

# Council Assessment Panel Minutes

**17 March 2025**

## **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** 6.30pm

**PRESENT** Mr Stephen Smith  
Mr Mark Adcock  
Mr Ross Bateup  
Mr Julian Rutt  
Cr Kester Moorhouse

**Staff** Geoff Parsons, Manager Development & Regulatory Services  
Kieran Fairbrother, Senior Urban Planner  
Tala Aslat, Administration Officer

**Panel Members**

**Staff**

**APOLOGIES** Cr Christel Mex

**ABSENT**

1. **COMMENCEMENT AND WELCOME**

2. **APOLOGIES**

3. **CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT  
PANEL HELD ON 17 FEBRUARY 2025.**

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

4. **DECLARATION OF INTERESTS**

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER ID 24032150 - THREESIXFIVE STUDIO – 48 SIXTH AVENUE ST PETERS

<b>DEVELOPMENT NO.:</b>	24032150
<b>APPLICANT:</b>	ThreeSixFive Studio
<b>ADDRESS:</b>	48 SIXTH AV ST PETERS SA 5069
<b>NATURE OF DEVELOPMENT:</b>	Demolition of existing dwelling and the construction of a two-storey detached dwelling and masonry front fence
<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 Frontage (Minimum frontage for a detached dwelling is 18m)</li> <li>• Minimum Site Area (Minimum site area for a detached dwelling is 600 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>	26 Sept 2024
<b>RELEVANT AUTHORITY:</b>	Assessment panel/Assessment manager at City of Norwood, Payneham & St Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) Version 2024.17 12/9/2024
<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>	David Brown, Heritage Advisor Matthew Cole, City Arborist

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APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 4:	Representations Map
ATTACHMENT 1:	Application Documents	ATTACHMENT 5:	Representations
ATTACHMENT 2:	Subject Land Map	ATTACHMENT 6:	Response to Representations
ATTACHMENT 3:	Zoning, Overlays and TNV Map	ATTACHMENT 7:	Internal Referral Advice

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## DETAILED DESCRIPTION OF PROPOSAL:

This proposal involves, in the first instance, demolition of the existing dwelling (circa 1925 bungalow) and all ancillary structures. Assuming demolition is supported, the application also seeks approval for the construction of a two-storey detached dwelling, with vehicle access obtained via Seventh Lane. Because of this, a well-landscaped front garden will exist between the dwelling and the primary street, which is proposed to be bounded by a new masonry-pillared front fence.

There is a significant fall in levels on the site from the front to the rear. The finished floor level has been proposed to match the existing dwelling, which does sit below existing footpath levels in Sixth Avenue. The FFL then steps down from the dwelling to the garage to accommodate vehicle movements from the rear lane. This means stormwater needs to be collected and discharged via a sump and pump system. Further, retaining walls up to 1m tall will be required along the side boundary shared with the Council reserve.

The swimming pool shown on the plans is indicative only and does not form part of this application.

## SUBJECT LAND & LOCALITY:

### Site Description:

**Location reference:** 48 SIXTH AV ST PETERS SA 5069

**Title ref.:** CT  
5759/421

**Plan Parcel:** D796  
AL597

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

Shape:	regular
Frontage Width:	22.86 metres
Area:	1039m <sup>2</sup>
Topography:	the site has significant fall in levels towards the north rear corner, with approximately 1.5m difference in ground levels
Existing structures:	a single-storey sandstone bungalow circa 1925 and ancillary structures
Existing vegetation:	heavily landscaped around the dwelling (front and rear) accounting for >50% of the site

### Locality

The locality is considered to comprise the portion of Sixth Avenue that extends approximately 100m in both directions from the subject land, and also includes a small portion of dwellings on Seventh Avenue that are within 70m of the subject land.

This chosen locality is inherently residential in nature, is contained within both an Historic Area Overlay and a Character Area Overlay, and is characterised by a mix of dwelling types – predominantly traditional detached dwellings on larger sites, although there is one pair of semi-detached dwellings on Sixth Avenue and two residential flat buildings on Seventh Avenue within 50m of the subject site. Immediately adjacent to the subject land is a Council-owned public reserve.

This locality enjoys a very high level of amenity due to the low-density built environment, a wide road reserve, and consistent, established street tree plantings along both sides of the street.

**CONSENT TYPE REQUIRED:**

Planning Consent

**CATEGORY OF DEVELOPMENT:**

- **PER ELEMENT:**  
New housing - Detached dwelling: Code Assessed - Performance Assessed  
Demolition - Demolition: Code Assessed - Performance Assessed  
Fences and walls - Fence: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code

**PUBLIC NOTIFICATION**

- **REASON**  
Development exceeds the TNV for the Zone of 1 building level
- **LIST OF REPRESENTATIONS**

First Name	Family Name	Address	Position	Wishes to be heard?
Karen	James	49B Sixth Ave ST PETERS	Opposed	No
David	Cardone	46 Sixth Ave ST PETERS	Opposed	Yes
Susan	Ide	45 Sixth Ave ST PETERS	Opposed	No
St Peters' Resident's Association		12 St Peters St ST PETERS	Opposed	Yes
Helen	Mercorella	42 Sixth Ave ST PETERS	Support, with concern	No

- **SUMMARY**

Representors 1 and 5 submitted a representation simply stating that they could not view the plans. It is acknowledged these representors suggested the plans were not available, however other representors managed to successfully download the documentation. The public notification system is operated and managed by Plan SA and the Council was not made aware of any system failure which would have prevented the documentation being available.

Representor 2's concerns can be summarised as followed:

- The development exceeds the DTS criteria for site coverage;
- The development exceeds the 1 level TNV;
- The development is not sympathetic to the predominant built form character in the historic area;
- The side setback provided to the southwestern side boundary is insufficient;
- The development will result in unreasonable overshadowing of their rear yard and swimming pool;
- The length of the second building level is excessive; and
- The second storey will be visible from Sixth Avenue and the Council reserve.

Representor 3 shares similar concerns to Representor 2, while also raising concerns of overlooking from the second storey. Representor 4 also shares similar concerns and adds that the large footprint leaves little room for meaningful landscaping that is likely to properly establish. Finally, Representor 4 submits that a swimming pool is not appropriate in a flood-susceptible area such as this (although this is not proposed as part of this application).

## INTERNAL REFERRALS

- David Brown, Heritage Advisor

Council's Heritage Advisor is supportive of the demolition of the existing dwelling. They do, however, have concerns with the width of the building and the resultant side setbacks from a streetscape perspective, as well as the height and visibility of the second building level.

The Heritage Advisor did have concerns regarding the roof profile and the lack of a front verandah treatment. The applicant has amended the design to address the concern regarding the roof material profile and colour, but the concern regarding the lack of a real front verandah treatment remains.

- Matthew Cole, City Arborist

This application was referred to Council's Arborist for advice on whether the development is likely to have an adverse effect on any of the Council-owned trees in the adjacent reserve and on Sixth Avenue. Council's Arborist has no concerns with the proposal in this respect.

## PLANNING ASSESSMENT

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

### Demolition

In the first instance, this application seeks to demolish the existing sandstone bungalow that is on the site.

Performance Outcome 7.3 of the Historic Area Overlay states:

*Buildings or elements of buildings that do not conform with the values described in the Historic Area Statement may be demolished.*

In terms of "eras, themes and context", the Historic Area Statement states: "*between the late 1870s and 1900, between the 1900s and the 1920s, and inter-war*". The subject dwelling proposed for demolition was constructed circa 1925 and therefore accords with the inter-war era expressed in the Historic Area Statement.

In terms of "architectural styles", however, the Historic Area Statement does not reference bungalows as being a key historic architectural style in the St Peters part of this historic area. Rather, the Statement references "*late Victorian Italianate villas... double fronted symmetrical and asymmetrical dwellings [that] are an elegant, larger version of the simple colonial cottage with the addition of a projecting wing... and some Edwardian style housing (such as Queen Anne and Art Nouveau styles)*". Inter-war bungalows are referenced as being important to the historic character of the Joslin portion of this historic area, but not St Peters.

Accordingly, the building does not conform with the values described in the Historic Area Statement and demolition is warranted by satisfaction of Performance Outcome 7.3, above. Council's Heritage Advisor agrees with this assessment.

### 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 corresponding Designated Performance Feature contains a TNV that states that the maximum building height should be one (1) level.

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.*

With respect to building heights, the Historic Area Statement states “predominantly single storey, up to two storeys in some locations”. No guidance is provided as to where within the historic area two storey development might be envisaged, because the same 1 level TNV applies to the whole of this Historic Area Overlay.

Performance Outcome 2.1 of the Historic Area Overlay states:

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

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 prevailing building height throughout this historic area is one of single-storey dwellings. There are some exceptions to this where two storey development is present. Most notably in the context of this assessment, there are two storey dwellings at 41, 43, 49, 49A and 49B Sixth Avenue, which are all within 75m of the subject site and within the determined locality. The latter three dwellings are all outwardly two storeys.

Performance Outcome 4.1 of the Zone seeks two outcomes: contribution to the prevailing character of the neighbourhood, and the complementation of the height of nearby buildings. The term ‘neighbourhood’ is not defined in the Planning & Design Code, but it was considered by the ERD Court to perhaps constitute an area larger than a locality.<sup>1</sup> In that case, as with this one, the character of the locality and what might constitute the larger neighbourhood is essentially the same such that both terms can be considered interchangeably.

As mentioned above, the Historic Area Statement provides no guidance as to where the “some locations” in which two storeys might be envisaged are. Nonetheless, it is noteworthy that on the opposite side of Seventh Lane, there is a Character Area Overlay which envisages two-storey development by way of a two-level TNV (see **Attachment 3**). One might therefore contextually interpret the Historic Area Statement as suggesting that this is an area where two storey development might be acceptable – being on the boundary of a different Overlay that contemplates such building heights.

Performance Outcome 4.1 of the Zone contemplates an analysis of the locality/neighbourhood, which would include the neighbouring Character Area Overlay with an applicable TNV of 2 levels; whereas, conversely, Performance Outcome 1.1 and 2.2 of the Historic Area Overlay contemplate an assessment that only considers the relevant Overlay. As pointed out by Commissioner Dyer in *Parkins*<sup>2</sup>, ‘it is a fundamental tenant of planning assessment that policy is applied having regard [to] the specific circumstances of each case’. In this case, the subject land abuts a section of the Established Neighbourhood Zone where a 2 level TNV applies, which cannot be ignored.

Consequently, the proposal for a two-storey dwelling on this site is not, in principle, considered to be at odds with Performance Outcome 4.1 of the Zone. It is, however, arguably in conflict with Performance Outcome 2.2 of the Historic Area Overlay because it is inconsistent with the *prevailing* single-storey building heights in the historic area.

The word ‘character’ in Performance Outcome 4.1 of the Zone is considered to refer to the streetscape impact of the development. Both the subject Historic Area Overlay and the abutting Character Area Overlay seek for new development to maintain a single-storey appearance to the primary street frontage. Thus, the ‘character’

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<sup>1</sup> *Minicozzi (Osmond Terrace) Pty Ltd v The City of Norwood Payneham & St Peters Assessment Panel* [2024] SAERDC 18 at [9]-[19].

<sup>2</sup> *Parkins v Adelaide Hills Council Assessment Manager* [2022] SAERDC 12 at [96].



to which this Performance Outcome seeks for buildings to contribute is a locality where streetscapes are characterised by single-storey development.

With respect to the proposed development, the second level is set back 10.5 metres behind the building line of the dwelling. The street-facing ground level portion of the dwelling has 3.6 metre wall heights and a hipped roof with an acceptable 30° pitch which together aid in obscuring views of the second level from the primary street. Moreover, the second building level is proposed to be clad in metal cladding in the same colour as the roof sheeting proposed over the single-storey portion of the dwelling, thus making it more visually recessive in the streetscape.

Consequently, the second building level herein proposed is not considered to be at odds with Performance Outcome 4.1 of the Established Neighbourhood Zone. It is at odds with Performance Outcome 2.2 of the Historic Area Overlay but the immediate context (of other two-storey buildings nearby and the adjacent Character Area Overlay with a 2 level TNV) provides justification for the failure to satisfy this provision.

With respect to Performance 2.1 of the Historic Area Overlay, although the second building level will be visible from the adjacent public reserve (i.e. the public realm), and this is contrary to the prevailing form and scale of traditional buildings in the historic area, this reserve is also on the fringe of the boundary between an historic area that seeks predominantly single-storey development and a character area that envisages two-storey development to the rear of buildings. Accordingly, the public can expect to see views of two-storey development on the opposite side Seventh Avenue. The delineation between the two Overlays is intangible and not something that a layperson visiting this reserve might understand. Accordingly, in this context, views from the reserve onto a two-storey building on Sixth Avenue is not considered fatal to the proposal.

### **Heritage, Design & Appearance**

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 2.1 of the Historic Area Overlay states:

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

Performance Outcome 2.3 of the Historic Area Overlay states:

*Design and architectural detailing of street-facing buildings (included but not limited to roof pitch and form, openings, chimneys and verandahs) complement the prevailing characteristics in the historic area.*

As previously mentioned, the Historic Area Statement references “*late Victorian Italianate villas... double fronted symmetrical and asymmetrical dwellings [that] are an elegant, larger version of the simple colonial cottage with the addition of a projecting wing... and some Edwardian style housing (such as Queen Anne and Art Nouveau styles)*”. Accordingly, any new dwellings should make reference to one of these architectural styles in their design, but without being a derivative reproduction.

To this end, the proposed dwelling predominantly takes cues from a traditional double-fronted cottage, but with an annex to the side that is further setback than the main face. The dwelling employs a simple hipped roof form above 3.6m tall external walls, akin to traditional cottages, which is consistent with the abovementioned Performance Outcomes.

All architectural styles listed in the Historic Area Statement traditionally include some form of front verandah treatment. No real front verandah has been included in this proposal, however. Instead, a projecting steel canopy is proposed along the façade of the dwelling, which extends 2.2m forward of the building line. The dwelling roof extends 1.75m forward of the building line also, thereby reducing the ‘verandah look’ that the steel canopy is intending to portray (because it only extends approximately 450mm further than the roof). In this respect, the dwelling partially fails to satisfy Performance Outcome 2.3.

With respect to the overall form of the street-facing portion of the dwelling, Council's Heritage Advisor is not supportive of the annexed section to the right of the main face because the result is a dwelling that is "wider than any other house in the area, making it visually dominant". While this is true, the overall width is not dissimilar to other dwellings further south on Sixth Avenue if you include the garage/carport associated with those dwellings. In form, the annexed section of the dwelling herein proposed is similar to the form one might expect of an attached carport or garage with lower wall heights (2.6m vs 3.6m), a lower roof line and an increased setback from the building line of the dwelling. In this context, the dwelling design is considered to sufficiently satisfy the abovementioned Performance Outcomes.

The second building level, that is visible from the adjacent public reserve, employs a rectilinear form that is inconsistent with the prevailing historic characteristics of the historic area; thereby failing to satisfy Performance Outcome 2.1 (above). However, the dwelling fails to satisfy this Performance Outcome only in respect of the second building level, and not for the ground level that is visible to Sixth Avenue, and only does so because the site is adjacent a public reserve. If the site was bounded by two other dwellings sites, then views of the second level would only be visible from the rear laneway, which has little amenity and is not considered a 'streetscape' worth of any enhancement. Consequently, little weight is given to the proposal's failure to wholly comply with Performance Outcome 2.1 of the Historic Area Overlay, and this failure is not considered fatal to the proposal.

Performance Outcome 2.5 of the Historic Area Overlay states:

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

The street-facing main elevation of the dwelling is comprised of stone piers that surround two large windows and a timber entry door. A steel canopy extends across the façade underneath a simple hipped roof constructed of corrugated Colorbond sheeting in Woodland Grey colour. These materials and colours are consistent with the traditional materials and colours used within the historic area, thereby satisfying this Performance Outcome.

The second building level conversely employs a rectilinear design clad constructed of Colorbond 'Maxline' cladding in Woodland Grey colour to all sides. This is not consistent with traditional materials in the historic area, but it is complementary. To the same extent that support has been given for similarly-designed additions to existing historic dwellings (because they help to delineate 'old from new'), the use of these materials and colours on a whole new dwelling do not derogate from the proposal's ability to comply with Performance Outcome 2.5 above.

Performance Outcome 4.4 of the Historic Area Overlay states:

*Fencing and gates closer to a street boundary (other than a laneway) than the elevation of the associated building are consistent with the traditional period, style and form of the associated building.*

The front fence proposed is a contemporary take on a traditional masonry-pillared front fence. The fence is 1.5m tall and has base walls equivalent to one-third of the height of the pillars, which is consistent with the proportions used in traditional masonry-pillared fences. The applicant has not provided details of the spacing between the metal infill battens between the pillars and so a Reserved Matter has been recommended for this detail to be provided. The proposed fence complements the double-fronted cottage look that the proposed dwelling seeks to emulate and will equally complement the streetscape, consistent with this Performance Outcome.

### **Setbacks, Visual Impact, Overshadowing & Overlooking**

Performance Outcome 5.1 of the Established Neighbourhood states:

*Buildings are set back from primary street boundaries consistent with the existing streetscape.*

Both sides of Sixth Avenue have a consistent setback pattern. The adjacent dwelling at 46 Sixth Avenue has a front setback consistent with this established pattern and therefore forms the best reference point for the development herein proposed.

To that end, 46 Sixth Avenue has a front setback of approximately 7.3 metres to the building line and approximately 5.5 metres to the front verandah. The proposed dwelling has a front setback of 7.9 metres to the building line and 5.6 metres to the projecting canopy, which accords with Performance Outcome 5.1 above. This places the dwelling slightly behind the adjacent Representative Building at 46 Sixth Avenue, which is a good outcome that gives the historic dwelling slightly more prominence in the streetscape over the proposed dwelling.

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 corresponding Designated Performance Outcome prescribes a quantitative method for determining side setbacks based on the height of the wall. No minimum side setback TNV is suggested in the DPF, which indicates boundary development may be acceptable.

Performance Outcome 20.3 of the Design in Urban Areas module of the general development policies states:

*The visual mass of larger buildings is reduced when viewed from adjoining allotments or public streets.*

At ground level, the proposed dwelling is set back between 0.9m and 1.27m from the southwest side boundary and 1.43m from the northeast side boundary at the front, increasing to 9.17m centrally. At the upper level, the dwelling is set back 2.9m from the southwest side boundary and between 9.2m and 14.4m from the northeast side boundary.

The setbacks to the northeast side boundary – the boundary shared with the public reserve – provide adequate separation to the building to complement the amenity of that reserve and the character of the locality. Further, the substantial setback provided to the second level reduces the visual mass of the building as viewed from the reserve.

With respect to the setback provided to the southwest side boundary, the affected neighbour has raised concerns about the impact this will have on their amenity and enjoyment of their dwelling and private open space. In their representation, this representor has relied on the quantitative criteria for a south-facing wall set out in DPF 8.1(b) when suggesting what an appropriate setback might be. The Panel should note that this wall is not a south-facing wall by definition<sup>3</sup>, because the allotment boundary is not orientated between E30°S/W30°N. The alignment of the shared boundary is approximately W34.5°N.

Although a DPF is not the only way by which a Performance Outcome may be satisfied, it is worth noting that the quantitative criteria set out in DPF 8.1 of the Zone suggests the following setbacks:

- For the ground level portion of the dwelling (3.6m tall walls) – 1.1m;
- For the upper level (excluding the small portion at the rear that extends over the part of the site where ground levels are lowered for the garage) (7.1m tall walls) – 2.27m.

Thus, when assessed against the DPF criteria, the proposed building achieves the minimum setback criteria at the upper level, with a slight shortfall of 190mm for approximately two-thirds of the ground level.

The administration has reviewed the approved plans for the recent addition undertaken at 46 Sixth Avenue (and a snippet of the floor plan and side elevation will be provided to the Panel members under separate cover for their own review). The neighbouring dwelling has no habitable windows that have a *direct* outlook onto the proposed dwelling, but there are one small bathroom window and a high-level window (2.5m sill height) for a lounge room. As such, the impacts of the proposed additions on the neighbouring property are considered to be limited to the direct visual outlook from the neighbour's private open space, oblique views from within the rear living areas of the dwelling, and any potential overshadowing of private open space (which are discussed below).

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<sup>3</sup> See *Part 8 – Administrative Terms and Definitions* of the Planning & Design Code for the full definition.

Both building levels of the proposed dwelling will be visible for occupants of 46 Sixth Avenue from the swimming pool, the open-to-air portion of the rear yard, the northern portion of the rear verandah and, partially and obliquely, from within the rear internal living areas. However, these views are not considered to be unreasonable. For the reasons earlier expressed, it is considered reasonable for a two-level dwelling to be constructed on this allotment. Approximately half of the length of the second building level aligns with the carport and dwelling walls of 46 Sixth Avenue; it is the second half which extends to, and will mostly be visible from, those aforementioned areas.

The 2.9m side setback proposed to the upper level is considered sufficient to mitigate any impacts by way of visual outlook and creates separation between buildings in a manner that does not *unreasonably* affect the neighbour's access to light and ventilation (discussed further in a later section of this report).

The slight shortfall in ground level setback (when assessed against the DPF criteria) is considered acceptable because these two walls are located adjacent the neighbour's carport and a recent addition which contains only one high level window. Accordingly, there will be no direct views onto the ground level portion of the dwelling and thus the slightly reduced setback creates no additional impact.

Accordingly, the proposal is considered to satisfy Performance Outcome 8.1 of the Zone and Performance Outcome 20.3 of the Design in Urban Areas module.

Performance Outcome 2.4 of the Historic Area Overlay states:

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

Council's Heritage Advisor has expressed his non-support for the width of the proposed dwelling and its consequent impact on the streetscape by way of reduced side setbacks. Within the Sixth Avenue streetscape there is a variation inside setbacks provided to dwellings. For example, some of the historic dwellings like the six dwellings to the southwest of the subject land have large setbacks to both side boundaries (ignoring the carport constructed immediately next door), reflecting the traditional way in which these allotments were developed. By way of contrast, there are other dwellings on the opposite side of the road that have minimal setbacks to both side boundaries. This theme is continued through Fifth Avenue also, which is located in the same Historic Area Overlay.

In the context of the broader locality, the proposed side setbacks are not considered to be wholly inconsistent with the prevailing setback pattern. In the context of the Sixth Avenue streetscape, the proposed side setbacks will not negatively affect the streetscape and are therefore considered acceptable.

Performance Outcome 9.1 of the Established Neighbourhood Zone states:

*Buildings are set back from rear boundaries to provide:*

- (a) Separation between dwellings in a way that complements the established character of the locality*
- (b) Access to natural light and ventilation for neighbours*
- (c) Private open space*
- (d) Space for landscaping and vegetation.*

The garage is setback 950mm from the rear lane whereas the upper level is set back 7.6m. For reasons discussed in the later sections of this report, the minimal rear setback does not preclude the development's ability to provide for sufficient private open space and landscaping. The rear setback to the garage is consistent with the typical setback pattern along the laneways in St Peters and the upper-level setback does not unreasonably impact access to natural light or ventilation for neighbours. Consequently, this Performance Outcome is satisfied.

Performance Outcome 10.1 of the Design in Urban Areas module of the general development policies 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 Designated Performance Feature suggests that obscuring upper-level windows to a height of 1.5 metres above the internal finished floor level is one way of potentially satisfying this Performance Outcome. The Applicant has proposed obscure glazing to a height of 1.5 metres for all upper-level windows on the south-west elevation, which satisfies this Performance Outcome. Condition No. 3 has been recommended to reinforce the ongoing need for this privacy treatment.

The only other upper-level windows are on the north-east elevation which face the public reserve and are at least 20 metres away from the private open space of any dwelling on Seventh Avenue. Accordingly, these windows do not need to be obscured because they do not provide any opportunities for 'direct overlooking' as defined in the Planning & Design Code. For the same reasons, the balcony that faces the public reserve does not need to be obscured in any way.

Performance Outcome 3.2 of the Interface Between Land Uses module of the general development policies states:

*Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses in... a neighbourhood type zone is minimised to maintain access to direct winter sunlight.*

The corresponding Designated Performance Feature suggests that this Performance Outcome may be satisfied if at least 35m<sup>2</sup> of the private open space associated with the neighbouring dwelling receives at least 2 hours of sunlight between 9am and 3pm on the winter solstice. This seems to set a very low bar considering this would comprise only approximately 10% of the neighbour's private open space, and therefore is not considered a satisfactory means for satisfying the Performance Outcome.

The shadow diagrams provided by the applicant demonstrate that the private open space associated with the neighbouring dwelling would be shadowed the most in the morning of the winter solstice, but most of this area is free from shadow by midday. Despite the concerns of this affected neighbour (Representor 2), this is considered reasonable and satisfies Performance Outcome 3.2 above.

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

*Development does not unduly reduce the generating capacity of adjacent rooftop solar energy facilities taking into account:*

- (a) *The form of development contemplated in the zone*
- (b) *The orientation of the solar energy facilities*
- (c) *The extent to which the solar energy facilities are already overshadowed.*

The adjacent dwelling at 46 Sixth Avenue has solar panels on the roof of their flat roof rear addition that will be impacted by the proposed development, as demonstrated by the shadow diagrams provided by the applicant (**Attachment 1**). These panels will be mostly shadowed during the morning period of the winter solstice, where one might expect the panels to have their lowest generating capacity because of the typically lower levels of sunlight. By the early afternoon of the winter solstice, however, the development does not provide any shadowing of these solar panels due to the northwest-southeast orientation of the two allotments. By inference, these solar panels will be largely unaffected by this development during summer, spring and autumn, when they have a larger generating capacity, because of the sun's higher angle in the sky. Accordingly, the development is considered to sufficiently accord with Performance Outcome 3.3 above.

### **Soft Landscaping & Private Open Space**

Performance Outcome 22.1 of the Design in Urban Areas module of the general development policies states:

*Soft landscaping is incorporated into development to:*

- (a) *Minimise heat absorption and reflection*
- (b) *Contribute shade and shelter*
- (c) *Provide for stormwater infiltration and biodiversity*
- (d) *Enhance the appearance of land and streetscapes.*

The corresponding Designated Performance Feature suggests that sites over 450m<sup>2</sup> in area should be minimum 25% comprised of soft landscaping.

Performance Outcome 6.2 of the Historic Area Overlay states:

*Development maintains the valued landscape patterns and characteristics that contribute to 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.*

With respect to landscaping, the Historic Area Statement states that “*landscaping around a dwelling, particularly in the front garden, is an important design element*”, while referencing the consistent, mature street tree plantings and a desire to obtain vehicle access from the rear lanes.

This application proposes 230m<sup>2</sup> of soft landscaping, which equates to 22.1% of the site. Although not proposed as part of this application, the plans show provision for a future swimming pool. If this swimming pool was not shown on the plans, and this area was instead landscaped, the total soft landscaping on the site would exceed the 25% expected by the DPF. In such an event, if a future application was then submitted for a swimming pool which lowered the total soft landscaping to 22% of the site, consent would not be unreasonably withheld on the account of a slight shortfall of soft landscaping when assessed against a DPF.

The site contains several small ‘pockets’ of soft landscaping around the dwelling, particularly on the western side, but otherwise includes larger lawned areas in which meaningful plantings can take place – particularly between the dwelling and the primary street. The landscaped areas proposed provide opportunity for stormwater infiltration and heat absorption as sought by Performance Outcome 22.1 (above). Similarly, the large lawned area next to the alfresco provides opportunities for plantings that will contribute to shade, and the large landscaped area in the front garden allows for landscaping that can enhance the streetscape, consistent with Performance Outcomes 1.1 and 6.2 of the Historic Area Overlay.

Condition No. 5 reflects the applicant's requirement to plant trees in accordance with the Urban Tree Canopy Overlay, as mandated by Practice Direction 12. Soil areas large enough to accord with the minimum requirements set out in DPF 1.1 of this Overlay have been provided on-site meaning the condition can be adhered to.

Performance Outcome 21.1 of the Design in Urban Areas module of the general development policies states:

*Dwellings are provided with suitable sized areas of usable private open space to meet the needs of occupants.*

Performance Outcome 21.2 of the Design in Urban Areas module of the general development policies states:

*Private open space is positioned to provide convenient access from internal living areas.*

At ground level, 281m<sup>2</sup> of private open space is provided for the site. The upper-level balcony provides an additional 14m<sup>2</sup> of private open space. Together, both areas provide sufficient private open space to meet the needs of the occupants per Performance Outcome 21.1 and are positioned to provide convenient access from internal living areas per Performance Outcome 21.2.

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 corresponding Designated Performance Feature states that site coverage should not exceed 50%. The site coverage proposed is 53.7%

By virtue of the fact that sufficient soft landscaping and private open space has been provided for the dwelling, and the setbacks to all boundaries are considered appropriate, the proposal is considered to accord with Performance Outcome 3.1 above.

## Access and Parking

Performance Outcome 5.1 of the Transport, Access and Parking module of the general development policies states:

*Sufficient on-site vehicle parking...[is] provided to meet the needs of the development...*

The corresponding Designated Performance Feature suggests that a provision of car parking spaces equivalent to those listed in Table 1 of the module is sufficient to satisfy the Performance Outcome. This is the generally accepted practice in respect of dwellings.

To that end, Table 1 suggests that this dwelling should provide two (2) off-street car parking spaces, of which at least one (1) should be covered. The application provides for at least two car parking spaces in the way of the proposed four-car garage.

Performance Outcome 23.5 of the Design in Urban Areas module of the general development policies states:

*Driveways are designed to enable safe and convenient vehicle movements from the public road to on-site parking spaces.*

Access for this site is proposed to be obtained from Seventh Lane, which is the preferred method of access in this historic area. The four-car garage is setback 950mm from the rear boundary. Seventh Lane is approximately 4.6 metres wide, but existing encroachments narrow the effective laneway width to approximately 4.1 metres where it abuts this site. Thus, the apron width (the distance between the garage and the wall on the opposite side of the laneway) is approximately 5.05 metres. Each of the garage openings are 5.51 metres wide, to provide additional room for vehicle manoeuvres.

The applicant has provided swept path movement diagrams for a B85 vehicle which suggest that vehicles are able to enter and exit each parking spot in no more than a three-point turn manoeuvre. However, these movements rely on: no vehicle larger than a B85 vehicle being parking in the garage, any other vehicle in the garage being parked against the rear wall of the garage, and very precise turning movements. This is arguably unrealistic and shouldn't be given too much weight.

Notwithstanding, per Performance Outcome 5.1 above, the dwelling only needs to provide for two (2) on-site vehicle parking spaces. Each garage door could be used for access of just one vehicle, which meets the needs of the development when assessed against this Performance Outcome. Consequently, if the garage is considered as needing to store only two vehicles, then Performance Outcome 23.5 of the Design in Urban Areas module is also satisfied.

## Siteworks, Retaining and Stormwater

Performance Outcome 8.1 of the Design in Urban Areas module of the general development policies states:

*Development... minimises the need for earthworks to limit disturbance to natural topography.*

The existing dwelling on the site has an FFL of 99.21 (local datum), which places it between 140mm and 500mm below the adjacent water table levels in Sixth Avenue. Existing ground levels on the site range from 99.41 at the front property boundary, to 98.64 where the rear verandah steps down from the house, and falling gradually to 97.69 in the rear northern corner of the site. Hence, from front to rear there is a fall in the land of approximately 1.72m.

This proposal originally sought to construct the dwelling with an FFL of 98.65, which would position it more than a metre below the highest water table level in Sixth Avenue. Following discussions with Council administration, the applicant amended this, and the FFL is now proposed at 99.19 – essentially matching that of the existing dwelling. The current dwelling is not subject to flooding according to Council's existing mapping and so by matching the existing FFL this can be assured for the future dwelling. This FFL also maintains a consistency in the streetscape.

However, this does result in the need for retaining walls up to 1.02m high on the northeast side boundary – albeit most of the retaining along this boundary is 0.54m or lower. The garage is proposed to be stepped down

from the dwelling, as is the rear yard area around the garage, to 98.00 (local datum). This design level allows vehicle access to the site from the rear lane.

The finished floor level of the dwelling will be approximately 500mm higher than the finished floor level of the neighbouring dwelling addition, which will likely result in the need for some low retaining walls despite not being shown on the plans. The impact of the additional retaining is not considered unreasonable because of the affected neighbour's lack of a direct outlook onto this section of the proposed dwelling from within their dwelling.

Therefore, while the proposed levels result in the need for a decent amount of fill and some retaining walls, this is not considered to be completely at odds with the abovementioned Performance Outcome because the fill is required to accommodate a dwelling that maintains a consistent level throughout and which can enjoy private open space adjacent to, and level with, its internal living areas.

As a result of these finished levels, stormwater cannot be gravity fed to the street water table. Seventh Lane does contain a spoon drain in its centre, but this is intended to service existing drainage infrastructure and surface flows from Seventh Lane and is not designed and constructed to accommodate additional flows. Thus, per Council's standard expectations, stormwater for this development must be collected and discharged to the Sixth Avenue Street water table. To facilitate this, the applicant's engineer has proposed a sump and pump system that will pump water out to Sixth Avenue, which is a reasonable solution.

### **Question of Seriously at Variance**

Having considered the proposal against the relevant provisions of the Planning & Design Code (version 2024.17, dated 12/09/2024), the proposal is not considered to be seriously at variance with the provisions of the Planning & Design Code for the following reasons:

- Dwellings are envisaged within the Established Neighbourhood Zone;
- The height of the proposed development exceeds the 1 level TNV for this Zone, but is not seriously at odds with the prevailing and anticipated building heights in the locality/neighbourhood;
- The dwelling design emulates that of a traditional double-fronted symmetrical cottage, and is not seriously at odds with the outcomes sought by the Historic Area Overlay; and
- The proposed site coverage and soft landscaping are reasonable.

### **CONCLUSION**

This proposal seeks to demolish the existing dwelling and ancillary structures on the land and construct a new two-storey dwelling and masonry front fence, together with associated earthworks and retaining walls.

The demolition of the existing dwelling is supported by the Planning & Design Code because the current dwelling fails to contribute to the historic character of this part of Historic Area Overlay as described in the Historic Area Statement.

Despite being located within a portion of the Established Neighbourhood Zone which has a 1 level TNV for building height, the two-storey proposal is considered to be acceptable because the subject land is on the periphery of this 1 level TNV and abuts a part of the Established Neighbourhood Zone that contemplates two-storey development to the rear of buildings with a 2 level TNV. There are other examples of two-storey development within the immediate locality also, which further justifies a two-storey development on this land. Importantly, the second building level will not be readily visible from Sixth Avenue and so the prevailing single-storey character of this particular historic area will not be jeopardised.

The dwelling has been designed to be a contemporary take on a double-fronted cottage, but with a lower-roofed annexed wing set slightly further back from the main façade. The materials and colours reflect those used on the traditional dwellings in the area and the simple hipped roof is an appropriate contextual response for this design. The dwelling does, however, lack a real front verandah treatment which is regretful but not considered to be fatal to the design. The front fence adopts traditional pillar-to-plinth proportions and will complement the proposed dwelling in this historic avenue.



The setbacks provided at both ground and upper levels of the building are sufficient to maintain separation between buildings in a manner consistent with the desired streetscape outcome, as well as mitigating visual impacts and overshadowing to the neighbouring dwelling. This dwelling will encounter some shadowing of their solar panels and private open space during the winter solstice, but not to an unreasonable extent that would render the proposal unable to be supported. The siting of the proposed building has considered the neighbouring dwelling in a way that mitigates the extent of visual outlook onto the proposed development, which is a good outcome. All upper-level windows that face the southwest boundary will be required to be adequately obscured to maintain the privacy of the adjacent neighbour.

The proposed site coverage is acceptable because sufficient soft landscaping and private open space is provided for the dwelling. Adequate on-site car parking facilities are provided to the dwelling, and access being obtained from the rear lane is a good outcome consistent with the desire to minimise crossovers along the historic Sixth Avenue streetscape.

Finally, significant fill and earthworks are required to achieve a level plane along which the dwelling and private open space can be constructed. Despite the extent of retaining that is required (up to 1m on the northeast side boundary), this is considered reasonable in the circumstances. To lower the floor level even further – to minimise the extent of earthworks and retaining – would result in a dwelling that sits too far lower than the water table level in the street and would be an inappropriate streetscape outcome. Appropriately, the garage is stepped down from the dwelling so vehicle movements from Seventh Lane can be accommodated.

## RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. The proposed development is not seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*.
2. Development Application Number 24032150, by ThreeSixFive Studio is granted Planning Consent subject to the following conditions and reserved matter(s):

## RESERVED MATTER RESERVED MATTER 1

Details of the metal infill proposed for the front fence, including batten dimensions and spacing between battens, shall be provided to the reasonable satisfaction of the Assessment Manager.

*NOTE: Further conditions may be imposed on the Planning Consent in respect of the above matters.*

Pursuant to Section 127(1) of the *Planning, Development and Infrastructure Act 2016*, the power to impose further conditions of consent in respect of the reserved matter(s) above is delegated to the Assessment Manager.

## 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 stormwater from buildings and hard-surfaced areas shall be collected and disposed of in accordance with the Drainage Plan (prepared by ANZAS & Associates Pty Ltd, Ref: ZS/7155, Dated 20/02/25) and accompanying Stormwater Calculations herein approved. In no instance is stormwater permitted to be discharged into Seventh Lane or the adjacent Council reserve.

Condition 3

All upper floor windows on the South-West Elevation shall either have sill heights of a minimum of 1500mm above floor level or be treated to a minimum height of 1500mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person within the room to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained at all times.

Condition 4

The approved development must include minimum rainwater tank storage which is:

1. connected to at least 60% of the roof area;
2. connected to one toilet and either the laundry cold water outlets or hot water service;
3. with a minimum retention capacity of 4000 litres;
4. if the site perviousness is less than 35%, with a minimum detention capacity of 1000 litres; and
5. where detention is required, includes a 20-25 mm diameter slow-release orifice at the bottom of the detention component of the tank

within 12 months of occupation of the dwelling(s).

Condition 5

Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.

Condition 6

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 Assessment Manager or its delegate.

Condition 7

The retaining walls indicated on the approved plans are to be constructed prior to the commencement of the construction of the dwelling(s) to ensure that the land is suitably stabilised to prevent slip and pollution through soil erosion.

Condition 8

Any change in gradient required to accommodate vehicle access to the garage shall be accommodated entirely within the property boundaries. No changes to levels in Seventh Lane are permitted.

## **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), or works that require the closure of the footpath and / or road to undertake works on the development site, 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.

#### Advisory Note 10

To assist in the interpretation of the Urban Tree Canopy condition noted above, where payment into a relevant off-set scheme is not possible or chosen, tree(s) must be planted in accordance with the requirements set out below. Further guidance and information can be obtained by visiting the Landscaping and Development webpage on the Council's website ([https://www.npsp.sa.gov.au/planning\\_and\\_development/landscaping-and-development](https://www.npsp.sa.gov.au/planning_and_development/landscaping-and-development)) or contacting the Council's Planning Department on (08) 8366 4555.

#### **Lot Size Per Dwelling (m2) // Tree Size and Number Required**

<450 // 1 small tree

450-800 // 1 medium tree or 2 small trees

>800 // 1 large tree or 2 medium trees or 4 small trees

**Tree Size // Mature Height (minimum) // Mature Spread (minimum) // Soil Area Around Tree Within Development Site (minimum)**

Small // 4m // 2m // 10m<sup>2</sup> and min. dimension of 1.5m

Medium // 6m // 4m // 30m<sup>2</sup> and min. dimension of 2m

Large // 12m // 8m // 60m<sup>2</sup> and min. dimension of 4m

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*Mr Pole addressed the Council Assessment Panel from 6:35pm until 6:37pm*

*Mr Cardone addressed the Council Assessment Panel from 6:38pm until 6:44pm*

*Mr Kwiatkowski addressed the Council Assessment Panel from 6:47pm until 6:54pm*

**MOTION 1**

**Moved by Mr Bateup**

- 1. The proposed development is not seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the Planning, Development and Infrastructure Act 2016.*
- 2. Development Application Number 24032150, by ThreeSixFive Studio is granted Planning Consent subject to the following conditions and reserved matter(s):*

**RESERVED MATTER**

*Details of the metal infill proposed for the front fence, including batten dimensions and spacing between battens, shall be provided to the reasonable satisfaction of the Assessment Manager.*

*NOTE: Further conditions may be imposed on the Planning Consent in respect of the above matters.*

*Pursuant to Section 127(1) of the Planning, Development and Infrastructure Act 2016, the power to impose further conditions of consent in respect of the reserved matter(s) above is delegated to the Assessment Manager.*

**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 stormwater from buildings and hard-surfaced areas shall be collected and disposed of in accordance with the Drainage Plan (prepared by ANZAS & Associates Pty Ltd, Ref: ZS/7155, Dated 20/02/25) and accompanying Stormwater Calculations herein approved. In no instance is stormwater permitted to be discharged into Seventh Lane or the adjacent Council reserve.*

*Condition 3*

*All upper floor windows on the South-West Elevation shall either have sill heights of a minimum of 1500mm above floor level or be treated to a minimum height of 1500mm above floor level, prior to occupation of the building, in a manner that restricts views being obtained by a person within the room to the reasonable satisfaction of the Assessment Manager and such treatment shall be maintained at all times.*

**Condition 4**

The approved development must include minimum rainwater tank storage which is:

1. connected to at least 60% of the roof area;
2. connected to one toilet and either the laundry cold water outlets or hot water service;
3. with a minimum retention capacity of 4000 litres;
4. if the site perviousness is less than 35%, with a minimum detention capacity of 1000 litres; and
5. where detention is required, includes a 20-25 mm diameter slow-release orifice at the bottom of the detention component of the tank

within 12 months of occupation of the dwelling(s).

**Condition 5**

Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.

**Condition 6**

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 Assessment Manager or its delegate.

**Condition 7**

The retaining walls indicated on the approved plans are to be constructed prior to the commencement of the construction of the dwelling(s) to ensure that the land is suitably stabilised to prevent slip and pollution through soil erosion.

**Condition 8**

Any change in gradient required to accommodate vehicle access to the garage shall be accommodated entirely within the property boundaries. No changes to levels in Seventh Lane are permitted.

**Seconded by Mr Adcock**  
**Motion LOST**

**MOTION 2**

**Moved by Mr Smith**

1. The proposed development is not seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the Planning, Development and Infrastructure Act 2016.
2. Development Application Number 24032150, by ThreeSixFive Studio is refused Planning Consent for the following reason:

*The existing building conforms with the historic characteristics and values as expressed in the Historic Area Statement, and it has not been demonstrated that the building is beyond reasonable repair, and therefore demolition of the building is not supported by Performance Outcome 7.1 of the Historic Area Overlay.*

**Seconded by Mr Moorhouse**  
**CARRIED**

**5.2 DEVELOPMENT NUMBER ID 25001816 - FOGOLAR FURLAN INC – 69-77 BRIAR ROAD FELIXSTOW**

<b>DEVELOPMENT NO.:</b>	25001816
<b>APPLICANT:</b>	Fogolar Furlan Inc
<b>ADDRESS:</b>	69 -77 BRIAR RD FELIXSTOW SA 5070
<b>NATURE OF DEVELOPMENT:</b>	Variation to DA 190/145/1997 to amend hours of operation
<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>• Heritage Adjacency</li> <li>• Hazards (Flooding - General)</li> <li>• Local Heritage Place</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>	6 Feb 2025
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at City of Norwood, Payneham and St. Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) Version 2025.2 30/01/2025
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	No
<b>RECOMMENDING OFFICER:</b>	Edmund Feary - Senior Urban Planner
<b>REFERRALS STATUTORY:</b>	None
<b>REFERRALS NON-STATUTORY:</b>	None

**CONTENTS:**

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<b>APPENDIX 1:</b>	<b>Relevant P&amp;D Code Policies</b>
<b>ATTACHMENT 1:</b>	<b>Application Documents</b>
<b>ATTACHMENT 2:</b>	<b>Subject Land Map</b>
<b>ATTACHMENT 3:</b>	<b>Zoning Map &amp; Locality Map</b>

## DETAILED DESCRIPTION OF PROPOSAL & BACKGROUND:

The site has an existing approved use as a function centre known as *Fogolar Furlan* (hereafter, “the Club”), which has operated as an Italian community club for many years. The site is listed as a Local Heritage Place on the basis of this cultural heritage.

The site’s hours of operation were set under DA 190/145/1997 which outlined the following:

*The hours of operations for the facility shall be:*

<i>Monday to Thursday</i>	<i>10.00am to 11.00pm</i>
<i>Friday</i>	<i>10.00am to 11.30pm</i>
<i>Saturday</i>	<i>10.00am to 12.30am</i>
<i>Sunday</i>	<i>10.00am to 10.30pm</i>
<i>Public Holidays</i>	<i>Noon to Midnight</i>
<i>Good Friday and Christmas Day</i>	<i>Nil</i>
<i>Special Days- Sundays which are followed by a Public Holiday</i>	<i>Noon to Midnight</i>

*and that any special function requiring extended hours other than those stipulated, requires notice in writing to Council at least 21 days prior to the event to obtain Council’s written permission.*

The club operates many “special functions” as annual events, and the requirement for them to seek the written permission for each creates an administrative burden on both the Council and the Club.

To this end, the Club is seeking to extend its approved trading hours as follows:

<i>Monday to Thursday:</i>	<i>from 10:00am until 11:00pm (no changes)</i>
<i>Friday:</i>	<i>from 10:00am until 01:00am (previously 11:30pm)</i>
<i>Saturday:</i>	<i>from 10:00am until 01:00am (previously 12:30am)</i>
<i>Sunday:</i>	<i>from 10:00am until 11:30pm (previously 10:30pm)</i>
<i>Special Days:</i>	<i>from 12:00pm until 01:00am (previously 12:00am)</i>
<i>Good Friday and Christmas Day:</i>	<i>closed (no changes)</i>

The venue’s liquor licence, approved on 16 November 2019 approves the following hours:

- *Monday-Saturday 5:00am to Midnight*
- *Sunday 8:00am to Midnight*

This conflict was brought to Council’s attention when applying for a short-term liquor licence, when Council staff noted that these were inconsistent. It was suggested to the Club that they may wish to apply for variations to make these hours consistent. The applicant has subsequently lodged this Development Application.

It is noted that the original application (190/145/1997) was determined by the Council (as in, the elected body), which is no longer a valid Relevant Authority under the Act. Based on legal advice, it is understood that where a variation is not development in its own right (e.g. variations to conditions) then the default Relevant Authority is the Assessment Panel (but the application should not undergo public notification).

## SUBJECT LAND & LOCALITY:

### Site Description:

**Location reference:** 69 -77 BRIAR RD FELIXSTOW SA 5070

**Title ref.:** CT 5847/552  
CT 5848/24

**Plan Parcel:** D3446 AL110  
D3446 AL 111  
D3446 AL 112  
D3446 AL 108  
D3446 AL 109

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

**Shape:** Mostly rectangular though the allotment boundary at the northern end is on a diagonal (though the car park does not reflect these allotment boundaries).

**Frontage width:** 95m

**Area:** 4106m<sup>2</sup>

**Topography:** Mostly flat

**Existing structures:** Community centre (Local Heritage Place in a generally modernist style) with associated fencing and sealed car park.

**Existing vegetation:** Large, significant gum trees around the site as well as a series of palm trees and ferns, other shrubbery, and a row of small deciduous trees along the Briar Road frontage of the car park.

### Locality

The site is surrounded on three sides by the River Torrens/Karrawirra Parri Linear Park, while the opposite (eastern) side of Briar Road is a low-density residential area (General Neighbourhood Zone).

The locality is considered to extend some 85m south along Briar Road, north to the River Torrens/Karrawirra Parri, east to the dwellings on Briar Road, and west approximately 60m to the outer edge of the public car park. This is shown in **Attachment 3**.

The locality's character is dominated by the Linear Park and associated carparking, which leaves a relatively natural landscape. The residential areas of a low, but increasing, density, with more recent subdivision evident.

Tree canopy coverage is high within the park, but relatively low outside of it.

Noise levels are generally low, with some noise from OG road and the O Bahn bus interchange on the opposite side of the river in Klemzig.

The streetscapes have a low/moderate degree of amenity, though the Linear Park has a very high degree of amenity.

### CONSENT TYPE REQUIRED:

Planning Consent

### CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**  
Other - Community - Change of Operating Hours: Code Assessed - Performance Assessed
  
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
  
- **REASON**  
P&D Code; No pathway provided

### PUBLIC NOTIFICATION

- **REASON**



The application does not seek to conduct “development” therefore it does not require public notification.

## **PLANNING ASSESSMENT**

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

The most relevant policy is Performance Outcome 2.1 of the Interface Between Land Uses module:

*Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its hours of operation having regard to:*

- (a) the nature of the development*
- (b) measures to mitigate off-site impacts*
- (c) the extent to which the development is desired in the zone*
- (d) measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.*

### **Disruption to Neighbours**

The variation proposes to retain the current operating hours on weekdays, with Friday, Saturday and special days up until 1am, and Sundays up until 11:30. The venue may have live or amplified music playing within the buildings, and noise would be generated from vehicles leaving the car park.

This section will consider the four elements that PO 2.1 (above) suggests should be regarded in any assessment:

#### The Nature of the Development

The site has been lawfully used as a community centre for many years, and events of this nature have occurred many times in those years, and should generally be reasonably expected for a community/cultural centre where regular celebrations will occur.

It is considered that the nature of the development does support extended operating hours.

#### Measures to Mitigate Off-Site Impacts

The site is separated from any residential properties by either a public road, or by a distance of approximately 50m, with vegetation to deaden sound.

Functions take place within two large buildings which have relatively thick walls given the nature of their construction.

There is an outdoor area provided, located between the two buildings on the southern side, so noise would be unlikely to travel east from here, and as noted above, noise travelling south would be deadened by vegetation in the park.

It is considered that suitable measures are in place to mitigate off-site impacts so as to support the extended hours.

#### The Extent to which the Development is Desired in the Zone

The development of community facilities is expected in the General Neighbourhood Zone (DPF 1.1, PO 1.2 (b)), though it is primarily a residential zone. This in mind, this factor neither particularly supports nor undermines the case for extended hours of operation.

#### External Measures

As this factor relates to measures in an adjacent zone, but the development is in the same Zone as the affected sensitive receivers, this section is not considered relevant.

On balance, the factors outlined in Performance Outcome 2.1 of the Interface Between Land Uses module generally support extended operating hours for the venue.

### Question of Seriously at Variance

The proposed development is not considered seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*, for the following reasons:

- It relates to an existing lawfully approved land use; and,
- It extends operating hours by no more than an hour and a half from the current approved hours.

### CONCLUSION

Given the longstanding nature of the use, the limited extent of the additional hours, and the separation from sensitive receivers, it is considered that the extended hours would not unreasonably impact the amenity of the locality. The application is therefore recommended for consent.

### RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. The proposed development is not considered seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*.
2. Development Application Number 25001816, by Fogolar Furlan Inc 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), noting that all previous stamped plans and documentation, including conditions previously granted Planning Consent for Development Application ID No. 190/145/1997 are still applicable except where varied by this authorisation.

##### Condition 2

The hours of operation for the facility shall be:

Monday to Thursday:	from 10:00am until 11:00pm
Friday:	from 10:00am until 01:00am
Saturday:	from 10:00am until 01:00am
Sunday:	from 10:00am until 11:30pm
Special Days*:	from 12:00pm until 01:00am
Good Friday and Christmas Day:	closed

\*Sundays which are followed by a Public Holiday.

### ADVISORY NOTES

#### PLANNING CONSENT

##### Advisory Note 1

No work other than that which was previously approved 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 operate during the additional hours allowed by this Consent until you have received notification that Development Approval has been granted.

#### Advisory Note 2

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

- Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;

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

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 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.

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#### **Moved by Mr Bateup**

1. *The proposed development is not considered seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the Planning, Development and Infrastructure Act 2016.*
2. *Development Application Number 25001816, by Fogolar Furlan Inc 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), noting that all previous stamped plans and documentation, including conditions previously granted Planning Consent for Development Application ID No. 190/145/1997 are still applicable except where varied by this authorisation.*

##### *Condition 2*

*The hours of operation for the facility shall be:*

<i>Monday to Thursday:</i>	<i>from 10:00am until 11:00pm</i>
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<i>Sunday:</i>	<i>from 10:00am until 11:30pm</i>
<i>Special Days*:</i>	<i>from 12:00pm until 01:00am</i>
<i>Good Friday and Christmas Day:</i>	<i>closed</i>

*\*Sundays which are followed by a Public Holiday.*

#### **ADVISORY NOTES PLANNING CONSENT**

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*Advisory Note 1*

*No work other than that which was previously approved 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 operate during the additional hours allowed by this Consent until you have received notification that Development Approval has been granted.*

*Advisory Note 2*

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

- *Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;*

*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*

*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 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.*

**Seconded by Mr Adcock**  
**CARRIED**

**6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT**

**7. REVIEW OF ASSESSMENT MANAGER DECISIONS**

**7.1 REVIEW OF ASSESSMENT MANAGERS DECISION – ID 24031118 –  
89 EIGHTH AVENUE ST PETERS**

<b>DEVELOPMENT NO.:</b>	24031118
<b>APPLICANT:</b>	Ms Kim Lau
<b>ADDRESS:</b>	89 Eighth Avenue, St Peters - CT 6152 / 747
<b>NATURE OF DEVELOPMENT:</b>	Variation of Development Application 24015340 to include a boundary wall
<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) (All structures over 110 metres)</li> <li>• Character Area (NPSPC4)</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 10m)</li> <li>• Minimum Site Area (Minimum site area for a detached dwelling is 500sqm; semi-detached dwelling is 500sqm)</li> <li>• Maximum Building Height (Levels) (Maximum building height is 2 levels)</li> <li>• Minimum Side Boundary Setback (Minimum side boundary setback is 1.5m for the first building level; 3m for any second building level or higher)</li> <li>• Site Coverage (Maximum site coverage is 50 per cent)</li> </ul>
<b>LODGEMENT DATE:</b>	4 October 2024
<b>RELEVANT AUTHORITY:</b>	Original Decision – Assessment Manager at City of Norwood Payneham & St Peters  Review of AM Decision – Council Assessment Panel at City of Norwood Payneham & St Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	Version applicable at lodgement – (4 October 2024)
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	No

<b>RECOMMENDING OFFICER:</b>	Geoff Parsons, Assessment Manager
<b>REFERRALS STATUTORY:</b>	None required
<b>REFERRALS NON-STATUTORY:</b>	None required

## CONTENTS:

<b>APPENDIX 1:</b>	<b>Relevant P&amp;D Code Policies</b>	<b>ATTACHMENT 4:</b>	<b>Delegated Planning Assessment Report</b>
<b>ATTACHMENT 1:</b>	<b>Council Assessment Panel Review of Decisions of the Assessment Manager Policy</b>	<b>ATTACHMENT 5:</b>	<b>Application Documents</b>
<b>ATTACHMENT 2:</b>	<b>Application to Assessment Panel and accompanying correspondence</b>		
<b>ATTACHMENT 3:</b>	<b>Decision Notification Form</b>		

## INTRODUCTION

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

A prescribed matter is defined as follows:

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

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

To assist with undertaking a review under Sections 201-203 of the *Planning, Development & Infrastructure Act 2016*, the Council Assessment Panel adopted a procedure to guide the consideration of an application for such at its meeting held on 21 October 2024. A copy of that Policy is provided in **Attachment 1**.

The Panel should be aware that the South Australian Government made changes to the *Planning, Development & Infrastructure (General) Regulations 2017* on 25 May 2023. An amended regulation was introduced which states:

- (2) An applicant to an assessment panel for a review of a prescribed matter must be given an opportunity to provide the assessment panel with the applicant's submissions in relation to the review (and, if the assessment panel determines to hold a hearing, must be given written notice of the date of the hearing and an opportunity to appear and make submissions at the hearing in person)

Council (together with the rest of the local government sector) has received advice in relation to the new regulation and such advice confirms that an Applicant should be provided with the right to make submissions (both written and verbal). Accordingly, the Applicant's written submission has been provided in **Attachment 2** (together with the request for the review) and the Presiding Member and Assessment Manager have agreed it is reasonable for both the Applicant and Assessment Manager to address the Panel verbally for five (5) minutes each, as per the Panel's normal processes for a hearing of representations. This is now allowed for as per clause 6.3 of the adopted *Policy*.

## DETAILED DESCRIPTION OF PROPOSAL:

The Application to which the review relates is Development Application 24031118. This Application sought Planning Consent to vary DA 24015340. That Application originally obtained Planning Consent for: *Construction of a two-storey detached dwelling and associated outbuilding (garage)*.

DA 24031118 was then lodged and sought consent for:

*Variation of Development Application 24015340 to include a boundary wall*

Specifically, the variation seeks to:

- Alter the south western wall to the “office” such that it no longer sits 960mm from the boundary, and instead rests on the side boundary;
- Construct the wall such that it has dimensions of 6.59m in length and 3.096m in height;
- Construct the boundary wall of face brickwork (black facebrick with white mortar).

Development Application 24031118 was refused Planning Consent under delegation from the Assessment Manager. It is that determination that is the subject of this review (for clarity, the Planning Consent for DA 24015340 remains valid and the two-storey dwelling can be constructed following the granting of Building Consent and Development Approval – it is only the variation application {DA 24031118} seeking to construct a boundary wall that has been refused).

Clause 7 in the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* stipulates that the Panel may:

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

In addition, the Council Assessment Panel may defer its decision in accordance with clause 6.8 of the *Council Assessment Panel Review of the Assessment Manager Policy*.

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

This particular review application was lodged outside of the timeframe outlined in the Policy (clause 3.3.3). However, that same clause grants the Presiding Member permission to still accept the Application for Review, and in doing so they may consider the circumstances outlined in clause 3.5. The Presiding Member made the decision to accept the Review on 10 January 2025.

## SUBJECT LAND & LOCALITY

### Development Location(s)

89 Eighth Avenue, St Peters, SA 5069

### Title and Parcel

**Title Ref:** CT 6152/747 **Plan Parcel:** D93154 AL2 **Additional Location Information: Council:**

The City Of Norwood Payneham & St Peters

The subject land was originally part of a larger parcel but was subdivided in 2010. At that time 89 and 89A Eighth Avenue were created. This application relates entirely to 89 Eighth Avenue.

The subject land is a rectangular land parcel of approximately 516 square metres in area. It is currently vacant. It has a frontage of approximately 11 metres and a depth of approximately 46 metres.

The land is generally level and has frontage to both Eighth Avenue and Eighth Lane.

### Locality

The locality is almost exclusively residential in nature. It contains primarily single-storey detached dwellings on spacious allotments with reasonable setbacks to the street frontage and allotment boundaries. Many



dwellings are of mature age but the area is subject to re-development with newer dwellings being designed to respect some of the character features and styles of the older dwelling stock.

The presence of laneways throughout St Peters mean that garaging is predominantly provided to the rear of the allotments, meaning dwellings address the street frontage with extensive living areas and large landscaped gardens.

Many properties incorporate front fencing which varies in condition and type, including timber, colour-coated steel, masonry and metal infill and other varieties.

Eighth Avenue is a wide street with mature street trees and footpaths either side. Traffic volumes are generally low.

The area enjoys a high level of amenity and is in a highly desirable and sought-after location.

## PROCEDURAL MATTERS

The Application was performance assessed and did not require public notification.

## AGENCY REFERRALS

No agency referrals were required.

## INTERNAL REFERRALS

No internal referrals were required.

## DOCUMENTS FOR REVIEW

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

- Appendix 1 – Applicable Planning & Design Code Policies
- Attachment 1 – Council Assessment Panel Review of Decisions of the Assessment Manager Policy
- Attachment 2 – Application to Assessment Panel and accompanying correspondence
- Attachment 3 – Decision Notification Form
- Attachment 4 – Delegated Assessment Report
- Attachment 5 – Application Documentation

## REVIEW OF ASSESSMENT MANAGER DECISION

The applicant, via the correspondence provided for in **Attachment 2**, has provided a valid and clear argument as to why the decision of the Assessment Manager (i.e. the refusal of DA 24031118) should be set aside, namely:

- The presence of numerous other boundary walls in the locality;
- The high quality of the dwelling design;
- Future landscaping which will partially screen the boundary wall;
- The boundary wall will not have an unreasonable impact on the locality.

To assist the Panel in their consideration of this matter, and in accordance with clause 5.1.4 of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy I have set out the rationale for the Assessment Manager's decision below.

The Delegated Planning Assessment Report (provided for in Attachment 4) sets out the rationale for the

original decision of the Assessment Manager in detail. The report provides for a comparison of other boundary walls / developments in the locality and considers the relevance of each. It is not necessary to repeat those comparisons for the purposes of this report.

The Assessment Manager’s decision was ultimately based on the following provisions within the Planning & Design Code:

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

*ENZ PO 7.1 – Walls on boundaries are limited in height and length to manage visual and overshadowing impacts on adjoining properties.*

*ENZ PO 8.1 – 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.*

*CAO DO 1 – Valued streetscape characteristics and development patterns are reinforced through contextually responsive development, design and adaptive reuse that responds to the attributes expressed in the Character Area Statement.*

*CAO PO 1.1 – All development is undertaken having consideration to the valued attributes expressed in the Character Area Statement.*

*CAO PO 2.1 – The form of new buildings and structures that are visible from the public realm are consistent with the valued streetscape characteristics of the character area.*

*CAO PO 2.3 – Design and architectural detailing of street-facing buildings (including but not limited to roof pitch and form, openings, chimneys and verandahs) are consistent with the prevailing characteristics in the character area.*

*CAO PO 2.4 – Development is consistent with the prevailing front and side boundary setback pattern in the character area.*

*Relevant Character Area Statement Provisions:*

<i>Architectural styles, detailing and built form features</i>	<i>Traditional pre-1940s roof forms, eaves, front verandah treatments, window proportions.</i>  <i>Semi-detached dwellings often presenting as single dwellings.</i>
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It is important to note the Assessment Manager’s decision was influenced by the following factors:

- The Desired Outcomes set the context within which the relevant Performance Outcomes should be interpreted. The Desired Outcomes for the Established Neighbourhood Zone and Character Area Overlay both specifically speak to contextually responsive development, valued streetscape characteristics being reinforced and new buildings being sympathetic to predominant built form characteristics.
- The locality is not a “typical” residential area (as one might see in other “General Neighbourhood Zones”) and a “higher bar” is established for development to ensure the valued character attributes of the area are not undermined by inappropriate development over time.
- A conclusion that the wall would be unlikely to have unreasonable impacts on the affected neighbour through inappropriate visual impacts or overshadowing.
- The boundary wall would unreasonably impact the streetscape character by creating a form of development which would:
  - Not incorporate an eave to the boundary wall element which is a character attribute specifically noted in the Character Area Statement;
  - Result in a living area on the boundary which is not common in the locality;

- Result in a development not complying with the side setback TNV of 1.5 metres (noting a TNV forms part of a Designated Performance Feature and is not a “mandatory” requirement).
  - Result in a streetscape outcome that is not common in the locality, is inconsistent with the valued attributes of the Character Area and undermines the established character of the locality / streetscape.
- Development assessment is not a “tick box” exercise and requires a careful weighing of the relevant policies within a specific context. The failure of a development to align with the valued attributes of a character area may not be fatal if those characteristics are already undermined and no longer relevant. Accordingly, the Assessment Manager carefully considered the context within which the development is proposed, and that analysis is borne out in the Delegated Planning Assessment Report (Attachment 4).

It is evident from that assessment that, while there are examples of boundary development (mostly approved under previous policy regimes), the majority of the character area is “intact”, maintaining boundary setbacks and eave forms which are consistent with the valued attributes as set out in the Character Area Statement.

For these reasons the Assessment Manager concluded that Development Application 24031118 could not be supported and refused Planning Consent.

As the Council Assessment Panel now has before it the rationale for the review as provided by the Applicant, and justification for the decision as provided by the Assessment Manager, the Panel must now consider this matter afresh taking into consideration all relevant factors.

## CONCLUSION

This report outlines the rationale for the decision of the Assessment Manager, as required by clause 5.1.4 of the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy*. The attachments provide all of the other relevant information and details as required by clause 5.1.

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

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

## RESOLUTION OPTIONS

### Resolution to affirm the decision of the Assessment Manager

*The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application 24031118 is not seriously at variance with the Planning and Design Code, but that it does not warrant Planning Consent for the following reasons:*

1. *The proposed boundary wall is inconsistent with prevailing side setback pattern of the locality and Character Area, therefore being inconsistent with Established Neighbourhood Zone Performance Outcome 8.1, and Character Area Overlay Performance Outcomes 2.1 and 2.4. It would also result in an eave form that would make it inconsistent with Character Area Overlay Performance Outcomes 1.1, 2.1 and 2.3.*

### Resolution to vary a decision of the Assessment Manager

*The Council Assessment Panel resolves to vary the decision of the Assessment Manager in relation to Development Application 24031118 by including the following reasons for refusal:*

- *[insert additional / alternate reasons]*

### Resolution to set aside a decision of the Assessment Manager

*The Council Assessment Panel resolves to set aside the decision of the Assessment Manager to refuse Planning Consent to Development Application 24031118 and substitute the following decision:*

- *Development Application 24031118 is not seriously at variance with the Planning and Design Code and Planning Consent is granted to the application subject to the following conditions and notes:*

## CONDITIONS

### 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 imposed on the Planning Consent for Development Application 24015340 are still applicable except where varied by this authorisation.*

## ADVISORY NOTES

### Note 1

*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.*

### Note 2

*This approval varies the original consent / approval to which it applies, but it does not extend nor vary the operative date of the original consent / approval. The consent / approval must be acted upon within the operative date applicable, unless extended by the relevant authority via separate submission.*

### 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.*

### 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.*

### Note 6

*The Building Consent to be submitted for this development must be submitted against the original Development Application granted Planning Consent, and not against the variation. However the Building Consent must be consistent with the latest version of the approved plans, which would incorporate any approved variations. The variation application may subsequently be verified as not requiring Building Consent, to allow Development Approval to be granted against the variation.*

*For further clarification, please contact Council's Planning Department on 8366 4530.*

### Resolution to defer review hearing

*The Council Assessment Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to refuse Planning Consent to Development Application 24031118 until:*

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

*Mr Owen addressed the Council Assessment Panel from 7:55pm until 8.00pm*

**Moved by Mr Rutt**

*Resolution to affirm the decision of the Assessment Manager*

*The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application 24031118 is not seriously at variance with the Planning and Design Code, but that it does not warrant Planning Consent for the following reasons:*

- 1. The proposed boundary wall is inconsistent with prevailing side setback pattern of the locality and Character Area, therefore being inconsistent with Established Neighbourhood Zone Performance Outcome 8.1, and Character Area Overlay Performance Outcomes 2.1 and 2.4. It would also result in an eave form that would make it inconsistent with Character Area Overlay Performance Outcomes 1.1, 2.1 and 2.3.*

**Seconded by Mr Moorhouse**  
**CARRIED**

**8. ERD COURT APPEALS**

**9. OTHER BUSINESS**

- *Variations and delegations – discussion on the relevant processes and procedures for variation applications.*
- *Heritage Advisors Reports – discussion on content and wording. Assessment Manager to discuss with Heritage Advisor.*
- *CAP Agendas – discussion on hard copy vs electronic copy agendas and attachments. CAP agreed to trial a hybrid model with the Code Extract being provided electronically.*

**10. CONFIDENTIAL REPORTS**

**11. CLOSURE**

***The Presiding Member declared the meeting close at 8:27pm***