

Council Assessment Panel Minutes

21 August 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 7:00pm

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
Tala Aslat, Planning Assistant

Staff

APOLOGIES

ABSENT

1. **COMMENCEMENT AND WELCOME**

2. **APOLOGIES**

3. **CONFIRMATION OF THE MINUTES OF THE SPECIAL MEETING OF THE COUNCIL
ASSESSMENT PANEL HELD ON 15 AUGUST 2023**

**Moved by Mr Adcock and Seconded by Mr Bateup
CARRIED**

4. **DECLARATION OF INTERESTS**

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 23012869 – GOSIA ZEBROWSKA-BOGUSZ – 44 TORRENS STREET, COLLEGE PARK

DEVELOPMENT NO.:	23012869
APPLICANT:	Gosia Zebrowska-Bogusz
ADDRESS:	44 TORRENS ST COLLEGE PARK SA 5069
NATURE OF DEVELOPMENT:	Alterations and additions to an existing dwelling comprising the construction of a front entry verandah and the extension of an existing rear pergola
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy • Water Resources • Airport Building Heights (Regulated) • Character Area • Hazards (Flooding) <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Minimum Frontage (Minimum frontage for a detached dwelling is 15m; semi-detached dwelling is 10m) • Minimum Site Area (Minimum site area for a detached dwelling is 500 sqm; semi-detached dwelling is 500 sqm) • Maximum Building Height (Levels) (Maximum building height is 2 levels) • Minimum Side Boundary Setback (Minimum side boundary setback is 1.5m for the first building level; 3m for any second building level or higher) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	15 May 2023
RELEVANT AUTHORITY:	Assessment panel at the City of Norwood, Payneham and St. Peters
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

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

DETAILED DESCRIPTION OF PROPOSAL:

There are two elements to the proposal, as detailed below.

Front Entry Roof

An existing deteriorated roof over the front entrance to the dwelling is proposed to be replaced with a new roof structure. A new timber stud wall is proposed alongside the side boundary of the allotment to support the new roof structure.

The roof extends approximately four (4) metres out from the dwelling, with the supporting wall extending out further, to approximately seven (7) metres and corresponding with the length of the wall of the adjoining dwelling. The roof structure is 1.2m high commencing at 3.45m above floor level, giving a total height of 4.65m.

Rear Pergola Extension

An existing pergola at the rear of the dwelling is proposed to be extended out 4.4 metres, for a width of 11.3m. The pergola extension matches the height of the existing pergola, at 4.2m above floor level and approximately 4.5m above ground level on the adjoining property.

The pergola is proposed to comprise 300x300mm columns and bulkhead with a painted render finish and treated timber rafters. Insect screens are proposed between the columns.

BACKGROUND:

The Council was advised by the owner of the adjoining property that building works were being undertaken on the subject land. The Council's Compliance Officer - Planning Services inspected the land and observed that the front verandah and rear pergola had been constructed as advised. Photographs of what was observed are provided below.

Photograph 1. Front Entry Roof



Photograph 2. Rear Pergola Extension



Both the front entry roof replacement and the rear pergola extension constitute development for which development approval is required. Exclusions from the definition of development include:

“other than in respect of a local heritage place, the repair, maintenance or internal alteration of a building—

- a) that does not involve demolition of any part of the building (other than the removal of fixtures, fittings or non load-bearing partitions); and*
- b) that will not adversely affect the structural soundness of the building or the health or safety of any person occupying or using it.”*

“the construction of a pergola or similar structure designed to provide shade associated with an existing dwelling (whether attached to the building or freestanding)—

- (i) which does not have a solid roof; and*
- (ii) each freestanding side of which is open (that is, not enclosed with a solid material); and*
- (iii) no part of which is higher than 4 m above the ground; and*

(iv) *which is not being constructed so that any part of the pergola or structure will be in front of any part of the building line of the dwelling to which it is ancillary that faces the primary street."*

The front entry roof does not satisfy the exclusion because the previous roof structure was replaced in its entirety, rather than being repaired without demolition of structural elements. The pergola extension does not satisfy the exclusion because it is higher than 4m above the ground, at 4.35m above the ground. Therefore, the owner of the land is in breach of the *Planning, Development and Infrastructure Act (2016)*, having undertaken development without having obtained Development Approval.

The owner of the subject land subsequently lodged Development Application 23012869 (which is the subject of this report), seeking to regularise the breach.

SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 44 TORRENS ST COLLEGE PARK SA 5069

Title ref.: CT
5892/107

Plan Parcel: D61344
AL701

Council: THE CITY OF NORWOOD PAYNEHAM AND
ST PETERS

The subject land is an irregular shape allotment with a frontage of approximately six (6) metres to Torrens Street, widening out to approximately thirty three (33) metres at the rear. It contains a semi-detached dwelling, which was constructed together with the adjoining semi-detached dwelling at 44A Torrens Street twenty years ago in 2003.

Locality

The subject land is bounded by Twelftree Reserve to the south, the River Torrens Linear Park to the rear and the property containing the adjoining semi-detached dwelling to the north at 44A Torrens Street.

The locality has a high level of amenity, resulting from low density development with established character homes and well vegetated public open space areas.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Verandah: Code Assessed - Performance Assessed
Other - Residential - Pergola: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**

The pergola is proposed on an allotment boundary and has a post height in excess of 3.2 metres measured from the lower of the natural or finished ground level. The proposed post height (ie. to the underside of the bulkhead) is approximately 3.95 metres above ground level on the adjoining property.

- **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Position on Application	Wishes To Be Heard
David	Aslop	219 Sturt Street, Adelaide	Opposed	Yes

- **SUMMARY**

1. The height of the structures creates visual impact on Mr Aslop's property;
2. The extent of boundary development is almost 70% of the western boundary which is excessive and above the 45% contemplated in the DTS / DPF 7.1;
3. The pergola height exceeds the three (3) metre maximum wall height contemplated in DTS / DPF 11.1;
4. The building heights proposed are not compatible with other ancillary structures within the locality.

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.

The below assessment deals only with the pergola extension at the rear of the dwelling. There are no planning impacts associated with the replacement of the front entry roof, as the new roof structure has ostensibly the same appearance as the structure it replaced. It is understood that Mr Aslop has a concern with the manner in which the structure was built, insofar as it may rely on the boundary wall of his dwelling for support. That is not how it is proposed in this application and in any event is not a planning consideration. Rather this is a consideration relevant to a building consent assessment.

Boundary Development Impact

The proposed pergola extends 3.1 metres beyond the boundary wall of the dwelling at 44A Torrens Street. In other words, occupants of 44A Torrens Street would only see 3.1m length of the proposed pergola.

The pergola is tall, at 4.2m above floor level and up to 4.5m above ground level on the neighbouring property. With insect screens installed between the columns, it is a reasonably imposing and solid looking structure which occupies much of the remaining boundary between the boundary wall and the rear boundary, therefore limiting visual outlook for the occupants of 44A Torrens Street to the rear and northern

side boundary. In this way, the proposal is somewhat inconsistent with Performance Outcome 7.1 and 11.1 of the Established Neighbourhood Zone, which respectively state:

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

and

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

Literal interpretations of these two policies do not address the visual impact of the proposed pergola on the occupants of 44A Torrens Street, because:

- a) in the case of PO 7.1, the pergola is not a dwelling wall (ie. it is not part of the dwelling and is not technically a wall); and
- b) PO 11.1 relates to how ancillary structures detract from the appearance of buildings on neighbouring properties, not the amenity experienced by people on adjoining properties.

Despite these literal interpretations, in a practical sense these policies in combination provide a framework which makes the visual impact of the proposed pergola to occupants of 44A Torrens Street relevant.

In considering whether the impact is reasonable or otherwise, it is also relevant to consider:

1. What development could occur on the boundary ‘as of right’ without development approval; and
2. The policy implications of the dwelling being one of a pair of semi-detached dwellings.

As of Right Development

As outlined in the background section of this report, the *Planning, Development and Infrastructure (General) Regulations 2017* specifies that pergolas are able to be constructed without development approval, provided that they meet certain pre-conditions. One of those pre-conditions is that the height does not exceed 4 metres measured from ‘ground level’. Another pre-condition is that each freestanding side of the pergola is ‘open’, although no definition is provided for the term ‘open’.

The Environment Resources and Development Court has acknowledged that development which is able to occur ‘as of right’ should be viewed as a conservatively acceptable form of development.

Therefore, when considering the impact of the proposed development, it is relevant to compare the impact of the proposed 4.5m high (above ground level) pergola with crime safe insect screen ‘walls’ with a 4.0m high pergola with an open side.

Semi-Detached Dwellings

The dwellings at 44 and 44A Torrens Street were approved in 2002 via DA 155/71/2002 as a pair of semi-detached dwellings, meaning that they are one building comprising two dwellings. Typically, this means they share footings and a parti wall.

The representor’s Planning Consultant has suggested that the proposal is inconsistent with Designated Performance Feature 7.1 because the combined length of all development on the boundary between 44 and 44A Torrens Street exceeds 45% of the length of the boundary. However, the part of DPF 7.1 which refers to this 45% criteria is not relevant to the proposal. DPF 7.1 states:

DTS/DPF 7.1

Dwellings do not incorporate side boundary walls where a side boundary setback value is returned in (a) below:

(a)

Minimum Side Boundary Setback
Minimum side boundary setback is 1.5m for the first building level; 3m for any second building level or higher

or

(b) where no side boundary setback value is returned in (a) above, and except where the dwelling is located on a central site within a row dwelling or terrace arrangement, 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
 - D. encroach within 3m of any other existing or proposed boundary walls on the subject land.

Since a boundary setback value is returned in part (a), part (b) is not relevant. This would ordinarily mean that dwellings should not incorporate boundary walls and that all dwelling walls should be at least 1.5m from boundaries. However, the Established Neighbourhood Zone anticipates semi-detached dwellings and by definition, semi-detached dwellings have parti walls along the shared boundary. Therefore, in a practical sense, DPF 7.1 is relevant only to setbacks from the southern side boundary of the allotment, shared with Twelftree Reserve.

This approach is reinforced through DPF 7.2 which states:

“Dwellings in a semi-detached, row or terrace arrangement are setback from side boundaries shared with allotments outside the development site at least the minimum distance identified in Established Neighbourhood Zone DTS/DPF 8.1.”

In effect, in the case of semi-detached dwellings, the Code sets more stringent criteria for development adjacent to the ‘outside’ boundaries than it does for the inside boundary between the pair of semi-detached dwellings.

On balance, considering the extent to which a pergola is able to be constructed as of right and the policy context for semi-detached dwellings, the length and height of the proposed structure on the boundary is considered reasonable. That said, the construction detail of the infill insect screens is important to ensure that the structure does not appear as a solid wall from the adjoining property. In particular, the screens should be installed at least 150mm inside the boundary (ie. centrally within the 300mm columns), so as to create a sense of relief and openness. If the Panel determines to grant consent, it is recommended that this be imposed as a condition.

Water Resources Overlay

Being located adjacent to the River Torrens, the subject land is located within the Water Resources Overlay. The desired outcomes of this overlay are:

“Protection of the quality of surface waters considering adverse water quality impacts associated with projected reductions in rainfall and warmer air temperatures as a result of climate change.”

and

“Maintain the conveyance function and natural flow paths of watercourses to assist in the management of flood waters and stormwater runoff.”

Designated Performance Feature 1.5 of the Water Resources Overlay states:

“A strip of land 20m or more wide measured from the top of existing banks on each side of the watercourse is free from development, livestock use and revegetated with locally indigenous vegetation.”

The rear boundary of the subject land is located at the top of the bank of the River Torrens. Therefore, the pergola extension is within 20 metres of the top of the bank, contrary to DPF 1.5. The Performance Outcome associated with DPF 1.5 is:

“Development that increases surface water run-off includes a suitably sized strip of vegetated land on each side of a watercourse to filter runoff to:

- a) reduce the impacts on native aquatic ecosystems*
- b) minimise soil loss eroding into the watercourse.”*

As the proposed pergola extension does not have a roof, it does not increase surface water run-off and therefore does not have the potential to contribute to soil erosion.

CONCLUSION

The proposed front entry roof replaces an existing structure with the same appearance and therefore has no relevant planning implications.

The proposed rear pergola structure is only visible from the neighbouring property for a length of 3.1 metres, however is tall and has the potential to be visually imposing. That said, a pergola which can be built without approval (ie. 4.0m high) also has the potential to be visually imposing and the impacts of boundary development between a pair of semi-detached dwellings can be expected to a greater extent than in other situations.

Provided that the insect screens are inset from the boundary, on balance the proposal is reasonably consistent with the Planning and Design Code.

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 23012869, by Gosia Zebrowska-Bogusz is granted Planning Consent subject to the following conditions and notes:

CONDITIONS

Planning Consent

1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
2. The insect screens of the pergola shall be installed a minimum of 150mm inside the property boundary.

ADVISORY NOTES

Planning Consent

Advisory Note 1

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

Advisory Note 2

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

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

Advisory Note 3

The Applicant is advised that construction noise is not allowed:

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

Advisory Note 4

The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council pursuant to the *Local Government Act 1999* prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.

Advisory Note 5

The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to

recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.

Advisory Note 6

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

Advisory Note 7

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

Advisory Note 8

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

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

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

Advisory Note 9

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

Mr Mason addressed the Council Assessment Panel from 7:04pm until 7:09pm

Mr Alsop addressed the Council Assessment Panel from 7:10pm until 7:13pm

Mr Vincent addressed the Council Assessment Panel from 7:24pm until 7:31pm

Moved by Mrs Newman

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 23012869, by Gosia Zebrowska-Bogusz is granted Planning Consent subject to the following conditions and notes:*

CONDITIONS

Planning Consent

1. *The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).*
2. *The insect screens of the pergola shall be installed a minimum of 150mm inside the property boundary.*
3. *The insect screens shall be comprised of a material that is visually permeable. A sample of the material shall be provided to the reasonable satisfaction of the Assessment Manager or it's delegate prior to the issuing of development approval.*

4. *All stormwater from the front entry verandah/portico 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 that stormwater drainage system shall be directly connected into either the adjacent street kerb and water table or a Council underground pipe drainage system.*

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Planning Consent

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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.

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Seconded by Mr Adcock
CARRIED

6. **DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT**
7. **REVIEW OF ASSESSMENT MANAGER DECISIONS**
8. **ERD COURT APPEALS**
Geoff Parsons updated the Panel Members to advise that an appeal was lodged with the ERD Courts for ID 22042866 – 319-327 Payneham Road Royston Park.
9. **OTHER BUSINESS**
Nil
10. **CONFIDENTIAL REPORTS**
11. **CLOSURE**

The Presiding Member declared the meeting closed at 8:24pm

Terry Mosel
PRESIDING MEMBER

Geoff Parsons
MANAGER DEVELOPMENT ASSESSMENT