

Special Council Assessment Panel Minutes

6 March 2024

Our Vision

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

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

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

Telephone 8366 4555
Email townhall@npsp.sa.gov.au
Website www.npsp.sa.gov.au
Socials  /cityofnpsp  @cityofnpsp



City of
Norwood
Payneham
& St Peters

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City of
Norwood
Payneham
& St Peters

VENUE Council Chambers, Norwood Town Hall

HOUR 7:00pm

PRESENT

Panel Members Mr Terry Mosel
Mr Mark Adcock
Ms Jenny Newman

Staff
Kieran Fairbrother, Senior Urban Planner

APOLOGIES Mr Ross Bateup
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 19 FEBRUARY 2024**

Moved by Ms Newman and Seconded by Mr Adcock
Carried

4. **DECLARATION OF INTERESTS**

Nil

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 24000067 – CITY OF NORWOOD PAYNEHAM & ST PETERS –
188 O G ROAD, FELIXSTOW

DEVELOPMENT NO.:	24000067
APPLICANT:	City of Norwood Payneham & St Peters
ADDRESS:	188 O G RD FELIXSTOW SA 5070 188 O G RD FELIXSTOW SA 5070 188 O G RD FELIXSTOW SA 5070
NATURE OF DEVELOPMENT:	Variation to Development Applications 22017508 and 23024217 comprising the removal of Tree 2 (a significant Flooded Gum)
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Housing Diversity Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Affordable Housing • Future Road Widening • Hazards (Flooding) • Heritage Adjacency • Hazards (Flooding - General) • Local Heritage Place • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Transport Routes • Urban Tree Canopy • Water Resources • Airport Building Heights (Regulated) • Advertising Near Signalised Intersections
LODGEMENT DATE:	9 Jan 2024
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Norwood, Payneham and St. Peters
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2023.19 - 21 December 2023
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	No
RECOMMENDING OFFICER:	Kieran Fairbrother Senior Urban Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 4:	Instrument of Delegation to the CAP
ATTACHMENT 1:	Application Documentation (Including Applicant's Response to Deferral Reasons)	ATTACHMENT 5:	Approved Site Plan
		ATTACHMENT 6:	Minutes for the CAP Meeting of 19 February 2024
ATTACHMENT 2:	Subject Land Map		
ATTACHMENT 3:	Applicant's Responses		

DETAILED DESCRIPTION OF PROPOSAL:

By way of development authorisation 22017508, the Applicant obtained planning consent for the "demolition of existing swimming pools, pavilion and minor structure and the construction of new swimming pools, pavilion, plant room, pool enclosure and shade structures". Several variations to the proposal were then made and approved as part of development authorisation 23024217. For both Development Authorisations, the Applicant sought to retain the tree that is the subject of this application and were able to demonstrate how the proposed development could occur without impacting the tree.

Now, the Applicant seeks removal of this significant tree for several reasons including, but not limited to, construction efficiencies, costs savings, the ability to use the space under the tree as recreation space, and preventing potential damage to the new swimming pool.

BACKGROUND

At its meeting on Monday 19 February 2024 ("First Meeting"), the Council Assessment Panel heard this matter and resolved as follows:

That the Council Assessment Panel resolved to defer Development Application ID 24000067 to enable the following information to be submitted:-

- *Further exploration and justification for the management and disposal of the contaminated soil including rationale as to why the removal of the significant tree is necessary to accommodate such; and*
- *Further information and justification regarding the consideration of all reasonable development options and design solutions to avoid the removal of the significant tree in accordance with PO 1.4(b) of the Regulated [and] Significant Tree Overlay.*

The Applicant has now provided information in response to these deferral reasons, and these are contained **Attachment 1** (page 29 onwards), along with all other previous documentation.

PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One. The previous Assessment Report is contained within **Attachment 6** – the undisputed parts of which will not be reiterated in this report.

Performance Outcome 1.2 of Regulated and Significant Tree Overlay states:

"Significant trees are retained where they:

- (a) Make an important contribution to the character or amenity of the local area*
- (b) Are indigenous to the local area and are listed under the National Parks and Wildlife Act 1972 as rare or endangered native species*
- (c) Represent an important habitat for native fauna*

- (d) *Are part of a wildlife corridor of a remnant area of native vegetation*
- (e) *Are important to the maintenance of biodiversity in the local environment and/or*
- (f) *Form a notable visual element to the landscape of the local area.”*

There was no doubt by the Panel at its First Meeting that the subject tree satisfied at least one of the criteria in PO 1.2 such that retention of the tree is warranted in the first instance. The Panel opted to defer its decision because it was not satisfied that Performance Outcome 1.4 of the Overlay had been met to justify the removal of the tree.

Performance Outcome 1.4 of the Regulated and Significant Tree Overlay states:

“A tree-damaging activity in connection with other development satisfies all of the following:

- (a) It accommodates the reasonable development of land in accordance with the relevant zone or subzone where such development might not otherwise be possible*
- (b) In the case of a significant tree, all reasonable development options and design solutions have been considered to prevent substantial tree-damaging activity occurring.”*

In respect of attempting to satisfy PO 1.4, the Applicant has now provided further information, contained within **Attachment 1**.

Firstly, it would be unwise to ignore the fact that an existing development authorisation exists for the redevelopment of the Payneham Memorial Swimming Pool facility (development authorisation 22017508 and variation authorisation 23024217), and that the development encapsulated by these approvals required the endorsement of the Council and are subject to a Local Government Infrastructure Partnership Program (“LGIPP”) Grant Deed of \$5.6 million. Consequently, it is worth noting that any further changes to the already-approved development, or any complete re-design of this development, would be required to go through the same rigor and submissions as has already occurred with the current approval; the history of which is outlined by the Applicant in pp. 29-34 of **Attachment 1**.

It is the administration’s view that to require the Applicant to re-design the redevelopment of this facility and go through these processes again, with no guarantee of a positive outcome in respect of either process, is inherently unreasonable and therefore PO 1.4(b) should be considered satisfied. Moreover, the Applicant has advised that any proposed redesign would be a breach of the LGIPP Grant Deed agreement and likely result in the loss of grant funding (**Attachment 3**). Nevertheless, the Applicant was asked to produce evidence that there has been consideration of all other reasonable development options and design solutions to avoid the removal of the tree.

Five (5) draft masterplan options were developed and presented to the Council, with the option that was endorsed being that which was ultimately granted development approval (ID 22017508). The Administration has verbally confirmed with the Applicant that all five options included the retention of the subject tree, but none of those options would’ve provided sufficient space on site to retain the contaminated material that has now come the light.

Investigations undertaken by LBW Co, on behalf of the Council, identified that there is approximately 3,376m³ of contaminated soils and material on the site that need to be managed and disposed. At an earlier stage, it was determined that the retention of this contaminated material on site was not feasible for two reasons (quoted from page 36 of **Attachment 1**):

“1. The site contamination is primarily uncontrolled fill and cannot be classified and approved as engineered fill under the buildings or pool structures without excavating, grading and further testing of soils during the construction stage. This would be an inefficient process without any guarantee of how much contaminated soil would actually be suitable for reuse.

2. Due to the increase in the total area of the site being development to accommodate the buildings, swimming pools, zero depth play and waterslides and tree protection zone, there is limited suitable area available (approximately 600m²) on-site to retain and encapsulate contaminated soils.”

Now that the cost for the disposal of this waste is known to be \$1.8 million, the Applicant seeks the removal of the tree so that this area can accommodate the on-site retention and encapsulation of all this contaminated material, thus providing significant savings.

The Applicant has demonstrated that there is not sufficient room on site to accommodate this material, due to the location and siting of buildings and the TPZ of the subject tree. Any alternative design or re-siting of buildings will still not be able to accommodate this uncontrolled fill, and so to this extent PO 1.4(b) is considered satisfied.

The Applicant was asked to investigate how much contaminated material could be stored on site based on the existing design (i.e. within the 600m² of aggregate space available) and what savings that might produce against the \$1.8 million disposal fees. Discussions with the construction contractor resolved that the retention of contaminants in multiple, smaller locations on the site would be so labour intensive and inefficient that the costs of undertaking that work and disposing of what remains would likely be more costly than disposing of all the material off-site. Accordingly, this is not considered to be a reasonable design solution either.

With the above in mind, as well as the other reasons put forward by the Applicant in **Attachment 3** (e.g. the removal of the tree allows for better use of the area), the removal of the subject tree is justified by virtue of satisfaction of PO 1.4 of the Regulated and Significant Tree Overlay.

To offset the loss of shade cover and habitat and biodiversity value that the subject tree provides, the Applicant has proposed a new landscaping plan (see p 105 **Attachment 1**) – and the Panel will recall that a detailed landscaping plan was recommended to be required by way of a Reserved Matter the last time this item was presented for your consideration. This landscaping plan provides for an additional ten (10) trees being planted on the site and a more usable lawn area for visitors. The Applicant has confirmed that any change to the landscaping plan does not require Council endorsement nor a variation to the existing LGIPP Grant Deed. This landscaping plan goes beyond what is required by regulation 59(1)(b) of the *Planning, Development and Infrastructure (General) Regulations* – that is, to plant just 3 replacement trees – and is consequently considered an acceptable response.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 24000067, by City of Norwood Payneham & St Peters is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

Condition 1

The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below, noting that all previous stamped plans and documentation, including conditions previously granted Planning Consent for Development Application ID No's 22017508 and 23024217 are still applicable except where varied by this authorisation.

Condition 2

Condition No 2 imposed on Planning Consent for Development Application ID No 23024217 is hereby deleted and replaced by the following:

With respect to Tree 1 and Tree 3 detailed in the Arboricultural Impact Assessment (AIA), dated 20 June 2022, prepared by Urbans Arboriculture, the following measures shall be undertaken in addition to the recommendations contained in the AIA:

- all service trenches shall avoid each tree's Tree Protection Zone (TPZ) where possible. Where this is deemed not possible, exploratory work for the service trenches shall be undertaken under the supervision of a level 5 arborist (or higher), with any structural roots of a diameter of 25mm or greater being retained where possible;
- the paving in the vicinity of Tree 1 be undertaken in accordance with amended plan 21-0255 (Drawing No. AA1221, dated 13/07/23) herein granted Planning Consent, and where excavation is required for the alignment of the paths and for stormwater or irrigation purposes it to be undertaken using boring or hydrovac excavation methods as appropriate under the supervision of a level 5 (or higher) arborist;
- physical tree protection barriers are to be installed with signage for the full duration of the works for the full extent of undisturbed TPZs (that is the areas of the TPZ within which no work is proposed), or to the largest extent possible, and not removed without consent of the Project Arborist;
- Irrigation must not be turned off between the months of October to May as the significant trees have developed a reliance on irrigation over time. Alternatively, supplementary watering shall be provided during this time; and
- any pruning should be undertaken by, or in the presence of, the Project Arborist, including any root pruning.

Condition No 3

Three (3) replacement trees, with a minimum mature height of 5 metres, shall be planted on the subject land as soon as is practical within 12 months of the removal of the significant tree herein approved. The replacement tree shall not be planted within 10 metres of a dwelling or in-ground swimming pool and cannot be of a species identified in Regulation 3F(4)(b) of the Planning, Development and Infrastructure (General) Regulations 2017.

Condition No 4

All areas of landscaping demonstrated on the herein approved Landscape Plan (Drawing No: 321-0359-00-L-02-DR01, dated 22.02.2024) shall be planted within the next available planting season after the completion of the development 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.

ADVISORY NOTES

Planning Consent

Advisory Note 1

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

Advisory Note 2

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

Advisory Note 3

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.

Advisory Note 4

The Applicant is reminded of its responsibilities under the *Environment Protection Act 1993*, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off

site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.

Mr Barnes answered questions from the Council Assessment Panel from 7:03pm until 7:06pm

Moved by Mr Adcock

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Seconded by Ms Newman
CARRIED

6. DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT

7. REVIEW OF ASSESSMENT MANAGER DECISIONS

8. ERD COURT APPEALS

Mr Fairbrother provided an update in respect of the following appeals:

DA 23010962 – 1 Kensington Road, Kensington – Hearing completed, pending judgment.

DA 23004961 – 114A Osmond Terrace, Norwood – Hearing commenced this week, expected to complete on Thursday, judgment expected at a later date.

9. OTHER BUSINESS

Nil

10. CONFIDENTIAL REPORTS

11. CLOSURE

The Presiding Member declared the meeting closed at 7:15pm

Terry Mosel
PRESIDING MEMBER

Kieran Fairbrother
ACTING MANAGER, DEVELOPMENT ASSESSMENT