

DEVELOPMENT NO.:	22022935
APPLICANT:	Lili Manos
AGENDA ITEM NO:	3.1
ADDRESS:	120 East Terrace, Adelaide SA 5000
NATURE OF DEVELOPMENT:	Construct upper level addition to existing garage fronting Nil Street to be used as a studio and demolition of gazebo
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • City Living <p>Subzones:</p> <ul style="list-style-type: none"> • East Terrace <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Hazards (Flooding – Evidence Required) • Prescribed Wells Area • Regulated and Significant Tree • State Heritage Place • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Levels) (Maximum building height is 2 levels)
LODGEMENT DATE:	17 November 2022
RELEVANT AUTHORITY:	City of Adelaide Council Assessment Panel
PLANNING & DESIGN CODE VERSION:	2022.21 – 10 November 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Edouard Pool - Senior Planner
REFERRALS STATUTORY:	Minister responsible for the administration of the <i>Heritage Places Act 1993</i>
REFERRALS NON-STATUTORY:	Nil

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All attachments and appendices are provided via Link 1 [here](#).

PERSONS SPEAKING BEFORE THE PANEL

Representor

- Marcus Rolfe from URPS on behalf of Frank Maiolo of 18 Nil Street, Adelaide

Applicant

- Simon Grose from Advantage Planning Services on behalf of the Applicant Lili Manos

1. DETAILED DESCRIPTION OF PROPOSAL

- 1.1 Planning consent is sought for the construction of a studio above an existing garage with an external staircase and demolition of an existing gazebo.

2. BACKGROUND

- 2.1 Dimora House was constructed in 1882 for Harry L Ayers to a design by William McMinn. Originally set in spacious landscaped gardens, the building was divided into flats in 1981 and the original garden was subdivided into 22 residential allotments and a private road; Dimora Court circa 1982.
- 2.2 Double garages for the three residential flat units occupying Dimora House were constructed in 1982 and were designed in a style and of materials that complemented the State Heritage listed building.

3. SUBJECT LAND & LOCALITY

Subject Land

- 3.1 The subject site is located on the western side of East Terrace, approximately 55 metres north of the intersection between East Terrace and Wakefield Street. The site is rectangular and has an area of 1,130m², with a frontage to East Terrace of 37.37 metres and a secondary street frontage to Nil Street of 30.12 metres.
- 3.2 The dwelling, Dimora House, is well setback from East Terrace with an existing large masonry wall located on the front boundary, separating the garden from the street and Park Lands. A free-standing rotunda is located near the corner of East Terrace and Nil Street. The site is enclosed by a bluestone wall on Nil Street and a low bluestone wall/plinth with wrought iron infills and gates to East Terrace.
- 3.3 Dimora House is subdivided into three dwellings, with the subject site being the two storey original core of the mansion, with the two rear 'wings' of the mansion being developed as separate single storey dwellings.
- 3.4 The site includes a generous front and side garden to Nil Street, set behind solid high bluestone walls. The side yard adjacent Nil Street is screened from public view by dense hedges and shrubs. The side yard to the north is narrow, being three metres in width and obscured from view by trellis fencing and front landscaping.
- 3.5 The primary private open space is located on the southern side of the property, immediately adjacent the existing garage and dwelling.

Locality

- 3.6 The locality is comprised of two distinct elements. The first is the development within Dimora Court which comprises two storey dwellings with pitched roofs and faux slate roof tiles. The dwelling also forms part of this generally uniform housing development, however it is the major part of the original Dimora House and is a State Heritage Place, together with the rear portion which is split into two attached dwellings.
- 3.7 The second element consists of properties further afield surrounding the original Dimora House property. These are extensive allotments with large, detached dwellings in spacious landscaped grounds. There are also contemporary infill semi detached and row dwellings, most of which are two storey.
- 3.8 A three-storey educational establishment (Christian Brothers College), and three storey mixed use buildings are located directly south of the subject site and further west along Nil Street.



Figure 3.1 - subject site viewed from East Terrace



Figure 3.2 - subject site viewed from Nil Street with garage on the left



Figure 3.3 - rear of Christian Brothers School, located opposite subject site



Figure 3.4 - view of subject garage and peppercorn tree at 18 Dimora Court



Figure 3.5 - view of courtyard at 18 Dimora Court with west wall of subject garage



Figure 3.6 - entrance and front courtyard at 18 Dimora Court looking southeast



Figure 3.7 - private open space at 18 Dimora Court looking west

4. CONSENT TYPE REQUIRED

Planning Consent

5. CATEGORY OF DEVELOPMENT

- **PER ELEMENT:**

Outbuilding:

Code Assessed - Performance Assessed

Demolition

Code Assessed - Performance Assessed

- **OVERALL APPLICATION CATEGORY:**

Code Assessed - Performance Assessed

- **REASON**

P&D Code; The 'highest' classification for the development is Code Assessed - Performance Assessed.

6. PUBLIC NOTIFICATION

- **REASON**

City Living Zone Table 5 - 'Outbuilding' addition 'abuts' western side boundary (100mm setback), with a wall height over 3 metres from top of footings.

TABLE 6.1 – LIST OF REPRESENTATIONS

No.	Representor Address	Request to be Heard
1	Frank Maiolo – 18 Dimora Court, Adelaide SA 5000	Yes – Opposes

TABLE 6.2 SUMMARY OF REPRESENTATIONS

Summary of Representations	Applicant Response (Summary)
Cantilevering of studio over garage to within 1 metre of the secondary street boundary is inconsistent with the setbacks of other outbuildings associated with the State Heritage Place.	Existing garage setback 2.2 metres from Nil Street boundary. Upper level studio will project 1.2 metres further forward to Nil Street, however it will be setback 1 metre from the southern boundary to Nil Street.
Studio will screen views of Dimora from Nil Street, affecting the value of the State Heritage Place.	Studio will not impact on views of the principal façade of Dimora House nor its setting. This is confirmed by Heritage South Australia.
Fenestration of the studio is not complementary to the windows of the State Heritage Place.	In response to a request from Heritage South Australia, the square/horizontal windows have been amended to vertical rectangular windows to complement those in Dimora House.
Pruning the large established peppercorn tree will make the proposed studio visually dominant from the adjacent dwelling and public realm.	The tree is a species excluded from regulated and significant tree controls.

<p>Black, metal, longline profiled, cladding is not sufficiently complementary to materials used of the State Heritage Place.</p>	<p>Heritage South Australia states <i>“the proposed form, colours and materials of the addition, while modern in appearance are considered acceptable within its setting”</i>.</p> <p>With reference to the Burra Charter, it is preferable to create a modern contrast rather than borrow from the original buildings in a pastiche reproduced fashion.</p>
<p>Proposal will have an unreasonable impact upon the amenity of the adjacent dwelling.</p>	<p>The modest wall heights of the studio at 2.4 metres with a 6 metre wide southern elevation and gable form is of a scale and form that will enhance the Nil Street streetscape.</p>

7. **AGENCY REFERRALS**

Minister responsible for the administration of the *Heritage Places Act 1993* (Heritage South Australia):

The proposed development is considered to be acceptable in relation to the State Heritage Place for the following reasons:

- *The proposed studio addition to an existing garage will face onto Nil Street and will be situated well behind the building line. It will not impact on the views to the principal façade of Dimora nor impact its setting.*
- *The proposed form, colours and materials of the addition, while modern in appearance, are considered acceptable within its setting.*
- *The application includes the demolition of the existing gazebo in the north/east corner. The gazebo is a later addition to the site and is not considered to contribute to the heritage values of Dimora. Its demolition will have no impact on the heritage values of the State Heritage Place.*

8. **INTERNAL REFERRALS**

Nil

9. PLANNING ASSESSMENT

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

9.1 Summary of East Terrace Subzone Assessment Provisions

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
Desired Outcome DO 1, DO 2	<ul style="list-style-type: none"> Low scale development proposed. 	✓
Site Coverage PO 1.1	<ul style="list-style-type: none"> Demolition of existing gazebo reduces site coverage. 	✓

9.2 Summary of City Living Zone Assessment Provisions

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
Desired Outcome DO 1	<ul style="list-style-type: none"> Low scale development proposed. 	✓
Ancillary Buildings and Structures PO 8.1, PO 8.2	<ul style="list-style-type: none"> Refer Section 9.5. 	✗/✓

9.3 Summary of Applicable Overlays

The following applicable Overlays for an 'Outbuilding' are not considered relevant to the assessment of this application:

- Airport Building Heights (Regulated) and Building Near Airfields Overlay – building height below maximum prescribed AHD level.
- Affordable Housing Overlay – new dwelling/s not proposed
- Regulated and Significant Tree Overlay – the peppercorn tree is exempt due to species.

State Heritage Place

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
Desired Outcome DO 1	<ul style="list-style-type: none"> Proposal does not directly affect the built form of the State Heritage Place. 	✓

Built Form PO 1.1, PO 1.2, PO 1.3, PO 1.4, PO 1.5, PO 1.6, PO 1.7	<ul style="list-style-type: none"> Form of the studio addition is not incongruous with the State Heritage Place, having a pitched roof form and vertically proportioned windows. Massing, scale and siting is determined to be complementary to the State Heritage Place according to Heritage South Australia. Development is not consistent with boundary setbacks and setting. Materials and colours are complementary to the heritage values of the State Heritage Place. Proposed building will not unreasonably affect the secondary façade of the State Heritage Place. 	✓
Ancillary Development PO 3.1, PO 3.2	<ul style="list-style-type: none"> Refer Section 9.5. 	✓

9.4 General Development Policies

The following General Development Policies are relevant to the assessment:

Clearance from Overhead Powerline

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
Desired Outcome DO 1	<ul style="list-style-type: none"> Occupants protected from existing electricity infrastructure. 	✓
PO 1.1	<ul style="list-style-type: none"> Proposal is not in proximity to powerlines which are located on the opposite side of the street. 	✓

Design in Urban Areas

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
Desired Outcome DO 1	<ul style="list-style-type: none"> Proposal to be constructed with durable materials, will be sustainable and will provide a reasonable contextual outcome in this locality. 	✓
Car parking, access and manoeuvrability PO 23.3, PO 23.4, PO 23.5	<ul style="list-style-type: none"> Safe and convenient access is provided via an existing crossover and parking arrangement. 	✓

9.5 Detailed Discussion

Land Use

The proposed studio will be constructed above the existing garage and demolition of the non-heritage gazebo will increase the area of landscaped open space. The studio will form an extension of the outbuilding. There is no provision of a toilet, bathroom, or other wet areas and consequently the studio will not function independently of the main dwelling. A recommended condition in Section 11 will ensure this is able to be enforced if required.

Built Form and Character

The site is within the East Terrace Subzone of the City Living Zone. In this area, medium scale housing is sought on large allotments within a landscaped setting. The original landscaped grounds of Dimora House were subdivided and built upon with low-scale dwellings, leaving a minimal area of land surrounding the original dwelling.

The Nil Street locality is defined by the presence of low scale buildings, with two-storey dwellings built close the street boundary on the north side and Christian Brothers School and offices located on the south side, which are built predominantly on the street boundary. Although the proposed upper level studio will present increased built form to Nil Street, relative to the scale of development and siting predominant in the street, it will not be out of scale, nor incongruously sited.

Heritage South Australia is satisfied with the colour, material, fenestration, roof shape and pitch of the development. It has confirmed the setback of the development from the primary façade of Dimora House, the degree of separation and general form will not adversely impact upon the value and setting of the State Heritage Place.

Building Setbacks and Boundary Walls

City Living Zone PO 8.1 seeks residential ancillary buildings sited and designed to not detract from the streetscape or appearance of primary residential buildings on the site or neighbouring properties.

While the proposed upper level addition will be visible from the public realm, it is not expected to detrimentally affect the existing streetscape or the neighbouring dwelling at 18 Dimora Court.

Zone DPF 8.1(c) and (d) seek buildings setback behind the primary façade of the main dwelling and 900mm from a secondary street boundary. Where located on a boundary to an adjacent property, buildings should not exceed a length of eight metres.

The garage is located behind the primary façade of Dimora House, thus satisfying the front setback criteria. The setback of the building from Nil Street will be in the order of 900mm, satisfying the secondary street setback.

The proposed studio cantilevers one metre beyond the ground floor wall of the existing garage. The total length measures approximately 8.5 metres, exceeding the desired length of eight metres on a boundary, thus not satisfying DPF 8.1(e). The 500mm exceedance of that referred to in DPF 8.1 is not considered excessive. The site to the west (18 Dimora Court) has its gardens located in proximity to the wall of the garage/studio and will experience reduced morning sunlight and an increased sense of enclosure, however this is not considered detrimental as discussed further below.

Height

The garage and studio will have an overall height of 6.1 metres to the top of the wall and 7.9 metres to the roof ridge. This exceeds the three and five metres referred to in DPF 8.1. In this instance the proposed height is in keeping with the scale of buildings in the immediate locality and will provide an appropriate contextual design response. The height has also been assessed as being satisfactory in terms of its heritage impact upon the State Heritage Place.

There are no specific overshadowing criteria in the Planning and Design Code relating to overshadowing to adjacent land caused by ancillary structures. However, the various height, setback and length criteria contained in City Living Zone DPF 8.1 are an indirect means to assess this impact.

While overshadowing is not a relevant planning consideration for an 'ancillary building', 18 Dimora Court has additional private open space located to the west of the property which is the more intensely used area. Consequently, any additional shadows cast over the eastern portion of private open space at 18 Dimora Court, will not result in unreasonable amenity impacts for occupants and the height and setback of the proposal is considered appropriate.

Other Matters

The proposed studio will require pruning of a large peppercorn tree (*Schinus molle*) located in the private open space area of 18 Dimora Court, adjacent Nil Street. This tree is not listed as being significant in the Planning and Design Code. Furthermore, this species of tree is exempt from being regulated or significant and therefore any pruning will not require development approval.

While overlooking is not a relevant planning consideration for an 'ancillary building' it should be noted some views of the private open space area and habitable room windows to the south at 18 Dimora Court may be possible from the staircase and south facing upper level windows. Direct overlooking is not expected as the staircase does not form a long-term viewing space and the viewing angle from the south facing windows is not expected to provide a direct line of sight.

Access to 18 Dimora Court from the entrance gate on Nil Street is not protected by a right of way despite the path of travel encroaching onto the subject site.

10. CONCLUSION

The proposal seeks to demolish a non-heritage gazebo and to construct an upper level addition to an existing ancillary outbuilding associated with a listed State Heritage Place. Heritage South Australia has provided support for the development.

Acknowledging the proposal will cause some amenity impacts to adjacent neighbour at 18 Dimora Court by way of its height, siting and overshadowing, these impacts are not considered to be unreasonable.

The proposal is not 'seriously at variance' with the relevant assessment provisions of the Planning and Design Code and exhibits sufficient merit to warrant the issuing of Planning Consent.

11. **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 22022935, by Lili Manos is granted Planning Consent subject to the following conditions and advices:

CONDITIONS

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).**
 - **Site Plan from Advantage Planning Services**
 - **Plan and elevation drawings from Advantage Planning Services dated 17 December 2023**
 - **Planning Report from Advantage Planning Services dated 4 July 2022**
 - **Letter from Advantage Planning Services dated 19 December 2023**

2. **The applicant or the person having the benefit of this consent shall ensure that all storm water runoff from the development herein approved is collected and then discharged to the storm water discharge system. All down pipes affixed to the Development which are required to discharge the storm water run off shall be installed within the property boundaries of the Land to the reasonable satisfaction of the Relevant Authority**

3. **External materials, surface finishes and colours of the Development shall be consistent with the description and sample hereby granted consent and shall be to the reasonable satisfaction of the Relevant Authority.**

4. **The studio is only to be used by occupants of the existing dwelling and shall be ancillary to the associated dwelling on the Land at all times and to the reasonable satisfaction of the Relevant Authority.**

ADVISORY NOTES

1. Expiration Time of Approval

Pursuant to the provisions of Regulation 67 of the *Planning, Development and Infrastructure (General) Regulations 2017*, this consent/approval will lapse at the expiration of 2 years from the operative date of the consent/approval unless the relevant development has been lawfully commenced by substantial work on the site of the development within 2 years, in which case the approval will lapse within 3 years from the operative date of the approval subject to the proviso that if the development has been substantially or fully completed within those 3 years, the approval will not lapse.

2. Notifications

Pursuant to Regulation 93 of the Planning, Development and Infrastructure Act, the Council must be given one business days' notice of the commencement and the completion of the building work on the site. To notify Council, contact City Planning via palnning@cityofadelaide.com.au or phone 8203 7185.

3. Appeal Rights

The applicant has a right of appeal against the conditions which have been imposed on this Planning Consent. Such an appeal must be lodged at the Environment, Resources and Development Court within two months from the day of receiving this notice or such longer time as the Court may allow. The applicant is asked to contact the Court if wishing to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

4. Requirements of the Aboriginal Heritage Act 1988

If Aboriginal sites, objects or remains are discovered during excavation works, the Aboriginal Heritage Branch of the Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet (as delegate of the Minister) is to be notified under Section 20 of the *Aboriginal Heritage Act 1988*.

5. Requirements of the Heritage Places Act 1993

If an archaeological artefact believed to be of heritage significance is encountered during excavation works, disturbance in the vicinity must cease and the SA Heritage Council must be notified.

Where it is known in advance (or there is reasonable cause to suspect) that significant archaeological artefacts may be encountered, a permit is required prior to commencing excavation works. For further information, contact the Department for Environment and Water. Any changes to the proposal for which Planning Consent is sought or granted may give rise to heritage impacts requiring further consultation with the Department for Environment and Water, or an additional referral to the Minister for Climate, Environment and Water. Such changes would include for example (a) an application to vary the Planning Consent, or (b) Building Rules documentation that incorporates differences from the proposal as documented in the development application.

6. Boundaries

It is recommended that as the applicant is undertaking work on or near the boundary, the applicant should ensure that the boundaries are clearly defined, by a Licensed Surveyor, prior to the commencement of any building work.

7. Demolition

Demolition and construction at the site should be carried out so that it complies with the construction noise provisions of Part 6, Division 1 of the Environment Protection (Noise) Policy 2007. A copy of the Policy can be viewed at the following site: www.legislation.sa.gov.au.

8. Other Requirements

In addition to notification and other requirements under the Planning, Development and Infrastructure Act and Fences Act, it is recommended that the applicant / owner consult with adjoining owners and occupiers at the earliest possible opportunity after Development Approval, advising them of proposed development work so as to identify and discuss any issues needing resolution such as boundary fencing, retaining walls, trees/roots, drainage changes, temporary access, waste discharges, positioning of temporary toilets etc.

9. Damage to Council's Footpath/Kerbing/Road Pavement

Section 779 of the Local Government Act provides that where damage to Council footpath / kerbing / road pavement / verge occurs as a result of the development, the owner / applicant shall be responsible for the cost of Council repairing the damage.

10. City Works Permit

Any activity in the public realm, whether it be on the road or footpath, requires a City Works Permit. This includes activities that have received Development Approval. The City Works Guidelines detailing the requirements for various activities, a complete list of fees and charges and an application form can all be found on Council's website at www.cityofadelaide.com.au/business/permits-licences/city-works/

When applying for a City Works Permit you will be required to supply the following information with the completed application form:

- A Traffic Management Plan (a map which details the location of the works, street, property line, hoarding/mesh, lighting, pedestrian signs, spotters, distances etc.); Description of equipment to be used;
- A copy of your Public Liability Insurance Certificate (minimum cover of \$20 Million required);
- Copies of consultation with any affected stakeholders including businesses or residents.