

Council Assessment Panel Minutes

20 May 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

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Email townhall@npsp.sa.gov.au
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Socials  /cityofnpsp  @cityofnpsp



City of
Norwood
Payneham
& St Peters

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VENUE Council Chambers, Norwood Town Hall

HOUR 7:00PM

PRESENT

Panel Members Mr Mark Adcock
Mr Ross Bateup
Mr Paul Mickan
Cr Christel Mex
Mr Julian Rutt

Staff Geoff Parsons, Manager Development & Regulatory Services
Ned Feary, Senior Urban Planner
Tala Aslat, Planning Assistant

APOLOGIES Mr Stephen Smith

ABSENT

1. COMMENCEMENT AND WELCOME

2. APOLOGIES

Mr Parsons advised that Mr Smith is an apology and sought nomination for an acting Presiding Member

Moved

That Mr Adcock be acting as Presiding Member

**Seconded by Mr Bateup
CARRIED**

**3. CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT
PANEL HELD ON 18 MARCH 2024**

**Moved by Cr Mex and Seconded by Mr Bateup
CARRIED**

4. DECLARATION OF INTERESTS

5. DEVELOPMENT APPLICATIONS – PDI ACT

5.1 DEVELOPMENT NUMBER 24001900 – LIN PENG – 1 PAYNEHAM ROAD, COLLEGE PARK

DEVELOPMENT NO.:	24001900
APPLICANT:	Lin Peng
ADDRESS:	1 PAYNEHAM RD COLLEGE PARK SA 5069
NATURE OF DEVELOPMENT:	Change of use from shop to music education studio, including the installation of acoustic wall panels
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Business Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Advertising Near Signalised Intersections • Future Road Widening • Historic Area • Heritage Adjacency • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • State Heritage Place • Traffic Generating Development • Urban Transport Routes <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	20 Feb 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 2024.3 15/02/2024
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Edmund Feary Senior Urban Planner
REFERRALS STATUTORY:	None
REFERRALS NON-STATUTORY:	None

CONTENTS:

APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 5:	Representations
ATTACHMENT 1:	Application Documents	ATTACHMENT 6:	Response to Representations
ATTACHMENT 2:	Subject Land and Locality Map	ATTACHMENT 7:	Heritage Survey Item Identification Sheet
ATTACHMENT 3:	Zoning Map		
ATTACHMENT 4:	Representation Map		

DETAILED DESCRIPTION OF PROPOSAL:

The proposal is for the use of a commercial tenancy within a State Heritage Place, for the purposes of providing music lessons. The applicant would be offering primarily one-on-one teaching, with three rooms meaning that there would usually be six persons on-site at a given time (three students, three teachers), though parents/caregivers would also sometimes be present. The business focuses on teaching piano, though violin lessons would also be offered.

Proposed hours of operation are:

- Monday-Friday: 3:30pm-8:00pm
- Saturdays: 8:30am-6:00pm
- Sundays: 10:00am-5:30pm

The applicant has not provided advice from an acoustic engineer but has provided some details regarding intended noise control methods including rugs/carpet, wall panels, placing thick blankets behind the back and underneath the piano, curtains, and keeping doors and windows closed while instruments are being played.

As the site is a State Heritage Place, the wall panels do require approval, and do therefore form part of the application.

BACKGROUND:

The site is a two-storey State Heritage Place, which is split into 13 commercial tenancies- with ground floor tenancies known as Shops 1-7 and upper tenancies known as Suites 1-6. These have primarily operated on the basis of “existing use rights” with the land uses varying depending on the tenancy in question.

An application for a “change of use to a guitar tuition facility” for suite 6 was submitted in 2015 (application 155/49/2015), though this was refused for non-supply of information, as application fees were never paid.

SUBJECT LAND & LOCALITY:

Site Description:

The site is located at a five-pointed intersection which includes four State Maintained Roads, being:

- North Terrace;
- Fullarton Road;
- Magill Road;
- Payneham Road; and,
- Baliol Street (being a local road, with only one-way access from Payneham Road).

The site has a two-storey State Heritage Place along the boundary with Payneham Road, and a car park behind, accessed from Baliol Street. The nature of the access from Payneham Road to Baliol Street means that vehicles leaving the car park cannot access Payneham Road directly and would need to travel via local roads in College Park.

The proposed tenancy is “Suite 3” which is on the upper level of the two-storey State Heritage Place, as shown on the floor plan provided in **Attachment 1**. The applicant has also provided a plan of the car park at the rear of the site, showing the assignment of the car parks among the various tenancies occupying the site.

Location reference: 1 PAYNEHAM RD COLLEGE PARK SA 5069

Title ref.: CT
5198/395

Plan Parcel: F32338
AL100

Council: THE CITY OF NORWOOD PAYNEHAM
AND ST PETERS

- Shape:** Irregular, though mostly rectilinear
- Frontage width:** Approx. 36.8m to Payneham Road, and approx. 38.2m to Baliol Street.
- Area:** Approx. 1112m² in site area, with the tenancy having a gross leasable floor area of 93m²
- Topography:** Mostly flat
- Existing Structures:** Two-storey commercial building (State Heritage Place). The building is described as the “Bon Marche building”, constructed between 1884-1913. It includes a verandah and balcony over the footpath along Payneham Road. The Heritage Survey Item Identification Sheet is provided in **Attachment 7**. Ancillary structures include a tall shed (described as a “store” on plans provided by the applicant) located along the northeastern boundary of the site.
- Existing Vegetation:** Some landscaping is provided in the car park, including two small trees (one of which is multi-stemmed).

Locality:

The locality for the development is considered to extend some 70m along Baliol Street and North Terrace, and some 50m along Payneham Road, as well as the other properties which address the intersection on which the site is situated. This is illustrated in **Attachment 2**.

The intersection, often referred to as the “Maid and Magpie Corner” in reference to the hotel, carries substantial traffic volumes, with Location SA traffic volume data showing that each State Maintained Road carries more than 20,000 vehicle movements per day, and Payneham Road has more than 30,000. The intersection is wide and given the high traffic volumes, has little pedestrian amenity. Nonetheless, the visual interactions between the subject State Heritage Place and the Maid and Magpie Hotel (also a State Heritage Place), do provides some visual amenity through this historic character and the manner in which they address the intersection. Further amenity is provided by mature trees on the Banner Hardware site on the southeast corner of the intersection, and by mature trees in the protuberance which prevents exits from Baliol St into the intersection.

Along Baliol Street, the character transitions from a more commercial character along Payneham Road, to a residential one. Baliol Street is typically characterised by large residential allotments with grand, historic homes, but the section that forms the locality for this development is primarily made up of more dense infill development. This comes mainly in the form of four newer townhouses facing Hartford Lane, and two more facing Baliol Street, constructed around 2001.

The Seventh-Day Adventist Church on the northern side of Hartford Lane is also a significant, historic building (a Local Heritage Place), adding further historic character to the locality.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Other - Commercial/Industrial - Music studio: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code; No other pathway due to being in the State Heritage Place Overlay

PUBLIC NOTIFICATION

- **REASON**
Change of use to a land use not specifically contemplated under Business Neighbourhood Zone Table 5
- **LIST OF REPRESENTATIONS**

Given Name	Family Name	Address	Position	Wishes to be heard?
Marina	Pepicelli	3 Baliol Street, College Park	Opposed	Yes
Linda	Madigan	4 Marlborough Street, College Park	Opposed	Yes
Jonathan Carolyn and Nicholas and Sarah Harry and Rhead		16 Trinity Street, College Park*	Support, with concerns	No
Sarah	Kostarelis	Shop 4/1 Payneham Road, College Park	Oppose	No

*This representor indicated that they write as the registered owner of 4 Hartford Lane, College Park, though they listed their address on the representation form as 16 Trinity Street, College Park.

- **SUMMARY**

Representors were primarily concerned by the noise impacts of the proposed use, with additional concerns about car parking. Concerns about noise were raised by nearby residents and one adjoining business, with some references made to the existing noise issues associated with the Maid and Magpie Hotel.

Some representors raised specific questions with reference to a lack of detail in public notification documents, including the nature of the instruments used, and the number of patrons. This has been clarified in the applicant’s response to representations.

AGENCY REFERRALS

No referral to Heritage SA was required as the application did not include any building work. The installation of the panels is a minor work and does not fall within any reasons for referral outlined in the Procedural Matters table of the State Heritage Place Overlay.

No referral to the Commissioner of Highways was required as the vehicle access point for the associated car park is more than 25m from a State Maintained Road, and therefore the proposal did not alter the nature or frequency of access through a specified access point.

INTERNAL REFERRALS

None required.

PLANNING ASSESSMENT

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

Land Use

The proposed development is not a use specifically defined under the Planning & Design Code, noting that “educational facility” is fairly narrowly defined to: “Means a primary school, secondary school, reception to year 12 school, college, university or technical institute, and includes an associated child care facility or institution for the care and maintenance of children”. As the proposed development is not necessarily for the “care and maintenance of children” and is not a school per se, it is not an educational facility and is its own land use category.

Business Neighbourhood Zone (BNZ) PO 1.1:
Housing and accommodation types appropriate to the locality complemented by shops, offices, consulting rooms and other non-residential uses that do not materially impact residential amenity.

BNZ PO 1.2:
Business and commercial land uses complement and enhance the prevailing or emerging neighbourhood character.

BNZ PO 1.3:
Changes in the use of land between similar businesses encourages the efficient reuse of commercial premises and supports continued local access to a range of services compatible to the locality.

The questions arising from these Performance Outcomes may therefore be summarised as:

- 1) *Does the proposed development “materially impact residential amenity”?*
- 2) *Does the proposed development “complement and enhance the prevailing or emerging neighbourhood character”?*
- 3) *Does the proposed development represent the “efficient reuse of commercial premises”?*
- 4) *Does the proposed development support “continued local access to a range of services”?*
- 5) *Is there proposed development “compatible with the locality”?*

Question 1) of these will be discussed under the “environmental factors” section.

Questions 2) and 5) can be explored through similar trains of thought, in an examination of the locality / neighbourhood. Payneham Road and the “Maid and Magpie Corner” are predominately commercial in their character, and the proposed tenancy fronts Payneham Road consistent with this.

The site has a history of commercial uses, and the fundamentals of a commercial use for this site are reasonably well established. A music studio will have some impacts such as noise which would be distinct from, say, a consulting room, but its impact on character is limited, and it is compatible with the established commercial character of this part of the locality.

By requiring no building work, the proposed use is consistent with the notion of “efficient reuse”. It is noted that the wall panels that the applicant has proposed to minimise noise impacts are of a kind which is mounted to the wall, rather than requiring any permanent alteration of said walls (these will be further discussed under the “Heritage” section). This is also consistent with the notion of adaptive reuse, which the Code supports as per State Heritage Place Overlay PO 2.2.

It is also consistent with providing local access to services, by providing local residents with access to music lessons.

Overall then, it is considered that the proposed use is consistent with the relevant land use policies in the Business Neighbourhood Zone.

Heritage

The proposed wall panels are easily mounted to the wall using a drill, as shown in the screenshots from the product website provided in Attachment 1. This would not impact the historic fabric of the building.

The proposed use is consistent with the use of the site for a variety of commercial purposes, and the proposed development would not diminish the site’s heritage value.

Traffic Impact, Access and Parking

The building has an established car park at the rear of the site, with each tenancy having one assigned parking space.

As the site is in the Business Neighbourhood Zone, and is in a high-frequency public transit area (as North Terrace, Magill Road and Payneham Road are all “Go-Zones”), the site is in a designated area for the purposes of car parking. This means that the applicable rate is outlined in Table 2 of the Transport, Access and Parking module.

However, as the same rate applies to all non-residential forms of development, the same rate applies to both the previous use of the land, and the new use. Carrying over the existing shortfall, consistent with established principles of interpreting designated area policies, the proposed development does provide the envisaged number of parking spaces to satisfy the Planning and Design Code.

Representors noted that parking in Baliol Street can be difficult. The street has two-hour timed parking 7am-7pm Monday-Friday, while Payneham Road immediately in front of the site is unavailable for parking, since it is the middle of a highly trafficked intersection.

While the concerns of representors are acknowledged, and the proposed use does have the potential to exacerbate existing issues, the Code anticipates these problems, and places greater merit on allowing the efficient reuse of commercial premises.

Environmental Factors

Noise Emissions

The primary concerns of representors related to noise impacts from the development. The applicant has provided further detail in the response to representations which clarify the extent of noise which would be generated, and the measures taken to reduce the impact of this noise. The proposed business would be primarily teaching piano, with some violin. Both of these are typically quieter instruments, which will have a lesser impact than percussion or brass instruments.

Interface Between Land Uses PO 4.6

Development incorporating music achieves suitable acoustic amenity when measured at the boundary of an adjacent sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers.

It should be noted that the nearest sensitive receiver is on the opposite side of the car park, some 24m from the tenancy.

The representors are mostly separated by a substantial distance from the proposed business:

Address	Distance
3 Baliol Street, College Park	64m
4 Marlborough Street, College Park	114m
4 Hartford Lane, College Park	30m
Shop 4/1 Payneham Road, College Park	0m

While representors raised concerns about existing noise issues from the Maid and Magpie Hotel, the noise from this business would be much lower by virtue of the nature of the instruments played and the lack of amplification. On balance, it is unlikely that any unreasonable level of noise would reach sensitive receivers.

Noise impacts for the downstairs business (and indeed other businesses in the complex) are more likely. The PO above refers to “sensitive receivers” who are defined in the Code as:

- *any use for residential purposes or land zoned primarily for residential purposes;*
- *child care facility;*
- *educational facility;*
- *hospital;*
- *supported accommodation;*
- *tourist accommodation.*

Therefore, the Code anticipates a lower level of acoustic amenity for businesses, and there is no policy that does not reference sensitive receivers.

Nonetheless, the applicant has outlined steps to minimise the disruption to the neighbouring businesses.

In order to ensure the expected level of acoustic amenity, conditions are proposed to:

- 1) Ensure that the proposed acoustic treatments are implemented;
- 2) Ensure that no amplified music is played;
 - a. The condition is worded to allow low volume amplified music where it is not audible outside of the tenancy, since some recordings may be necessary for tuition or other purposes.
- 3) Limit the types of instruments played;
 - a. The condition would prohibit brass or percussion instruments as these have the highest potential to cause a nuisance. It would therefore allow woodwind and string instruments.
 - b. As saxophone is a woodwind instrument, but does also have potential to create a nuisance in the manner of a brass instrument, it is specifically included.

Hours of Operation

Interface Between Land Uses module DPF 2.1 envisages that most businesses will operate between 7am-9pm Monday to Friday, and 8am-5pm on Saturdays. It envisages that shops would operate 8am-5pm on Sunday as well, but this is not the case for consulting rooms or offices (the only uses where this DPF provides any guidance).

Interface Between Land Uses PO 2.1 states:

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.*

As has been established above, the extent of the noise impacts are relatively limited, given the nature of the instruments which are to be played. As such, the nature of the development is such that it would not generally impact the amenity of sensitive receivers. It is noted that the hours for the development are consistent with what the relevant DPF would expect for a shop, and this is not considered unreasonable.

Waste Management

The proposed use would not generate substantial amounts of additional waste, and the existing bins are considered to be sufficient to meet the needs of the development.

Signage

The applicant has not proposed any new signage as part of this application. While existing signs could have their messaging changed to reflect the applicant's business branding, no new signage is permitted without Development Approval, as the site is a State Heritage Place.

Consideration of Seriously at Variance

Having considered the proposal against the relevant provisions of the Planning and Design Code version 2024.3 - 15 February 2024, the proposal is not considered to be seriously at variance with the provisions of the Planning and Design Code for the following reasons:

- The land use is a non-residential use which will “not materially affect residential amenity” as per BNZ PO 1.1;
- The proposed land use is complementary to the commercial character of this part of the locality in accordance with BNZ PO 1.2;
- The small-scale nature of the use is consistent with the scale of uses in the locality; and
- The proposal is consistent with the adaptive reuse of a State Heritage Place as envisaged in SHPO PO 2.2.

CONCLUSION

In conclusion, the proposed development aligns with the intended use of the Business Neighbourhood Zone by complementing the local character, promoting efficient reuse of commercial space, and providing continued access to services. Despite concerns about parking and noise, the site is in a designated area for car parking, and measures have been outlined to mitigate potential noise issues, such as implementing acoustic treatments and regulating instrument types and hours of operation. Overall, the proposed development appears consistent with relevant land use policies and aims to integrate effectively into the surrounding area.

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 24001900, by Lin Peng is granted Planning Consent subject to the following reasons/conditions/reserved matters:

CONDITIONS

Planning Consent

Condition 1

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

Condition 2

Suitable acoustic treatments, as outlined in the business description and response to representations herein approved, shall be implemented and maintained to the reasonable satisfaction of the Assessment Manager.

Condition 3

No amplified music (other than at a volume where it cannot be heard outside the walls of "Suite 3") is to be played as part of the use herein approved.

Condition 4

No percussion or brass instruments, nor saxophones, are to be played as part of the use herein approved.

For the avoidance of doubt, a piano is, for the purposes of this condition, considered to be a string instrument, and is permitted.

Condition 5

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

- Monday-Friday: 3:30pm-8:00pm
- Saturdays: 8:30am-6:00pm
- Sundays: 10:00am-5:30pm

ADVISORY NOTES

Planning Consent

Advisory 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.

Advisory Note 2

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

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

If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at townhall@npsp.sa.gov.au. 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 Applicant is reminded of its responsibilities under the *Environment Protection Act 1993*, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.

Advisory Note 5

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

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

Advisory Note 6

The Applicant is advised that construction noise is not allowed:

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

Advisory Note 7

The Applicant is advised that 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 8

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 9

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.

Ms Pepicelli addressed the Council Assessment Panel via teleconference from 7:04pm until 7:15pm

Ms Peng addressed the Council Assessment Panel from 7:16pm until 7:32pm

MOVED by Mr Rutt

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
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**Seconded by Mr Bateup
CARRIED**

6. **DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT**
7. **REVIEW OF ASSESSMENT MANAGER DECISIONS**
8. **ERD COURT APPEALS**
1 Kensington Road Norwood – Appeal upheld by ERD Court on 29 April 2024
114A Osmond Terrace Norwood – Hearing was held on 5 - 7 March 2024, awaiting outcome.
9. **OTHER BUSINESS**
Nil
10. **CONFIDENTIAL REPORTS**
11. **CLOSURE**

The Acting Presiding Member declared the meeting closed at 8:05pm

Mark Adcock
ACTING PRESIDING MEMBER

Geoff Parsons
MANAGER DEVELOPMENT ASSESSMENT