetscape perspective, as the addition will be situated behind the Representative Building and will not be readily visible when viewed within a streetscape context.

In terms of the visual impact for the occupiers of 57 Frederick Street, it is considered that the extent of proposed boundary development along the southern side boundary and the potential for a compromised outlook on these directly neighbouring occupiers is acceptable in the context of both the existing built form within the locality and due to the configuration of this dwelling's main private open space area.

The neighbouring two-level dwelling at 57 Frederick Street, incorporates two internal courtyard areas. The easternmost internal courtyard (the largest of the two and highlighted in red) at 57 Frederick Street is identified below:



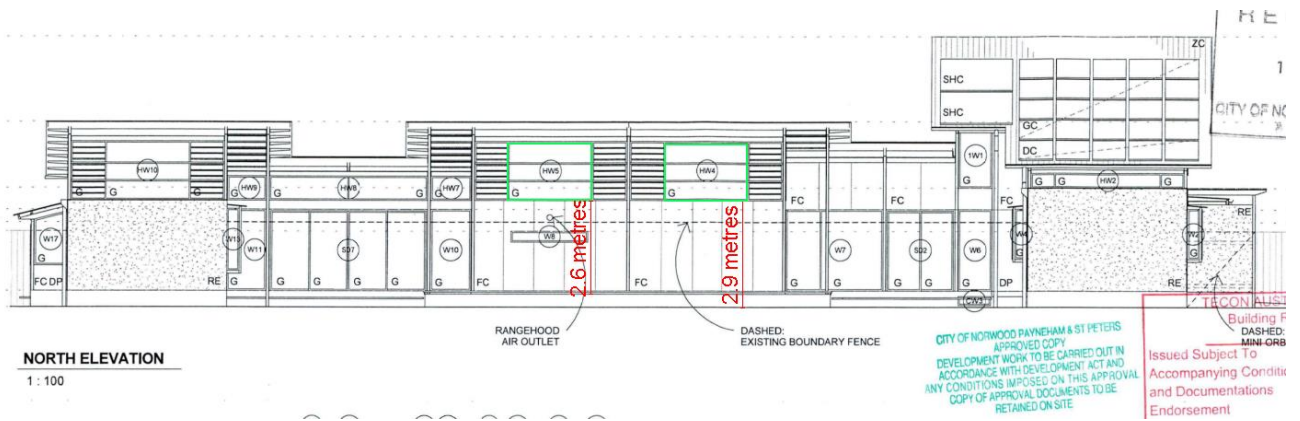
In terms of the proposed 8.7 metre boundary wall length, only in the order of 3 metres (or only 34% of the entire overall length) will be visible when viewed from the adjacent courtyard area of 57 Frederick Street as detailed below:



Similarly, the 3 metre visible extent of the boundary wall when viewed from the courtyard will span less than half (ie. 44%) of the 6.8 metre width of this courtyard.

In terms of the outlook from within the open plan living/kitchen/dining area of the dwelling at 57 Frederick Street, the boundary wall is not considered to have a significant impact on amenity, either by way of visual outlook nor overshadowing to the internal area of the neighbouring dwelling.

The external north facing wall of the living/kitchen area of the dwelling at 57 Frederick Street is setback 1 metre from its northern side boundary. The north facing wall has two high level windows that have sill heights that commence 2.6 and 2.9 metres above finished floor level and adjacent ground level respectively. These two windows are highlighted in green and shown below:



In this context, the boundary wall will only be realistically discernible from the southernmost section of the living and dining area of the dwelling at 57 Frederick Street whilst maintaining a relatively uninterrupted outlook to the northern sky, as evidenced by the photograph (below) contained in the representor’s professional planning opinion prepared by Mr Greg Vincent.



In this context, it is considered that the boundary wall is in accordance with Performance Outcome 7.1, which requires that boundary walls are limited in height and length in order to minimise such impacts.

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 up to 3 metres in height and in the case of upper level walls, a distance of 900mm plus one-third of the wall height above 3 metres.

The dwelling addition is setback 2.8 metres from the northern side boundary of the subject land which in turn exceeds the criteria detailed in Designate Performance Feature 8.1.

### **Design & Appearance**

Performance Outcome 3.1 of the Historic Area Overlay states:

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

The Designated Performance Feature for PO 3.1, states:

*“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.”*

The dwelling addition is situated to the rear of the existing single-fronted cottage and as such, it will not interfere with the front facade of the dwelling therefore, this aspect of the proposal is consistent with both the Performance Outcome and the Designated Performance Feature.

The representors at 57 Frederick Street have raised concerns with the use of galvanised corrugated sheeting as a cladding to the boundary wall of the dwelling addition.

In terms of dwelling additions within a Heritage Area Overlay, they should incorporate wall materials that are generally compatible in colour and texture with the original materials of construction of the building. The dwelling addition to the rear of 59 Frederick Street is lightweight in construction as evidenced by the use of the galvanised corrugated cladding to the southern boundary wall. Whilst ordinarily a galvanised corrugated cladding is associated with pitched roof areas within a Historic Area Overlay, the use of the material as a wall cladding is considered to be a compatible wall material to the existing rendered masonry wall of the single-fronted cottage which in turn clearly results in a distinguishable appearance from the original dwelling. In other words, this clearly contrasts the “new” from the “old”.

Furthermore, the use of the galvanised corrugated cladding also demonstrates a compatible and complementary visual relationship with the relatively new and coteremporary dwelling at 57 Frederick Street which incorporates a variety of exposed structural steel elements, large sections of framed aluminium glazing and internally exposed sections of galvanised roofing areas (ie. situated above the easternmost internal courtyard of 57 Frederick Street). In this context, the proposed galvanised corrugated boundary wall cladding is considered to be consistent with Performance Outcome 3.1 in that the dwelling addition is considered to display both a complementary and contextually responsive design approach.

### **Overshadowing**

Through their representatives, the owners of 57 Frederick Street have expressed concerns regarding the overshadowing impacts to the easternmost courtyard and the open plan internal living/kitchen/dining area from the boundary wall of the dwelling addition.

Performance Outcome 3.1 and corresponding Designated Performance Feature 3.1 of Interface between Land Uses of the General Development Policies section of the P&D Code state respectively:

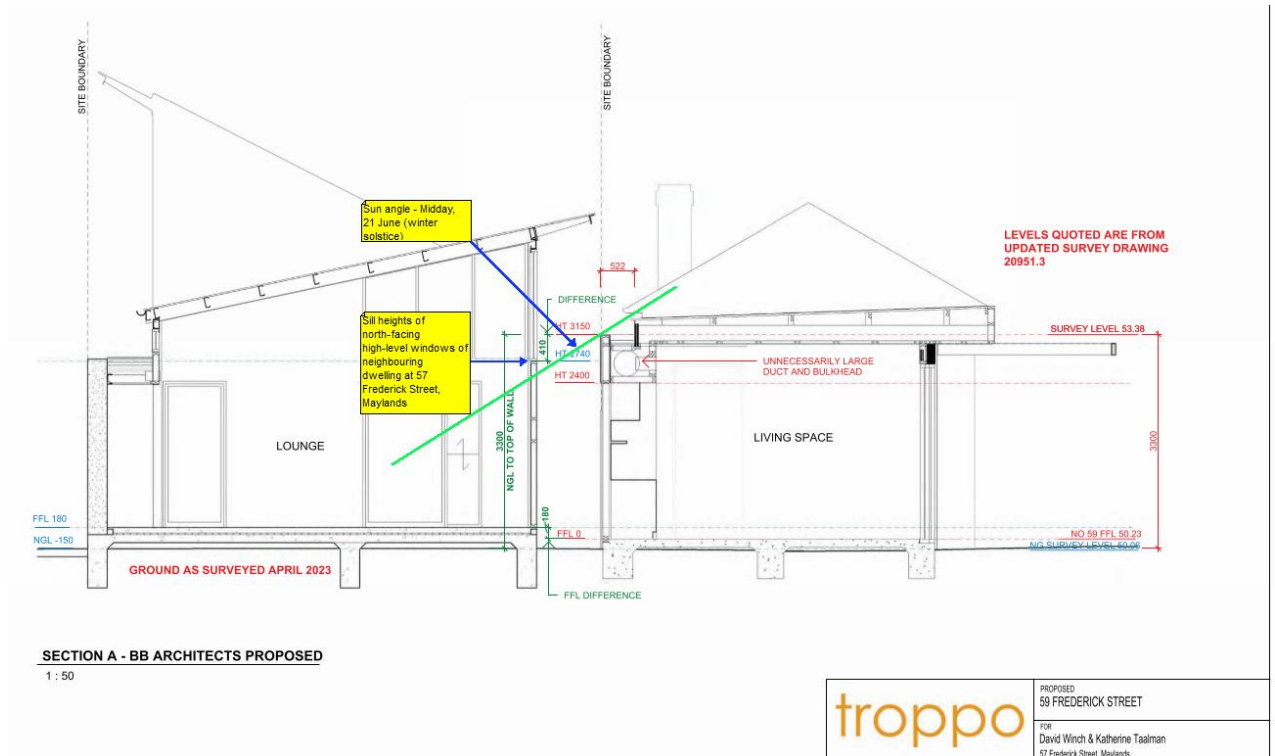
Overshadowing of habitable room windows of adjacent residential land uses in:

- a) a neighbourhood-type zone is minimised to maintain access to direct winter sunlight
- b) other zones is managed to enable access to direct winter sunlight.

And

North-facing windows of habitable rooms of adjacent residential land uses in a neighbourhood-type zone receive at least 3 hours of direct sunlight between 9.00am and 3.00pm on 21 June.

Having regard to the sun's angle of 32 degrees in the sky at midday on 21 June (ie. winter solstice), the north facing high-level windows will not be shadowed as detailed in the image below:



Accordingly, the proposal is consistent with Performance Outcome 3.1

Performance Outcome 3.2 and corresponding Designated Performance Feature 3.2 of Interface between Land Uses of the General Development Policies section of the P&D Code state respectively:

Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses in:

- a. a neighbourhood type zone is minimised to maintain access to direct winter sunlight
- b. other zones is managed to enable access to direct winter sunlight.

And

Development maintains 2 hours of direct sunlight between 9.00 am and 3.00 pm on 21 June to adjacent residential land uses in a neighbourhood-type zone in accordance with the following:



- a. for ground level private open space, the smaller of the following:*
- i. half the existing ground level open space*
  - or*
  - ii. 35m<sup>2</sup> of the existing ground level open space (with at least one of the area's dimensions measuring 2.5m)*
- b. for ground level communal open space, at least half of the existing ground level open space.*

The representors at 57 Frederick Street have provided shadow diagrams that illustrate both the existing and proposed levels of overshadowing to their easternmost internal courtyard at 9.00am, 12.00pm and 3.00pm on 21 June (the winter solstice). The shadow diagrams illustrate that this courtyard will experience varying degrees of overshadowing as follows:

- 9:00am – no overshadowing.
- 12:00pm – approximately half of the non-shadowed section of the courtyard will now experience shadowing; and
- 3:00pm – the court yard area will be predominately overshadowed during the afternoon period.

The shadow diagrams demonstrate that the extent of shadowing is at odds with Designated Performance Feature 3.2, insofar that at least 2 hours of direct sunlight between 9.00 am and 3.00 pm during the winter solstice are not maintained on at least 50% of this private open space area.

As a starting point, it is important to recognise that varying degrees of overshadowing will occur within localities where allotments are orientated east-west and the density is relatively high and siting of buildings is generally compact as in the case with both 57 and 59 Frederick Street, Maylands.

Furthermore, in terms of the boundary development associated with the dwelling addition, the Established Neighbourhood Zone allows for boundary wall heights not exceeding 3.2 metres (ie. measured as a height above the natural surface or finished level of the ground level) and a length not exceeding 8.0 metres. Simply put in another way and in isolation, the dwelling addition could have been designed such that it satisfied these criteria and it could have been positioned directly adjacent the 6.8 width of the easternmost courtyard at 57 Frederick Street. In this context, the extent of shadowing would have been far greater in such an example than with the boundary wall in its current configuration. In this regard, whilst the Designated Performance Feature is not achieved it is considered that the boundary wall (ie. of which only a 3.7 metre long by approximately 3.2 metre high portion that is directly adjacent the courtyard) satisfies Performance Outcome 3.1 in this instance in that a reasonable degree of direct winter sunlight is maintained to this courtyard on the neighbouring property.

## CONCLUSION

The proposed dwelling addition is consistent with the Planning and Design Code in that the addition is single level and is situated directly behind the existing Representative Building.

The relatively modest addition displays an outwardly contemporary design approach, uses traditional building materials that are considered both compatible and complementary to the existing built form character within the immediate area of this part of the Historic Area Overlay.

Overall, 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/SCAP 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 23006526, by Judith Jones is granted Planning Consent subject to the following reasons/conditions/reserved matters:

### CONDITIONS

#### Planning Consent

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

##### Condition 1

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.

##### Condition 2

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.

##### Condition 3

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.

### 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](mailto: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.

*Mr Vincent addressed the Council Assessment Panel from 8:03pm until 8:10pm*

*Mr Winch addressed the Council Assessment Panel from 8:11pm until 8:13pm*

*Mr Hilditch addressed the Council Assessment Panel from 8:15pm until 8:20pm*

*Mr Rolfe addressed the Council Assessment Panel from 8:21pm until 8:27pm*

## **MOVED**

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 23006526, by Judith Jones is granted Planning Consent subject to the following reasons/conditions/reserved matters:*

### **CONDITIONS**

#### **Planning Consent**

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##### *Condition 3*

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### **ADVISORY NOTES**

#### **Planning Consent**

##### *Advisory Note 1*

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*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;*
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*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](mailto: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*

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*building work or change of use of the land until you have received notification that Development Approval has been granted.*

**Seconded and carried**

6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT
7. REVIEW OF ASSESSMENT MANAGER DECISIONS
8. ERD COURT APPEALS

**9. OTHER BUSINESS**

Nil

**9.1 COUNCIL ASSESSMENT PANEL – TERMS OF REFERENCE**

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**REPORT AUTHOR:** Manager, Development Assessment  
**GENERAL MANAGER:** General Manager, Urban Planning & Environment  
**CONTACT NUMBER:** 83664567  
**FILE REFERENCE:** qA63668  
**ATTACHMENTS:** A and B

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**PURPOSE OF REPORT**

This report provides notice to the Council Assessment Panel of amended Terms of Reference that have been endorsed by the Council.

**BACKGROUND**

Section 83 of the *Planning, Development & Infrastructure Act 2016* (PDI Act), requires a designated authority (in this case, the Council) to establish a Council Assessment Panel. The PDI Act requires that:

*(b) a designated authority must determine-*

- (i) the membership of the assessment panel, being no more than 5 members, only 1 of which may be a member of a council, and, if the designated authority thinks fit, on the basis that the assessment panel will be constituted by a different number of members depending on the particular class of development that is being assessed by the assessment panel; and*
- (ii) the procedures to be followed with respect to the appointment of members; and*
- (iii) the terms of office of members; and*
- (iv) conditions of appointment of members, or the method by which those conditions will be determined, (including as to their remuneration) and the grounds on which, and the procedures by which, a member may be removed from office; and*
- (v) the appointment of deputy members; and*
- (vi) who will act as the presiding member of the panel and the process for appointing an acting presiding member.*

The Council specifies the requirements and processes around these matters in the Terms of Reference, which are applicable to the Council Assessment Panel.

The current Terms of Reference were adopted by the Council Assessment Panel on 10 February 2021, however for reasons explained later in this report, the Terms of Reference required updating and endorsement by the Council.

**DISCUSSION**

As noted in the *Background* section above, the applicable legislation (in this case the *Planning, Development & Infrastructure Act 2016*), clearly anticipates that the designated authority (i.e. the Council) must establish the parameters and procedures applicable to the constitution of the Council Assessment Panel.

The manner in which the Council Assessment Panel operates (i.e. the Meeting Procedures) is a matter for the Panel itself, as anticipated by Regulation 18 in the *Planning Development & Infrastructure (General) Regulations 2017*:

## 18 – Other Matters

*Except insofar as a procedure is prescribed by the Act or these regulations, the procedures of an assessment panel in relation to the conduct of its business will be as determined by the assessment panel (and an assessment panel is accordingly a specified body for the purposes of section 246(6)(d) of the Act).*

The Terms of Reference for the Council Assessment Panel are currently combined with the Meeting Procedures to form one document.

To comply with the advice that the Council has received through both the Local Government Association of South Australia and the Council's solicitors (Norman Waterhouse), it is necessary to separate the Terms of Reference and Meeting Procedures into separate documents, as both documents require endorsement from different entities (i.e. the Council for the Terms of Reference and the Council Assessment Panel for the Meeting Procedures).

The attached, updated version of the Terms of Reference were endorsed by the Council recently at its meeting held on 1 May 2023:

*Cr Granozio moved:*

- 1. That the updated Terms of Reference for the Council Assessment Panel, as contained in Attachment A, be endorsed and adopted.*
- 2. That a copy of the endorsed Terms of Reference be provided to Members of the Council Assessment Panel for their information.*

*Seconded by Cr Duke and carried unanimously.*

An updated version of the Terms of Reference is contained in **Attachment A** for the Council's consideration and endorsement. The original version of the Terms of Reference (to be superseded) is contained in **Attachment B**.

The changes that have been made to the Terms of Reference are summarised below:

- Separation of the Terms of Reference from the Meeting procedures.
- Change of the term "Specialist External Members" to "Independent Members". This change ensures conformity with the Model Meeting Procedures issued by the Local Government Association of South Australia and assists with consistency of language.
- Clause 2.10 – Altered to reflect the option that the Council has to re-appoint existing Members for a further term should they choose to do so. This addition does not prevent the Council's power to call for expressions of interest at the expiry of the term of CAP Members. It simply allows the Membership to "roll over" to another term, should the Council deem that course of action appropriate.
- Addition of Clause 2.11 – Reflects the fact that Council will call for nominations of interest for the Elected Member position on the CAP (rather than a formal external EOI process as is the case for Independent Members).
- Clause 2.14 – Added clarification that only an Independent Member can act as the Presiding Member.
- Addition of Clause 2.15 – Adds clarification of the role of the Presiding Member and what is expected.
- Clause 2.16 – The addition of the words "*as determined by the Council*" at the end of the clause to clarify that a Presiding Member is eligible for re-appointment at the end of their term, but only if the Council resolves accordingly.
- Clause 2.19 – This addition reflects that an Elected Member (and Deputy Elected Member) are to be appointed for two (2) years or the expiry of the current elected term, whichever occurs first.

This simply reflects the fact that an Elected Member should not continue to be a CAP Member if their elected term has expired.

- Clause 2.20 – Addition of the words “*as determined by the Council*” at the end of the clause to clarify that a CAP Member is eligible for re-appointment at the end of their term, but only if the Council resolves accordingly.
- Clause 2.22 – 2.28 – These additional Clauses provide clarification regarding the requirements which are applicable to Independent Members for their accreditation (all Independent Members must be accredited at Level 2 under the Accredited Professionals Scheme). The Clauses reflect the fact that Independent Members are responsible for their accreditation, for notifying the Council of any changes to their accreditation status and for the training costs, which they incur in maintaining their accreditation. In practice, this is already a generally accepted understanding on behalf of CAP Members and administration, the clauses simply reflect that understanding.
- Clause 4.2 – Addition of the words “*and training if agreed to by the Assessment Manager at his or her absolute discretion*”.

This Clause enables CAP Members to be remunerated not only for their time in attending meetings, but also to attend training, only where approved by the Council’s Assessment Manager. The intention of this change is to enable CAP Members to receive reimbursement if they attend training which is organised by the Council. This would be rare (expected to be once or less per annum) and would only occur where the Council considers the Panel would benefit from additional training.

As Members would be aware, they are still responsible for the training costs which they incur as part of maintaining their accreditation in accordance with Clause 2.24.

- Clause 5.4.1.2 – Within this clause, a further clause (5.2.1) is referenced and this is to be altered to Clause 5.2 to reflect the extent of reasons that a CAP Member may be removed from office.

## CONCLUSION

The changes to the Terms of Reference are primarily administrative in nature. The amended wording of the various clauses noted above generally reflects the “model” terms of reference as published by the Local Government Association of South Australia and provides a greater level of clarification.

The most significant change is the separation of the Terms of Reference and the Meeting Procedures into separate documents. This is required because the Council is responsible for setting the Terms of Reference, whereas the Panel is responsible for setting the Meeting Procedures.

A revised set of Meeting Procedures is currently being prepared by the Council’s administration and it is anticipated these will be put before the Council Assessment Panel at the June Meeting for consideration and endorsement.

This report is provided for information purposes only. No decision of the Panel is required with respect to the Terms of Reference.

## RECOMMENDATION

1. That the Council Assessment Panel notes that updated Terms of Reference applicable to the Panel, and that a future report and set of updated Meeting Procedures will be provided for review and endorsement in due course.



**MOVED**

1. *That the Council Assessment Panel notes that updated Terms of Reference applicable to the Panel, and that a future report and set of updated Meeting Procedures will be provided for review and endorsement in due course.*

**Seconded and carried**

10. **CONFIDENTIAL REPORTS**

11. **CLOSURE**

The Presiding Member declared the meeting closed at 9:00pm

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Terry Mosel  
**PRESIDING MEMBER**

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Geoff Parsons  
**MANAGER DEVELOPMENT ASSESSMENT**