

COUNCIL ASSESSMENT PANEL MEETING
8 May 2019
AGENDA – ITEM 8.1

Applicant: Mark Musolino	Landowner: M A Musolino & R P Musolino
Agent: James Levinson	Ward: Manoah
Development Application: 2013/30/473	Originating Officer: Melanie Scott
Application Description: Filling of land to a maximum depth of 6.2 metres (non complying)	
Subject Land: Lot:100 Sec: P957 DP:63108 CT:5917/721	General Location: 24 & 28 Emmett Road Crafers West and Attachment – Locality Plan
Development Plan Consolidated : 12 April 2012 Map AdHi/22	Zone/Policy Area: HILLS FACE ZONE
Form of Development: Non-complying	Site Area: 1.3hectares
Public Notice Category: Category 3 non complying no building rules required Notice published in The Advertiser on 21 April 2017	Representations Received: 2 Representations to be Heard: 2

1. EXECUTIVE SUMMARY

The purpose of this application is to enable extensions to the existing apron of fill to the north and north-west of a dwelling existing on the subject land. The works will also enable better access to the northern portion of the land for land management purposes and enable the applicant to better meet CFS requirements for access to the dwelling for fire-fighting purposes.

The subject land is located within the HILLS FACE ZONE and the proposal is a non-complying form of development. The property is not in the watershed area. Two (2) representations in opposition to the proposal were received during the Category 3 public notification period.

The focus of the view for dwellings in this locality is to the north. The dwelling on the subject land is the most northerly positioned of the dwellings and is lower than the neighbouring dwellings, and by virtue of this anything on the subject land has the potential to impact on the amenity of the neighbouring dwellings. That said it is not unreasonable for the applicant to improve their own amenity and safety and arguably, given the difference in their elevation (lower) than their neighbours and that the works are largely screened from the neighbours by the applicant's dwelling, the proposal is considered reasonable. Because of the age of the existing dwelling and time elapse since the fill was undertaken there is speculation regarding the form of the land prior to the works and the extent of the works is contestable. There is no doubt when the work was first undertaken it was a very visible scar on local amenity. The passing of time and the further improvements proposed for landscaping of the fill have ensured the proposal on balance meets the expectations of the zone as detailed in the Adelaide Hills Council Development Plan.

As per the CAP delegations, the CAP is the relevant authority for Category 3 non-complying development where representors wish to be heard.

The main issues relating to the proposal are amenity, bushfire risk, natural character, encroachment and the appropriate nature of fill up to 6.2m in the locality.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel (SCAP) be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Fill to a maximum depth of 6.2m
- Access track
- Landscaping including rock pitching, sandstone steps and gabion walled terraces(maximum height .8m)

The proposed plans are included as *Attachment – Proposal Plans* with other information included as *Attachment – Application Information* and *Attachment – Applicant’s Professional Reports*.

3. BACKGROUND AND HISTORY

August 21 17, 2003	02/D506/473 Council approved a land division boundary realignment
April 1990	Carport and verandah
November 1973	Brick dwelling and associated earthworks

Historical aerial photography indicates the earth works began around October 2010. An order to remove the fill was issued 6 August 2012 as a result of a customer complaint. This order was suspended while the applicant went through an application process. An application to approve the fill was lodged 17 January 2013. A resolution to proceed with assessment of a non-complying application was agreed on 9 May 2016. A statement of effect was received in March 2017, non-complying fees were paid in April 2017 and the application was publically notified in April 2017. Two representations were received. There have been attempts to negotiate with the neighbours and representors by the applicant and their agent. The applicant’s response to the representations and those negotiations are ongoing and as they involve encroachment per the Encroachment Act 1944 these negotiations remain a civil matter to be resolved separately from this application process. At no time has the works on 32 Emmett Road been described as part of this application. Further there is some contention over the extent of works on 32 Emmett Road. The survey data provided would indicate a minimal incursion of fill. Site inspection and historical aerial photography indicated minimal changes in vegetation on the boundary between 32 and 28 Emmett Road further supporting the argument the issue is a civil matter between the neighbours. Further the applicant has proposed to remove the fill that has encroached onto 32 Emmett Road to which there has been no response.

The negotiations with 24 Emmett Road are more complicated and involve a long existing encroachment and practicalities of access to 28 Emmett Road. These negotiations have resulted in advice from the representor confirming the extent of works that have been agreed. At some time in the future there may be an application for a boundary realignment to better reflect the practicalities of how things work between 24 and 28 Emmett Road.

As the planner involved in this application I have formed the opinion I am generally supportive of the applicants agents assertion that this application should be resolved and the ongoing boundary issues with 32 Emmett Road is a civil matter. For this reason the exact boundary treatment of the proposed fill will be subject to future resolution and pending the amount of works may be subject to a further application.

4. REFERRAL RESPONSES

- **CFS – informal**
The CFS have no objection to the proposal and state that it will not increase fire risk on the subject or neighbouring land. The CFS advice is in the attachments.
- **NVC - informal**
NVC advise the reports and plans provided by the applicant are from consultants they use and represent good remediation.
- **AHC EHU**
It appears the onsite waste predates the requirement to lodge an application (1980) and is most likely a 1620litre tank with a 9m soakage trench. The applicant is aware of the location of both and the breather is still visible which on the advice of EHU means the onsite system is still intact.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Two (2) representations were received. Both representations are opposing the proposal and are from adjacent properties.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Jan Tomlinson	24 Emmett Road Crafers West	Not indicated
D Simmons & V Bullock	32 Emmett Road Crafers	Masterplan – Graham Burns

The applicant(s) or his representative – James Levinson may be in attendance.

The issues contained in the representations can be briefly summarised as follows:

- Increased fire risk
- Amenity considerations
- Encroachment across boundaries (Encroachment Act 1944)
- Form of development
- Impact on natural character

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**. A copy of the plans which were provided for notification are included as **Attachment – Publically Notified Plans**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site’s Physical Characteristics

The subject land is 13210m² in area and contains a dwelling. The high point of the subject land is the access point to Emmett Road to the south. The land slopes away to the north with the dwelling at the end of a narrow access point and then steep land with remnant native vegetation for the remainder. The portion of the land with the access and the dwelling is the narrowest section of the land with the dwelling being some 100metres from Emmett Road.

ii. The Surrounding Area

The area is a mixture of large residential allotments with dwellings on the flatter land near Emmett Road. The lower portions of allotments particularly on the northern side of Emmett Road (the same side as the subject land) are largely native vegetation. There are winter watercourses at the northern lower end of the allotments in the area.

iii. Development Plan Policy considerations

a) *Zone Provisions*

The subject land lies within the HILLS FACE ZONE and these provisions seek:

Policy Area

- Preservation of natural character whilst limiting the visual intrusion of development in the zone when viewed from local roads and the Adelaide Plain.

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2

PDCs: 1, 2, 3, 4, 14, 22, 23, 24, 26

Accordance with Zone

The dwelling on the subject land has a modest footprint when compared to many in the locality. It is not unreasonable to landscape to extend useable living space and improve access to the property. The proposal is considered in accordance with PDC 1 as the earthworks is associated with an existing dwelling and will result in native landscaping to preserve, enhance and re-establish the natural character of the subject land.

Form of Development

PDC 2 requires excavation and filling of land to be kept to a minimum and it could be argued the scale of the fill is not minimal. However the proposed landscaping and the stabilisation of the slope and the resultant minimisation of the visual impact of the proposal on the amenity of the locality result in a longer term balanced outcome

for the subject land. Arguably the finished landscape will be more in accordance with the natural character of the zone than the extensive exotic landscaping and recreational uses found on other land in the locality. On balance the proposal is considered in accordance with PDC 2.

The proposal incorporates vehicle access to the northern lower slopes of the subject land for bushfire and property maintenance purposes and the access works across the new contour of the fill ensuring the proposal is in accordance with PDC 14.

Appropriateness of Proposal in Locality

The proposed fill will be stabilised and is distant (greater than 100 metres) from mapped surface water resources. The applicant has undertaken remedial work around some larger native trees in the vicinity of the works and proposes extensive ongoing management of the slope with native vegetation planting. The CFS has confirmed they do not believe the works have altered the bushfire risk for the area. It is acknowledge whilst the works were new the amenity of adjoining land would have been impacted as the site is north and in the view zone of the two neighbouring dwellings, however the proposed landscaping minimises the loss of amenity. On balance the proposal is considered in accordance with PDCs 3 and 4.

Conservation

More than two thirds of the subject land is contaminated native vegetation which is proposed to be restored, maintained and improved which will be more achievable once access is more readily available. Proposed plantings on the fill slope are proposed to improve the biodiversity of the site and a barrier is proposed to limit further contamination of the native vegetation from the developed portion of the site. On balance for these reasons the proposal is considered in accordance with PDCs 22, 23 and 24.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- orderly and economic development
- conservation and preservation of scenically attractive areas
- preservation of amenity of localities
- minimisation of the threat of bushfires
- conservation of trees

The following are considered to be the relevant Council Wide provisions:

Objectives: 1, 2, 4, 5, 9

PDCs: 2, 3, 4, 7, 9, 13b, d& g, 15, 82, 202, 203, 204, 209, 227, 229, 230, 234, 244, 300, 333, 337

Form of Development

The amount of fill and its apparent depth may seem extreme in the zone however needs to be considered in context of a large, steep and difficult to manage site. On balance the extension of the level “apron” to the north of the existing dwelling which is at a narrow part of the site is considered a modest extension of useable area for recreation purposes on the subject land when compared to extensive recreational

uses found in the locality which have required similar extensive remodelling of the natural form of the land. The proposal is considered orderly and economic as it is in association with an existing dwelling and could reasonably be expected on the subject land, in accordance with PDCs 2, 3 and 7.

There is a small amount of fill on 32 Emmett Road which is proposed to be removed. There is a larger amount of fill on 24 Emmett Road and arguably an encroachment which has existed since the dwelling on 28 Emmett Road was built in 1973. The existing encroachment enabled reasonable vehicle access to the garage on 28 Emmett Road. It also ensures CFS vehicle access to the dwelling. The location of the dwelling and the shape of the subject land at the dwelling would not enable a CFS turnaround if kept within boundaries as they are presently. Historically there has been an encroachment by the driveway of 28 into 24 Emmett Road. There is now a further encroachment with additional fill and an opportunity to resolve access. This is more difficult to resolve and is the subject of ongoing negotiations between 24 and 28 Emmett Road. The applicant's representative has argued that the resolution of this is beyond the scope of the Development Act and is rather a civil matter to be negotiated under the Encroachment Act 1944. Further the applicant and the neighbour (28 Emmett Road) have reached an agreement on the extent of works for this project. I am inclined to support this position. A site meeting with the applicant and the neighbour indicated that access and better land management including fencing are shared goals. In principle the proposal is considered in accordance with PDCs 9 and 13 notwithstanding the location which is on the northern side (view side) of both the neighbours. Over time the visual impact for the immediate neighbours has naturalised and the extent of the works is not visible from the greater public area. Arguably the proposal will ensure better access to the northern portions of 28 and 24 Emmett Road and enable better enjoyment of the full extent of both parcels of land.

Residential Development

PDC 82 requires minimising potential for personal and property damage arising from natural hazards including bushfires. Bushfire protection measures have changed significantly since the dwelling on the land was built and the extension of the turnaround area for the dwelling to accommodate CFS turning is considered in accordance with this PDC and PDCs 244 and 300.

Conservation

As previously mentioned in the zone provisions the proposal represents a net gain to native vegetation on the site with proposed reparation works and is considered in accordance with PDCs 15, 202, 204, 211, 213 and 227.

PDC 229 requires minimising alteration to existing land form and you could argue this proposal does not with the maximum depth of fill however the earthworks are not extensively visible from surrounding localities, they do not skyline or impact the natural character of the Mount Lofty Ranges so on balance in accordance with PDCs 230 and 234 the proposal is considered acceptable.

Stormwater Management & any potential for Flooding, Subsidence or Erosion of the land

It could be argued there was not a lot of science when the fill was installed however practically it has been in place for 6-8 years, and some very long and wet winters and not subsided. The proposed landscaping with rock stabilisation will ensure the proposal is in accordance with PDCs 4 & 7.

Vegetation & Land Management

It is noted there was one significant and one regulated tree impacted on by the works and remedial works were undertaken to protect these trees in 2014. Those trees are still alive.

Other Matters

There are unresolved encroachment issues which mean the plan approved as part of this application may not be the final plan with regards to this site in particular with regards to 32 Emmett Road. The application is described as works on 24 and 28 Emmett Road and with proposed remediation of the encroachment to 32 Emmett Road, the application represents a resolution of a long standing inadequate situation. It is hoped the resolution of this application will result in further resolution and applications to resolve the situation between 28 and 24 Emmett Road Crafers West. Of significance to the applicant and the representors, any fencing on all three properties is the subject of development applications per the requirements of the Development Act and Regulations.

7. SUMMARY & CONCLUSION

The application is retrospective for extensive fill on land in the Hills Face Zone. The fill did extend onto two neighbouring properties. The application proposes to resolve this encroachment on one property and offers an opportunity to resolve a long standing inappropriate arrangement with the other property. Further the works will result in better land management practices on the subject land and propose extensive landscaping which will minimise the visual impact of the works and improve the quality of the vegetation on the subject land. The representor's planning consultant has suggested the proposal is seriously at variance with the Development Plan and should be refused. There are many properties in the locality with more extensive landscaping with modern recreational uses, in the context of the locality this proposal is considered a modest proposal with a return of much of the land to its natural character. As the planner I accept the proposal does not return the land to its natural form, however given the minimal impact the proposal has on public amenity and the improved vegetation and fire management opportunities presented by the proposal on balance the proposal should be supported. The CFS has confirmed there is no increased fire risk as a result of this proposal and further the proposal assists in emergency vehicle access to the dwelling on the site.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent to Development Application 2013/30/473 by Mark Musolino for Filling of land to a maximum depth of 6.2 metres (non complying) at 28 Emmett Road Crafers West subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Statement of support from owner dated January 17 2013
- Statement of effect from Botten Levinson dated March 2017
- Landscape plans SK01 and 02 from JPE Design Studio dated 18 December 2017
- Vegetation Restoration Plan from Ecological Associates Pty Ltd dated 23 November 2017
- Plan labelled Track Design Option 1 from Olden Van Senden Surveys reference 3856 dated 1 December 2017
- Drawings from Olden and Van Senden Pty Ltd reference 3856 plan 3856XI dated 1 August 2014 Sheets 1, 2 and 3 of 3
- Tree Management Plan by Gordon Sykes dated 23 July 2014

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Timeframe For Landscaping To Be Planted

Landscaping detailed in plan Landscape plans SK01 and 02 from JPE Design Studio dated 18 December 2017 shall be planted in the next planting season after this approval and maintained in good health and condition at all times. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased in the next planting season.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated and ensure the survival and maintenance of the vegetation.

(3) Establishment Of Tree Protection Area

Prior to the commencement of any work on site appropriate measures shall be taken to protect the 'significant' tree Eucalyptus Leucoxydon as identified by the report from Gordon Sykes dated 23 July 2014. In particular, the area in which the tree's branches and roots are located shall be protected by the erection of a secure fence. The fencing shall:

- a) consist of a 2.0 metre high solid, chain mesh, steel or similar fabrication with posts at 3m intervals;
- b) incorporate on all sides a clearly legible sign displaying the words "Tree Protection Area"; and
- c) not be erected closer to the tree than a distance equal to half of the height of the tree or the full width of the branch spread (whichever is lesser).

REASON: To protect the regulated tree from the impact of the development.

NOTES

(1) Development Approval Expiry

This development approval is valid for a period of twelve months commencing from the date of the decision notification. However if the development hereby approved is substantially commenced within the twelve (12) month period then it shall be completed within three (3) years of the date of such notification. This time period may be further extended beyond the 3 year period by written request to and approval, by Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee. Please note that in all circumstances a fresh development application will be required if the above conditions cannot be met within the respective time frames.

(2) Requirement For Further Applications

The applicant is reminded any fencing and earthworks greater than 9cubic metres is the subject of separate application.

(3) Existing Encroachment Identified

The fill which encroaches over the side boundary into 24 Emmett Road remains unresolved. This development authorisation in no way implies approval from Council for this encroachment. The applicant is encouraged to continue negotiations with 24 Emmett Road to resolve this new and historical encroachment which will likely require a further application to Council to rectify this situation.

(4) Works On Boundary

The development herein approved involves work within close proximity to the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a survey being carried out by a licensed land surveyor prior to the work commencing.

(5) Erosion Control During Construction

Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

(6) EPA Environmental Duty

The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes, or may cause, environmental harm.

(7) Department of Environment, Water & Natural Resources (DEWNR) – Native Vegetation Council Note

The applicant is advised that any proposal to clear, remove limbs or trim native vegetation on the land, unless the proposed clearance is subject to an exemption under the Regulations of the Native Vegetation Act 1991, requires the approval of the Native Vegetation Council. The clearance of native vegetation includes the flooding of land, or any other act or activity that causes the killing or destruction of native vegetation, the severing of branches or any other substantial damage to native vegetation. For further information visit:

www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation

Any queries regarding the clearance of native vegetation should be directed to the Native Vegetation Council Secretariat on 8303 9777. This must be sought prior to Full Development Approval being granted by Council.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Referral Responses
Representations
Applicant's response to representations
Publically Notified Plans

Respectfully submitted

Concurrence

Melanie Scott
Acting Team Leader Statutory Planning

Sam Clements
Acting Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
8 May 2019
AGENDA – ITEM 8.2

Applicant: Frost Protection Australia Pty Ltd	Landowner: Casella Management Pty Ltd
Agent: N/A	Originating Officer: Marie Molinaro
Development Application:	18/498/473
Application Description: Frost fan (maximum height 13.3m)	
Subject Land: Sec: 5050 HDP:105600 CT:5526/985 & Lot:41 Sec: P5049 FP:155656 CT:5526/980	General Location: 106 Buckleys Road, Lobethal Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Maps AdHi/3& 42	Zone/Policy Area: Watershed (Primary Production) Zone & Onkaparinga Valley Policy Area
Form of Development: Merit	Site Area: 42.67 hectares
Public Notice Category: Category 3	Representations Received: Two
Notice published in The Advertiser on 14 September 2018	Representations to be Heard: Two

1. EXECUTIVE SUMMARY

The purpose of this application is to construct one frost fan associated with an existing lawful vineyard. The fan is intended as protection for the vineyard from damage during frost events. Frost fans work by drawing down warm air from above and mixing it with cold air, which lifts temperatures at crop levels and prevents frost damage.

The subject land is located within the Onkaparinga Valley Policy Area of the Watershed (Primary Production) Zone .

The proposal is a category 3, merit form of development. Two representations were received during the Category 3 public notification period.

As per the CAP delegations, the CAP is the relevant authority as the representor who submitted their representation in time wishes to be heard.

The main issues relating to the proposal are noise impact on residential amenity when the fan is in operation, and the potential impact on visual amenity.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Construction of one frost fan
- The frost fan is the C59 model with a 5 blade propeller design
- The fan blade propeller is supported by a 10.38m high monopole
- The combined height of the monopole and fan blades is 13.3m
- The diesel engine controlling the fan operation is located in an enclosed cabinet at the base of the monopole
- The monopole and engine cabinet are finished in grey galvanised steel
- The fan blades are finished in a grey, composite material
- The frost fan is located towards the north-east of the site and is 125m from the nearest boundary

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Applicant’s Professional Report**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
7 June 2006	06/409/473	Change of use to horticulture

4. REFERRAL RESPONSES

No referrals were required for this application.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Two opposing representations were received from adjacent property owner/occupiers during the public notification period.

The following representors wish to be heard:

Name of Representor	Representor’s Property Address	Nominated Speaker
Russell Miatke & Meredith Dickson	99 Buckleys Road, Lobethal	TBA
Randal Tomich	1403 Onkaparinga Valley Road, Woodside	Janet Hind

Peter Bird, of Casella Wines or his representative may be in attendance for the applicant.

The issues contained in the representations can be briefly summarised as follows:

- Impact on residential amenity as a result of noise generated by the fans
- Further negative impacts resulting from the potential installation of additional frost fans in the future
- Other alternative methods should be used to limit frost damage, in particular sprinkler irrigation
- Frost may be blown by the fan onto neighbouring properties, containing vineyards

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site’s Physical Characteristics

The subject land is 42.67 hectares in area and is comprised of two allotments. The land contains a vineyard, dwelling and outbuildings.

The land is at the southern end of Buckleys Road, a non-through road. Unmade road, Golf Links Road bounds the site the west, and the land is approximately 660m east of Onkaparinga Valley Road, an arterial road and scenic route.

The vineyard covers the majority of the site, with the dwellings and outbuildings clustered towards the north of the land.

The site is undulating, and generally slopes down from the east and west, punctuated by a valley (low point) towards the centre of the land.

Access to the vineyard areas is by existing internal gravel tracks.

ii. The Surrounding Area

The locality is predominantly comprised of large irregular shaped allotments, used generally for horticulture and grazing.

Within the locality there are examples of rural living allotments, but these are generally clustered at the northern end of Buckleys Road, where it joins Woodside Road.

The exception to this is the representor Russell Miatke & Meredith Dickson’s property, which is a small rural living allotment adjoining the subject site to the north.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Onkaparinga Valley Policy area of the Watershed (Primary Production) Zone and these provisions seek:

Onkaparinga Valley Policy Area

- *The retention of the existing rural character by ensuring the continuation of farming and horticultural activities and excluding rural living or other uses which would require division of land into smaller holdings.*

The following are considered to be the relevant Policy Area provisions:

Objective: 1
PDCs: Nil

The proposal is considered to be consistent with Objective 1. The frost fans will assist in protecting an existing lawful vineyard (horticulture) from damage during frost events. Protecting the vineyard from damage will assist in ensuring the continuation/retention of horticultural activity on the land.

The applicant has advised that frost fans work by drawing down warm air and mixing it with the cold air that is flowing through the vineyard. That is that the frost fans do not push cold air away from the vineyard that they are installed on.

On the basis of this advice it is considered that the proposal will not prejudice or negatively impact on the continuation of primary production activities occurring on nearby land.

The following are considered to be the relevant Zone provisions:

Watershed (Primary Production) Zone

- *The maintenance and enhancement of the natural resources of the south Mount Lofty Ranges*
- *The enhancement of the Mount Lofty Ranges Watershed as a source of high quality water*
- *The long-term sustainability of rural production in the south Mount Lofty Ranges*
- *The enhancement of the amenity and landscape of the south Mount Lofty Ranges for the enjoyment of residents and visitors*

Objectives: 1, 2, 3, 4 & 5
PDCs: 1, 11, 14, 15, 16, 17, 39, 41, 42, 43 & 70

Form of Development

Principle of Development Control (PDC) 1 provides guidance as to how buildings (including structures) can maintain the natural rural character by being sited in unobtrusive locations.

In particular, buildings should:

- Be located well below the ridge line;*
The proposed fan is located below the ridge line.

- b) *Be located within valleys or behind spurs;*
The proposed fan is located within a valley.
- c) *Be located not to be visible against the skyline when viewed from public roads and especially from the Mount Lofty Ranges Scenic Road;*
The subject land is 660m west of the Onkaparinga Valley Scenic Route. Despite its height, the fan is not expected to skyline above the ridge given its position within the low point of the land, with the highpoint of the land behind. The fan is therefore not expected to be visible from the Onkaparinga Valley Scenic Route.
- d) *Be set well back from public roads, particularly when the allotment is on the high side of the road;*
The proposed fan is considered to be well setback from the adjoining public roads, with a minimum setback distance of 190m provided to the nearest public road. The nearest public road is Buckleys Road and the land is at the end of this no-through road.
- e) *Be sited on an excavated rather than a filled site to reduce the vertical profile of the building;*
The frost fan needs to be at a certain height above ground level to be effective, so it is not technically feasible to set the fan at a lower level to reduce its height.
- f) *Where possible, structures to be screened by existing native vegetation when viewed from public roads and especially from the Mount Lofty Ranges Scenic Road; and*
The subject land is mostly clear of native vegetation. In any event, views of the frost fan from public roads are minimised due to the positioning of structure in a valley and well setback from boundaries.
- g) *Maximise the retention of existing native vegetation and the protection and retention of watercourses in their natural state.*
The positioning of the frost fan will not result in any native vegetation removal.

The proposal is therefore considered to be consistent with PDC 1.

As the proposal is consistent with the design guidance criteria of PDC 1, it is also considered that the proposal is consistent with PDC 14 which calls for development to not detract from the natural and rural landscape character of the region.

PDCs 11 and 39 are identical, both stating that buildings should not impair the character of rural areas by reason of their scale or siting. If necessary, buildings should be screened by trees or shrubs. In reference to these PDCs it is noted that the height scale of the frost fan is not consistent with those PDCs of the Zone which seek the profile of buildings to be low. However, the height of the frost fan is standard and is required to ensure that they operate effectively. However, the bulk and scale of the fan is reduced by its slender design and minimal footprint on the land. The fan is sited at the low point of the land, and the construction does not require any native vegetation removal. The proposal is considered to be sufficiently consistent with PDCs 11 and 39 on this basis.

PDC 70 is the non-complying development trigger in the Zone, with all development not listed in PDC 70 being non-complying. Frost fans are listed in PDC 70, so the proposal has been assessed as a merit form of development. The inclusion of frost fans in PDC 70 signals that they are an expected form of development in the Zone, subject to full assessment against the relevant provisions of the Development Plan.

Rural Development

Objective 3 seeks the long-term sustainability of rural production, and is supported by PDC 42 which seeks rural areas to be retained for primary production purposes, and other uses compatible with maintaining rural productivity.

Objective 3 and PDC 42 are very similar to Objective 1 of the Onkaparinga Policy Area.

As discussed previously, the proposal is considered to assist in ensuring the continuation of primary production, in this circumstance horticulture, by protecting the vineyard crops from frost damage. As mentioned, a concern was raised in the representations that the frost fan will push cold air onto neighbouring sites. Based on information provided by the applicant, the proposal is not considered to prejudice or negatively impact on primary production activities occurring on nearby sites.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- *The retention of rural areas primarily for forestry, primary production and conservation purposes and the maintenance of the natural character and rural beauty of such areas*
- *Protect community health and amenity from adverse impacts of development*
- *Protect desired land uses from the encroachment of incompatible development*
- *Protection of the scenic qualities of natural and rural landscapes*
- *Protection of productive primary production land from conversion to non-productive or incompatible uses, and encouragement of full-time farming of rural land*

The following are considered to be the relevant Council Wide provisions:

Animal Keeping and Rural Development

Objective: 1

PDCs: 1 & 4

Objective 1 and PDC 1 are the same as Objective 1 of the Onkaparinga Policy Area and Objective 3 and PDC 42 of the Watershed (Primary Production) Zone, which have been discussed above in the report.

PDC 4 states that the planning, design and undertaking of horticulture should minimize impacts that ensure acceptable outcomes relating to the emission of dust, noise, odour or spray drift. Dust, odour or spray drift will not result from the fans, but the spinning blades and engine operation of the fans will generate notable noise

levels. Further discussion on noise impact is included later in the report – refer to section Interface Between Land Uses.

The applicant has advised in their response to the representations that the following alternative frost crop protection methods have been considered, but are not viable:

- Frost irrigation system
This would place a great demand on water resources and could lead to ground salinity.
- Chemical sprays
The use of sprays requires very accurate frost forecasting for application, and are yet to be proven to be effective.
- Helicopters
Provide the same protection as a frost fan, but are noisier.

Interface Between Land Uses

Objectives: 1, 2 & 3

PDCs: 1, 7 & 14

Amongst other matters PDC 1 seeks for development to not detrimentally affect the amenity of the locality through vibration. In the matter of *Frost Protection Australia Pty Ltd v The Barossa Council* [2017] expert advice from an acoustic engineer with experience in vibration impacts was that “ground borne vibration was not likely to be perceptible at distances of greater than five metres from the base of the fans, and cause no impact at surrounding residences.” Using the advice from this matter as a guide, the proposal is considered to be consistent with PDC 1.

PDC 7 is directly applicable to noise generating activities and states that development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant *Environment Protection (Noise) Policy* criteria when assessed at the nearest existing noise sensitive premises. The applicant has provided an environmental noise assessment report. The report (included in Attachment Applicant’s Professional Report) concludes that regardless of noise attenuation methods, the fans when in operation will achieve the Environment Protection (Noise) Policy criteria level at the closest non-associated dwellings, the sensitive premises.

The *Environment Protection (Noise) Policy 2007* a policy prepared by the Environment Protection Authority (EPA) sets out specifically the noise control provisions applicable to frost fans – refer **Attachment Environment Protection (Noise) Policy 2007**. Additionally, the EPA publication titled *Evaluation Distances for Effective Air Quality and Noise Management* provides advice on separation distances. It recommends a distance of 2000m for frost fans from sensitive uses – refer **Attachment Evaluation Distances for Effective Air Quality and Noise Management 2016**.

It is recognised that the proposed frost fans will have a significantly lesser separation distance at 265m from the closest non-associated dwelling (sensitive use), than the EPA recommended separation distance. However, compliance with the *Environment*

Protection (Noise) Policy 2007 is considered to negate a reduced separation distance between land uses. This is noting that the *Evaluation Distances for Effective Air Quality and Noise Management 2016* document is a guide only, including a mechanism for an applicant to demonstrate that a separation distance, other than the recommended distance is appropriate. Consequently, the distances quoted in the document should not be adopted as absolute criteria, but rather as indicative distances that may be adjusted having regard to specific site circumstances.

For the purpose of determining the relevant allowable noise level for noise-affected premises, the land use category applicable in this circumstance is 'rural industry'. This is based on primary production being the promoted land use in the Watershed (Primary Production) Zone. In addition, the EPA has confirmed that the use of the rural industry land use category for assessing compliance with the Policy in this circumstance is correct.

The rural industry land use category of the Policy allows a higher noise threshold for rural industry land uses compared to the other rural living land use category. The rural industry land use category allowable noise level for noise affected premises is 55 decibel (dB(A)) outside the noise affected premises.

The Sonus report concludes that at a point outside of the nearest non-associated dwelling (representor, Russell Miatke & Meredith Dickson's dwelling) the predicted level of noise is 52 dB(A). Based on the report the proposal is considered to achieve the Environment Protection (Noise) Policy criteria and is therefore consistent with PDC 7.

Under the current legislation if the land owner intends to install another frost fan on the land, this new structure will require a separate development application to be lodged and assessed for development approval. Assessment of a future separate application will need to consider cumulative noise impact resulting from the operation of multiple fans.

PDC 14 is directly applicable to the proposal and states that frost fans associated with primary production should not lead to unreasonable impact on adjacent land uses. As discussed above, it has been demonstrated via the Sonus environmental noise assessment report that the proposal will achieve the noise criteria set out in the EPA document Environment Protection (Noise) Policy 2007.

With regard to the Noise Policy threshold, staff have been advised by the EPA that noise at a certain level such as 50 dB(A) will sound quite loud if the background level of noise is low such as at night in a rural area where noise can often be between 30-35 dB(A). However, this threshold has been set in recognition that frost fans typically operate occasionally throughout each year, and usually in the cooler months when non-associated dwelling are closed up (e.g. doors and windows closed).

In regards to the anticipated operation of the fans, the applicant has provided advice in their response to the representations that the fans are expected to operate infrequently from September to November but recognising that frost and cold air events can occur at any time. However, usage will be restricted to nights when the

ambient temperature reaches a critically low level of around 1.0 degree Celsius. To minimise the operation of the frost fans, the fans have been designed to switch off automatically when the temperature at the affected crop position reaches 2 degrees Celsius or more and when there is wind. **Recommended condition 2** reinforces the requirement for the fans to switch off when a temperature of 2 degrees Celsius is achieved.

It is also recognised that the C59 fan design has been selected for this proposal. It is understood that the C59 design is quieter than the alternate C49 design, comprising only four fan blades, as it operates at a lower rpm. Further to this, applicant has also noted that the fan operation will be monitored remotely and by vineyard management on known frost risk nights, and that a monthly maintenance schedule will be deployed to ensure the fans operate as they are intended to do.

Using compliance with the Noise Policy as a guide for what would be a reasonable noise impact, and considering all of the above the proposal is sufficiently consistent with PDC 14.

Orderly And Sustainable Development

Objectives: 10

PDCs: 1

Objective 10 seeks the protection of productive primary production land from conversion to non-productive or incompatible uses, and the encouragement of full-time farming of rural land. As discussed earlier in the report, the proposal is considered to be a mechanism for the protection of an existing lawful primary production (horticulture) use.

The retention and encouragement of primary production uses are a fundamental objective of the Watershed (Primary Production) Zone. The proposal is consistent with Objective 10 and PDC 1.

7. SUMMARY & CONCLUSION

The proposal is for the construction of a frost fan on a lawfully existing vineyard that is located in the Watershed (Primary Production) Zone.

The siting and design of the frost fan is considered to limit its visual impact to an acceptable level, in accordance with the qualitative visual amenity provisions of the Zone.

The applicant has demonstrated through expert advice that the anticipated noise level of the frost fan when in operation will not exceed the quantitative allowable noise levels for within habitable rooms of nearby non-associated dwellings as set out in the *Environment Protection (Noise) Policy 2007*. Compliance with the criteria set-out in the *Environment Protection (Noise) Policy* is considered to sufficiently demonstrate that the level of noise will not unreasonably impact on adjacent residential land uses, despite the reduced setback distance to sensitive receptors as set out in the EPA publication *Evaluation Distances for Effective Air Quality and Noise Management 2016*.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, and it is considered that the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 18/498/473 by Frost Protection Australia Pty Ltd for Frost fan (maximum height 13.3m) at 106 Buckleys Road Lobethal subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Site plan, received by Council 10 September 2018
- Amended elevation plan (sheet S.01), dated 19 July 2010 by Design Phase Ltd Consulting Engineers
- Foundation & baseplate details and hold down bolts plan (sheet S.02), dated 19 July 2010 by Design Phase Ltd Consulting Engineers
- Environmental Noise Assessment (ref. S4390C95), dated June 2018 by Sonus Consulting

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Frost Fan Operation

The frost fan shall be set with a fan 'start' temperature of 1 degree Celsius and a fan 'stop' temperature of 2 degrees Celsius.

REASON: To ensure the proposed development operation is limited to that which is necessary for efficient operation.

NOTES

(1) Development Plan Consent Expiry

This Development Plan consent (DPC) is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced the date on which it is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the DPC, or a fresh development application will be required. The twelve (12) month time period may be further extended by Council agreement following written request and payment of the relevant fee.

(2) EPA Environmental Duty

The land owner is reminded of their duty, that the operation of the frost fans shall be in accordance with the provisions of the Environment Protection (Noise) Policy 2007 relating to frost fans.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Applicant's Professional Report
Representations
Applicant's Response to Representations
Environment Protection (Noise) Policy 2007
Evaluation Distances for Effective Air Quality and Noise Management 2016

Respectfully submitted

Concurrence

Marie Molinaro
Statutory Planner

Sam Clements
Acting Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
8 May 2019
AGENDA – ITEM 8.3

Applicant: Nielsen Architects	Landowner: Pomona Road Stirling Pty Ltd
Agent: Ekistics	Originating Officer: Melanie Scott
Development Application:	19/272/473
Application Description: Staged construction of a supermarket (shop), signage, solar panels, fencing, car parking, site works/retaining walls, landscaping & removal of 1 x regulated tree. Stage 1 – Bulk earth works (retaining and excavation) and site preparation (including tree removal) Stage 2 – Balance of remaining works (building construction, car park, stormwater, fencing, and landscaping) (SCAP Relevant authority)	
Subject Land: Lot:13 & 14 Sec: P46 DP:92777 CT:6127/47 & CT:6218/57	General Location: 3 & 5 Pomona Road Stirling Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/28 & 72	Zone/Policy Area: District Centre Zone & Stirling Fringe Policy Area
Form of Development: Merit	Site Area: 8413m ²
Public Notice Category: Category 2 Merit	Representations Received: Managed by SCAP Representations to be Heard: Managed by SCAP

1. EXECUTIVE SUMMARY

The purpose of this application is staged development of a supermarket (shop), and associated advertising signage, fencing, car park, earthworks, retaining walls, landscaping and the removal of one regulated tree.

The subject land is located within the District Centre Zone and the Stirling Fringe Policy Area, and the proposal is a merit form of development.

The State Commission Assessment Panel (SCAP) is the relevant authority in accordance with clause 20 (a) and (b)(i) of Schedule 10 of the Development Regulations 2008, pursuant to a declaration by the State Coordinator-General (via a letter to Council dated 7 March 2019) as:

- (a) The total amount to be applied to any work, when all stages of the development are completed, exceeds \$5,000,000; and
- (b) The Coordinator-General considers the development not solely for residential purposes.

The SCAP has referred the application to Council under Regulation 38 (2)(b) for comment. The Council's role is to provide comments to the SCAP on any matters relevant to the application. In preparing these comments, Council is seeking the advice of the CAP before the comments are forwarded to SCAP. Draft comments and conditions to the SCAP are included in the recommendation and any further advice provided by the CAP will be included in the final comments to the SCAP.

The main issues relating to the proposal are the scale of the proposed development in the Fringe Policy Area, traffic related matters, character and amenity, water quality impacts, stormwater management and regulated tree impacts.

In consideration of all the information presented, and following an assessment against the relevant Policy Area, Zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **SUPPORTED**, subject to the comments and conditions as detailed in the recommendations being incorporated in the final approval.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- A staged development of a supermarket (shop) and associated works
- Stage 1- Bulk earthworks and retaining walls, including tree removal
- Stage 2- Balance of remaining works (shop building construction, car park, stormwater infrastructure, fencing and landscaping)
- Removal of one regulated tree (detail species)
- Retaining walls to maximum height 2.1m around the proposed car park area
- Retaining walls to maximum height 4.73m in the rear (north-eastern) corner of the proposed building
- Two plinth advertising signs with light box
- Gable light box sign
- Poster box sign
- 1.2m high timber paling fence
- 1.2m high powder coated steel fencing
- 1.8m high woodland grey Colorbond fencing
- Extensive landscaping
- Shop building with a gross leasable area of 1692m². The shop building is single storey with a maximum overall height of 5.8m
- Car parking area with 99 car parks
- Installation of roof mounted solar array
- Earthworks- maximum excavation depth of and fill level of
- Retaining walls maximum height of 4.73m
- Off-site works including:
 - New footpath on Pomona Road of some 80 metres and associated pram ramp
 - Widening of the carriageway of Pomona Road
 - Landscaping within the verge of Pomona Road
 - Installation of barrier kerbing along Pomona Road
 - Removal of a redundant crossover
 - Removal of indented car parks on Pomona Road
 - New driveway crossover for the adjacent property 1 Pomona Road (same location)

- Island modifications associated with the roundabout at the intersection of Pomona and Mount Barker Road

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

The Land Management Agreement registered over the land is included as **Attachment – Land Management Agreement**.

3. BACKGROUND AND HISTORY

Application Background

- 9 March 2019 - Council received a letter from the State Co-ordinator General declaring that he had appointed the SCAP as the relevant authority for the assessment of a retail development incorporating a supermarket together with associated signage, car parking, site works and landscaping at 3-5 Pomona Road, Stirling
- 29 March 2019 - SCAP requested that Council provide comments on the development application (473/E009/19) for Staged construction of a freestanding ALDI supermarket (shop) with associated car-park, fencing, site works, signage, solar panels, landscaping and the removal of one (1) regulated tree pursuant to Regulation 38 (2)(b)

AHC Development Plan Background

The subject land was zoned Country Living until August 2010 when it rezoned to District Centre Zone and Stirling Fringe Policy Area. A shop in the Fringe Policy Area was originally listed as non-complying development, except in association with a dwelling.

However, a shop was subsequently removed from the non-complying development list in the Fringe Policy area via a ministerial development plan amendment (Existing Activity Centres Policy Review DPA) in April 2016.

Development Application History:

December 10, 2002	02/1164/473	Removal of a significant tree - cupressus macrocarpa
May 4, 2005	04/405/473	Aged accommodation with associated facilities & conversion of existing dwelling to consulting rooms – LAPSED
September 27, 2009	05/D30/473	Land division WITHDRAWN
December 5, 2005	05/422/473	Significant tree removal seven (7) cypress species, six (6) populus alba, two (2) quercus robur
October 5, 2005	05/424/473	Significant tree removal - twenty (20) populus alba, two (2) cypress species, one (1) liquid amber styraciflua, one (1) fraxinus oxycarpa, one (1) quercus robur, one (1) ulmus procera
August 18, 2005	05/448/473	(Lapsed) Roof alterations
June 5, 2008	06/D54/473	Land division creating two additional allotments
March 21, 2012	11/D48/473	Land division – boundary realignment

April 1, 2014	13/847/473 (Lapsed) CDAP approved mixed land use – two-storey offices & dwellings, car parking, retaining walls, removal of one significant & five regulated Eucalyptus globulus trees, fencing, water storage tanks & associated earthworks
October 20, 2014	14/876/473 (Lapsed) Variation to development authorisation 13/847/473 to undertake the work in stages. Stage 1 - construction of building 1, Stage 2 - construction of buildings 2, 3 and 4 together with balance of works
2 September, 2015	15/711/473 (Lapsed) Variation to development authorisation 13/847 - change in approved use of building four from two offices and one dwelling to three dwellings
December 1, 2015	15/768/473 (Lapsed) Variation to development authorisation 13/847 - change of approved use of building 2 from offices to consulting rooms
January 27, 2017	Council agrees to enter into a new LMA subject to DPC being granted to the current development application 16/463/473
March 7, 2017	16/463/473 CAP refused stormwater infrastructure (culvert) and filling of land (900m ³) in a flood plain including road and drainage works on Council road reserve and associated landscaping
February 27, 2018	16/463/473 ERD Court granted DPC (compromise reached) stormwater infrastructure (culvert) and filling of land (900m ³) in a flood plain including road and drainage works on Council road reserve and associated landscaping. Development Approval issued 10 December 2018.
January 30, 2019	An application was made to extend again the approval for development application 13/847/473. This was refused and all applications related to this have been lapsed.

A Land Management Agreement (LMA) is registered over the subject land which relates to the protection of trees. The current LMA was associated with the culvert application 16/463/473 and protects the stand of mature trees in the south-eastern corner of the land adjacent Pomona Road. This proposal does not seek to alter this LMA.

4. REFERRAL RESPONSES

No external referrals applicable.

Council Engineering

Council Engineering staff requested the following conditions:

1. The applicant is to provide detailed designs and specifications for any new or altered public infrastructure (such as kerb and footpath works), for Council approval prior to commencing construction onsite. Reason: To ensure assets to be taken over by Council meet our standards.
2. The applicant is to provide detailed designs and turning movement diagrams for the new access point on Pomona Road for Council approval prior to commencing construction onsite. Reason: to satisfy Council that the specified delivery vehicles can safely access the development.

3. The applicant is to provide detailed stormwater design and associated calculations for Council approval, prior to commencing construction onsite. Reason: To ensure the drainage concept proposed meets required water quality targets, and discharge from the site does not exceed the capacity of Council's infrastructure.
4. Applicant to provide evidence of consent or approval from SA Water for construction over the easement noted on their plans.

Local Heritage

Referred 9 April 2019 – no response as at 26 April 2019. Response will be provided at the CAP meeting.

5. CONSULTATION

The application was categorised by the SCAP as a Category 2 form of development in accordance with Development Plan procedural matters which assigns development within 10m of a common Policy Area boundary as a Category 2 form of development requiring formal public notification. This process is being managed by the SCAP and will be undertaken between 1 and 14 May 2019. At the time of writing this report the outcome of public notification process is therefore unknown.

Whilst CAP will not hear any representations, the applicant and their representatives will be in attendance at the CAP meeting, namely:

Beck Thomas, Ekistics Planning
Paul Morris, GTA (Traffic)
Andrew Woods, WGA (Stormwater)
Trent Burns and/or Luke Tilsley, Nielsen Architects

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

- i. The Site's Physical Characteristics
The subject land is 8413m² in area and is vacant. 3 Pomona Road is 3071m² and 5 Pomona Road is 4973m². As detailed above, development plan consent has previously been granted for a mixed use development of dwellings, offices and associated car parking (13/847/473 and associated variations) at 3 Pomona Road which was lapsed in January 2019. There is a low point in site running approximately north to south along the boundary between the two parcels which is a watercourse with a defined bed and banks. This low lying land is flood prone. There is a 600mm drainage pipe running east-west on 3 Pomona which joins the creek just below the proposed northern headwall. On site it was noted there was evidence of high volume water flows around the eastern most inspection point of this drainage pipe. Application 16/463/473 was granted development approval in December 2018 and proposes to underground a major portion of this creek, with filling of land above the new culvert, and a replacement upsized culvert under Pomona Road. The completion of the culvert works is essential to this proposal.

ii. The Surrounding Area

To the north of the site is the south-eastern freeway. To the east is the local heritage listed place “Pomona,” a former dwelling within the same policy area. To the south-east there are residential uses and the land is zoned mixed residential. To the south-west there is land collectively described as the Stirling shopping centre which is zoned District Centre and Stirling Core, and public purpose. The subject land is in a low point and the existing shopping centre is at a high point in the locality. The subject land and the shopping centre do not have a geographical connection. There is a dwelling adjacent in the north-western corner at 1 Pomona Road. A site inspection of 1 Pomona Road undertaken on 27 February 2016 revealed evidence of more than half of the land acting as a flood plain, directing water into the creek at the rear and through the north eastern portion of 3 Pomona Road.

iii. Development Plan Policy considerations

a) *Policy Area*

The subject land lies within the Stirling Fringe Policy Area and the District Centre Zone and these provisions seek:

District Centre Zone

1. *A centre that accommodates a range of business and retail facilities, offices, consulting rooms, and cultural, community, public administration, recreation, entertainment, health and religious venues servicing residents and visitors within the surrounding district.*
2. *Development of a visually and functionally cohesive and integrated district centre that maintains its village character, and is in accord with the District Centre Stirling Concept Plan Figure DCe/1.*
3. *A centre accommodating medium density residential development in association with non-residential development.*
4. *Development that contributes positively to the desired character of the zone.*

Stirling Fringe Policy Area

1. *An area accommodating a mix of residential uses together with small scale consulting rooms, offices and similar activities.*
2. *Buildings retained and/or restored to retain their original residential character and appearance where such buildings contribute to the desired character.*
3. *Development that contributes positively to the small scale and low-density character of the policy area.*

The following are considered to be the relevant Policy Area provisions:

Objectives: 1, 2 & 3

PDCs: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 & 15

The desired character statement for the policy area informs much of the interpretation of the PDCs for the policy area. The proposal is limited in its bulk and scale and sited a sufficient distance from public roads, allowing generous landscaping which also assists in separating the parking area from the street frontage. The shop building is excavated into the embankment which backs onto the freeway ramp and in the context of the overall site area the building footprint is considered quite small. Further, being cut into the land and setback from the road frontages ensures that the

building will not dominate the local heritage listed building to the east. All these design features are as envisaged in the desired character statement.

Of note a shop, including a restaurant and a supermarket, in this policy area was previously non-complying development until a ministerial development plan amendment occurred in April 2016. The proposed shop is not an envisaged form of development as detailed in PDC 1, but as mentioned above, is an on-merit form of development. Arguably, given the background noise of the freeway, some of these listed uses would not be best suited to this site. By virtue of the design features described earlier, the proposal does, by a number of measures, meet the desired character statement for the policy area. There is no existing building on the site to be reused as envisaged in PDC 2 (a). The proposed design is considered to complement the existing character of the zone by the use of a small building footprint, it's siting (i.e. excavated site and deep front setback) and the use of a variety of materials found locally on old and contemporary residential buildings in the locality. On balance, the proposal is considered to accord with PDCs 2 (b) and 3.

The proposed building will be excavated into the slope, with the northern and eastern walls of the building acting as retaining and are therefore concealed. The total maximum height of the building is 5.8m with the finished floor level at 490.17m. The level of the Pomona Road crossover is proposed at 489m, and is at the lowest point on the site being over the proposed and approved culvert. The proposal meets all the design parameters detailed in PDC 4 with regards to height.

Refrigeration and air conditioning is proposed on the roof of the building behind a parapet on the north-western portion of the building approximately 70 metres from the nearest residential building. There is a large solar array proposed which covers the remainder of the roof, which is flat to the roof to reduce glare. The proposal is considered to be consistent with PDC 5.

The proposal abuts a residential property at 1 Pomona Road (north-western boundary) and because of its low roof line and excavated site it meets the design requirements of PDC 6. As the built form covers approximately 22% of the site, the site coverage is considered appropriate and accords with PDC 7.

The requirements relating to the management of water and water sensitive urban design were debated at length in the culvert application (16/463) for the subject land. This proposal will add to the stormwater water runoff directed into the culvert, with roof water and paved area water directed into it. All stormwater will pass through two proposed gross pollutant devices in the carpark before discharge into the culvert. The applicant has submitted that the quality of the water runoff from higher up the catchment is questionable and the proposed gross pollutant devices will ensure the water from the development site is the same if not better than that from higher up the catchment. No details have been provided to demonstrate that the gross pollutant traps will achieve the water quality targets stipulated in the Environment Protection (Water Quality) Policy (*see recommended condition 2*). The applicant has indicated that there is limited site area available to filter water via more natural measures (Water Sensitive Urban Design) and therefore has elected to utilise these mechanical measures. There is no proposed detention for either the car park or roof water on site. Council engineering staff have formed the opinion the proposed culvert

has been designed to cater for the increased run off and therefore there is no need for any on-site detention. The applicant's Engineer has submitted that there is only a marginal increase in overland flows, with the flows from the proposed hard surface areas comparable to the flows that currently exist on the site. Accepting these suggestions increase the lack of Water Sensitive Urban Design (WSUD) on this site, namely the piping the watercourse and flood plain on site, and now the use of mechanical measures for water filtration. Whilst water quality issues will be minimised by the use of the gross pollutant traps, the proposal is considered to be partly at odds with PDC 8. It would be favourable if underground retention tanks were included in the proposal to store water for irrigation purposes, to at least include some WSUD measures within the proposal.

The proposed car parking provision is in excess of the required amount for the proposed shop, and therefore the proposal accords with PDC 9. However, the proposed car park is in front of buildings, faces and borders Mount Barker Road, does not share access or services, has no access to abutting sites and gains access directly from the sites street frontage, all things not envisaged by PDC 10. The location of the car park area in front of the proposed building is offset largely by the topography of the land and that it is further excavated into the slope. In addition, the proposed fencing, landscaping and verge treatments combined minimise the visual impact of the proposed carpark. As the site shares no direct connection with any other centre site, the requirement for shared access, car park connectivity and other requirements of PDC 10 are not considered relevant, nor fatal to the proposal.

The landscaping proposed is considered to accord with PDCs 11, 13 and 14. Approximately 30% of the site will be landscaped and PDC 14 requires a minimum of 10%. Of note, some 56 new trees are proposed to be planted on the site. The proposal also protects and preserves the existing stand of 7 mature exotic trees in the south-east corner of the site currently protected by a Land Management Agreement.

The proposed advertising signs are discretely incorporated into the site and use materials consistent with other buildings in the Zone. The light box nature of the advertising signage is a concern for Council, particularly how this type of signage will fit in with the residential character of fringe part of this zone. The light boxes are on the two proposed plinth signs. Council recommends that the SCAP consider requiring these signs to only be externally illuminated, rather than permit their construction as light boxes. The proposed poster box sign is deep into the site is therefore considered appropriate. On balance, with the request for the plinth signs to only be externally illuminated, the proposal is considered sufficiently consistent with PDC 15. ***See recommended comment 1 and condition 5.***

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2, 3 & 4

PDCs: 1, 2, 4, 5, 6, 11, 12, 13, 14, 15, 18, 19, 20 & 21

The desired character statement again informs much of the decision making around this proposal. The Stirling area features the only district centre zone in the while Council area and as such has an important role in providing a wide range of services to the community. The proposal does not directly address in an affirmative fashion

many of the statements however the proposed design of the building, its excavated site and proposed landscaping along with the proposed new footpath along Pomona Road do much to ensure the proposal makes a valuable contribution to the desired character of the zone.

The desired character statement is unequivocal with regards to advertising signage stating that “signs should not be directly illuminated except via dim external lighting” and “internally illuminated signs are not appropriate in the Zone”. The applicants planning consultant has suggested the “light output or lumens are not excessive.” However, no quantification of these claims has been provided. In accordance with the desired character statement for the Zone, Council again requests the plinth signs be lit externally.

With regards to PDC 1, a shop is envisaged in the Core policy area. The proposal is in the fringe policy area directly adjacent the core. A shop is not listed as non-complying in the zone and therefore not clearly an inappropriate use. The proposal accords with PDC 2.

The applicant has provided a comprehensive traffic report which indicates that there is capacity in the existing road network. Based on this, the proposal is considered to accord with PDC 4.

The use of varied materials, the excavated site and extensive landscaping are on balance considered to contribute to making the development consistent with the desired character of the zone as required by PDC 5.

The proposal does not directly address in an affirmative fashion the envisaged uses in the District Centre Stirling Concept plan which describes the desire for residential/offices/consulting room uses for the subject land. As previously stated, due to the location of the site adjacent the freeway, the site is not likely to be suitable for residential uses without substantial building costs in the form of noise attenuation. On balance, with the improved pedestrian linkage to the adjacent commercial complex to the south by virtue the provision of the new footpath along Pomona Road up to the roundabout, the proposal will make a valuable contribution to the desired character of the zone, and is considered meritorious in the context of PDC 6.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- Orderly and economic development which contributes to the scenic beauty and amenity of the region
- Buildings designed to blend with the locality and ensure the continued enjoyment of neighbouring land for existing uses.

The following are considered to be the relevant Council Wide provisions:

Advertisements

Objectives: 1, 2, 3 & 4

PDCs: 1, 2, 3, 5, 6, 7, 8, 11, 13, 14, 15, 18 & 20

The proposed advertising is considered in to be consistent with PDC 1 and the design principles in Table 7 being two signs on the building façade, one poster box sign adjacent the main entrance to the building and two low plinth signs, one at the crossover to the property and one in the south-west corner of the site, adjacent the roundabout. The façade signs are Aldi branded light boxes measuring 1280 x 1540mm. The plinth signs are Aldi branded lightboxes measuring 2200 x 600m on a sandstone plinth measuring 3009 x 1500mm. The number and location of the signs are considered to accord with the provisions of PDCs 2, 3, 5, 6, 7, 8, 11, 12 and 15 as they are minimalist, well positioned and constructed of materials regularly seen in the locality. With regards to PDC 15, which suggests one sign only, given the size of the site and that the building and its entrance is distant from the main trafficked intersection, the two plinth signs are not considered to be a fatal deviation from this PDC. Arguably the internal illumination of the proposed plinth signs could cause a distraction to drivers and one is located near the intersection of Mount Barker Road leading to questionable compliance with PDCs 13 and 14. Council's preference is for dim external lighting to the plinth signs, however, limited hours or reduced illumination for certain hours to minimise any conflicts with the amenity of the area may also be acceptable compromises (**See recommended comment 1 and condition 5**). The speed limits adjacent the land are less than 80km/h and therefore the proposal accords with PDC 18. Also, the proposed signs do not exceed 25% of the ground floor wall area of the façade as envisaged in PDC 20.

Centres and Retail Development

Objectives: 1, 2, 3 & 5

PDCs: 1, 2, 6, 7, 9, 11, 13 & 14

Of note, Objective 5 describes that centres should be developed in accordance with a hierarchy based on function, so that each type of centre provides a proportion of the total requirement of goods and services commensurate with its role. Whilst planners do not normally formally consider the economic impact of a development this objective would imply it is worth scrutinising the supplied 'Retail Demand and Impact Report.' The report supplied by the applicant focusses on Aldi market share, competition and the amount of retail space when compared with population and concludes there is room in the market for Aldi alongside all the existing retailers. Based on this report, the proposal accords with PDC 11 as the proposal will not demonstrably lead to the deterioration of the designated centre.

The design of the proposed building, the proposed landscaping and the proposed footpath linking the site to Mount Barker Road ensure the proposal accords with PDCs 1, 2 and 7. The proposed carpark is along the street frontages of the site, however, the site is below the road, the car park level is to be lowered further (excavated) and extensively landscaping. The proposal is considered to be consistent with PDC 6.

The proposal is in the north-eastern quadrant of an intersection with Mount Barker Road (an arterial road) and therefore accords with PDC 9.

Proposed landscaping is in accordance with the suggestions in Table 6, will provide shade within the carpark and is therefore considered to be consistent with PDC 13. Further, the proposed landscaping will form an integral part of the design as it ensures the proposal meets the shade, design and amenity requirements of PDC 14.

Design and Appearance

Objectives: 1 & 2

PDCs: 1, 2, 3, 4, 7, 9, 16, 17, 18, 20, 21, 22, 23, 27 & 28

As discussed in the zone section of this report, the proposed building design is considered to reflect the character of the locality. The building is excavated into the site in the rear (north-eastern) corner of the subject land. The proposal is considered to meet the requirements of PDCs 1, 2, 3 and 4. Further, as the proposed building is excavated into the site, it will not cause a loss of sunlight or views to existing development, nor create a micro climate or have an adverse impact on the amenity of the area as required by PDC 7. Certainly the construction of the building will alter the form of the land contrary to PDC 9, however as the building will act as retaining and conceal the excavated earth, the variance from this PDC is considered acceptable. The applicant has contended that the proposal is a good fit for the adjacent local heritage building in accordance with PDC 16. Council staff are inclined to agree with this view due all the design reasons aforementioned. As mentioned above, local heritage advice will be provided at the CAP meeting.

Once again, the excavated site to the rear of the subject land will ensure the proposal meets the requirements of PDCs 17, 18 and 22, and will not create overshadowing or any unreasonable impacts to privacy on adjacent land. There is a dwelling directly to the west of the proposed building. Due to the generous separation distance, minimal building height, gradient, mature landscaping separating these buildings and the minimal openings on western side of the proposed building, it is considered that the proposal will not detrimentally impact upon the privacy of this western neighbour.

The façade of the proposed shop building faces Pomona Road, as envisaged by PDC 20. The proposed landscaping, shop building, paving and signage are considered to have a coordinated appearance and will contribute to the visual attractiveness of the locality. The proposal is considered to be consistent with PDC 21. The one exemption to this is the internal illumination of the proposed plinth signs as aforementioned.

The provision of a footpath on the Pomona Road frontage up to the Mount Barker Road ensures the proposal addresses the pedestrian requirements of the site. The proposal accords with PDC 23. Internal pedestrian paths and linkages have been provided for within site also.

The proposed loading and service areas are proposed in the north-western corner of the proposed building. A chevron area has been provided in the eastern portion of the car park to facilitate a 19m semi-trailer turnaround manoeuvre within the site. All vehicles will be able to enter and exit the site in a forward direction. The proposal is considered to accord with PDC 27.

The building proposed to the rear of the site is not strictly as envisaged in PDC 28, however, there is no set or predominant building setback in the immediate locality and the chosen siting the building has many other advantages as aforementioned. The setback ensures the proposal is compatible with the adjacent local heritage building and the retention of mature trees. On balance, the proposal is considered to be consistent with PDC 28.

Energy Efficiency

Objectives: 1 & 2

PDCs: 2 & 3

The proposal includes a large solar array on the flat roof to reduce energy consumption. Based on the limited level of information provided in relation to this array, it is not clear if this element of the proposal is actually subject to development controls.

Hazards

Objectives: 1, 2 & 4

PDCs: 1, 2, 3, 4, 5 & 25

The applicant has expressed confidence in the previously approved culvert application to improve the management the flood waters on the site and Council engineering has accepted the calculations supporting this. A note in relation to flooding risk is recommended (**see recommended note 4**).

Heritage Places

Objectives: 1, 3 & 4

PDCs: 5 & 6

The proposal is not between the front street boundary and the facade of the adjacent local heritage property (7 Pomona Road) as described by PDC 5. The applicant has suggested that the proposal accords with PDC 6 by virtue of its design features as aforementioned. Council Heritage Advice will be provided at the CAP meeting.

Interface Between Land Uses

Objectives: 1, 2 & 3

PDCs: 1, 2, 3, 6 & 7

The planning submission indicates that the Aldi business model in regards to delivery vehicles and hours minimises the potential for amenity impacts from the emission of airborne pollutants, noise, vibration, light spill, glare and traffic impacts, particularly with regard to deliveries to the site. It is recommended that conditions be added to any approval around delivery vehicle sizes and hours to ensure that any other business operator would be bound by similar models of operation. **See recommended conditions 1, 6, 7 and 10** which restrict service vehicles to a low swept exhaust, a maximum of two 19m semi-trailer vehicle movements in a 24 hour period and a limitation of hours for deliveries and the operation of the air conditioning, fans and compactor.

As detailed above, given the building excavated into the slope and positioned as far as possible on the site from any adjacent residential properties, the proposal is considered to accord with PDC 3.

As there are residential uses adjacent Council recommends operating hours be restricted to minimise the effect of the proposal on those uses as envisaged in PDC 6. **See recommended conditions 1, 6 and 7.**

The applicant provided an environmental noise assessment from Sonus which summarises “the overall development is well considered from an environmental noise perspective with the ALDI store building located to achieve maximum separation distance from sensitive receivers, and the car park being located near existing high

noise level roads to minimise the potential for an adverse impact from the onsite vehicles.” The assessment considers noise at nearby residences from car park activity, vehicle movements, delivery activity, mechanical plant and rubbish collection within the context of the surrounding acoustic environment to ensure the proposal does not adversely impact the amenity of the locality. This report recommends the specific location of mechanical plant and restricting the times for rubbish collection and compactor operation. **See recommended conditions 1 and 8 relating to these matters.**

Landscaping, Fences and Walls

Objectives: 1 & 2

PDCs: 1, 2, 3 & 4

Whilst landscaping should not be proposed to correct, mask or offset poor design, the extensive landscaping proposed for this site is considered to enhance the proposal by softening the appearance of the extensive car park and provides a well landscaped setting for the proposed building. Given the substantial area of the car park and its location, is considered necessary that at least some of trees are semi-mature plantings for more instant benefit, and that the landscaping is irrigated and maintained to the reasonable satisfaction of Council. **See recommended conditions 9 and 10.** As mentioned above, it would be favourable if retention tanks were included in the proposed to store water for irrigation purposes, in line with the desire of the policy area and Natural Resources Council Wide section to include WSUD. The proposed landscaping is considered to accord with PDCs 1, 2 and 3. The applicant has advised there will be a more detailed planting plan available at the CAP meeting. Further, the proposed landscaping enhances the amenity of the locality in line with the desired character statement for the zone.

The proposed retaining walls maintain the low profile nature of the proposed building. An Arborist report has been provided to stipulate a tree protection zone for each tree which may be affected by site works or the development. There are three types of fencing proposed as part the development. In the north-eastern corner of the site, on both the north and eastern boundaries (adjacent the building), a 1.8m high Woodland Grey Colorbond fence is proposed. Along the western and southern boundaries (adjacent the carpark) and atop the proposed retaining walls a powder coated black tubular steel fence is proposed, which will act as a balustrade. The remaining boundary surrounds the adjacent property number 1 Pomona Road. This boundary treatment is proposed to be a 1.2m high timber paling fence in a natural finish atop a blockwork retaining wall (basalt finish). These boundary treatments are considered to accord with the requirements of PDC 4.

Natural Resources

Objectives: 1, 2, 4, 5, 6, 7 & 10

PDCs: 3, 4, 8, 10, 11, 12, 13, 14, 15, 16, 17 & 18

These principles of development control were debated at length during the assessment of the culvert now approved for the site, development application 16/463/473. It is not appropriate to revisit them here other than to note the applicant maintains there is capacity in the culvert to manage the water flows from the building and the sealed surfaces of the site. As mentioned, there are two gross pollutant devices proposed for water quality purposes and no detention. The applicant has further argued the waters which enter the culvert from upstream are not of high

quality and therefore any positive or negative contribution this site may make to the water quality in the Aldgate Creek is negligible. As mentioned above, it would be favourable if the proposal include some WSUD techniques, at least stormwater harvesting for re-use. The proposal is currently at odds with a number of the provisions of this Council Wide section.

Council must ensure the proposed creek modifications on the site above the culvert are completed in accordance with the previous approval to ensure some compliance is achieved with the expectations of this section of Council's Development Plan.

Orderly and Sustainable Development

Objectives: 1, 2, 3, 4, 5, 11 & 12

PDCs: 1, 3, 5, 6, 7, 8, 9, 12, 16 & 17

Whilst a shop is not envisaged in this Policy Area, it is also not discouraged (not non-complying) and is envisaged in the Zone. As already mentioned in this report, arguably a shop is good use of the subject land given its location adjacent to the freeway. On balance, the single "commercial" use the land is not considered to prejudice the development of the zone for its intended uses. The proposal is consistent with PDC 1.

The applicant has provided a convincing 'Retail Demand and Impact Report' suggesting there is capacity in the local market for this type of development and given the Adelaide Hills Council only has one District Centre Zone it is considered appropriate to expand the number of retail facilities available within this centre. This is also noting the desire for medium density residential development in this Zone and the adjacent Mixed Residential Zone (i.e. small population increase). The report suggests a market share for Aldi which would on face value purport to be expanding the economic base of the region in a sustainable manner as envisaged by PDC 3. Some economic benefits may include less travel time for shoppers, more local jobs, and possibly even more shoppers visiting the centre due to the greater variety of choice (greater catchment).

This corner site does not place any further demand on public services and infrastructure and proposes some benefit to the community with provision of a footpath on Council land. The proposal is considered to accord with PDC 5.

The applicant has also provided a traffic assessment from MFY which indicates capacity in the local road network and some modification is required to Pomona Road and the roundabout, which is at applicant's expense (***see recommended condition 14***). The proposal is considered to be consistent with PDC 6.

As the applicant has asserted, the land has been vacant for many years and this development would put this land to an appropriate district centre use. The land originally existed as gardens for the adjacent dwellings. However, since it was rezoned in 2010, and despite two separate approvals, it is yet to be developed. On balance, the proposal is considered orderly and the potential impacts to adjacent land have been suitable mitigated. The proposal is considered to accord with PDC 7.

In line with discussion above, the proposal has been well designed with due regard to the existing character of the locality and the desired character statement of the Policy Area and Zone. On balance, the proposal addresses the design parameters in table 7 as stipulated by PDCs 8. Further, given filling of land within a flood plain and installation of culvert within the watercourse has been approved, this proposal is considered to make good use of the land having regard its condition and location (adjacent the freeway). The proposal is considered to accord with PDC 9.

The applicant is certain that the flood issue has been resolved by the previously approved culvert. The proposal is considered to be consistent with PDC 12. As mentioned above, a note in relation to flooding is recommended (***see recommended note 4***).

As detailed above, the applicant has proposed a high quality design which takes into account the amenity of the area. On balance, the proposal is considered to accord with PDCs 16 and 17.

Regulated Trees

Objectives: 1 & 2

PDCs: 1, 2 & 3

There is one regulated tree proposed to be removed, identified as Tree 8 on the proposal plans. This regulated tree is a horse chestnut (*Aesculus hippocastanum*) and is located in the north-eastern corner of the site. Arguably, being distant to Pomona Road this tree makes a minimal contribution to the character and visual amenity of the locality. There are nine mature trees protected by the LMA over the land (two significant and one regulated) in the south-eastern portion of the land fronting Pomona Road, near the boundary with 7 Pomona Road. There are tree protection measures proposed around tree 11, a significant English Oak (*Quercus Robur*) which the development has predicted 13% incursion into the tree protection zone (TPZ) and tree 43, a regulated English Oak (*Quercus Robur*) which the development has a predicted 17% incursion into the TPZ. A project Arborist is recommended to supervise the works in relation to trees 11 and 43. A number of conditions regarding tree protection are recommended (***see recommended conditions 11 & 12***). On balance, the proposed is considered reasonable with the loss of one regulated tree, but with the planting of over 50 trees on the site. The proposal is considered to accord with PDC 2.

Siting and Visibility

Objectives: 1

PDCs: 1, 2, 3, 4, 5, 6, 7 & 10

As detailed above, the proposed building is on an excavated site at the rear of the subject land and will be lower than the adjacent local heritage listed building and will have minimal visual impact on the locality as envisaged by PDCs 1, 2, 3, 4, 6 and 7. During construction, the site excavations will be highly visible. However, once the proposed building is constructed it will conceal these deep excavations. The final development outcome will accord with PDC 5.

As previously mentioned, extensive landscaping has been proposed and therefore the proposal is considered to be consistent with PDC 10.

Sloping Land

Objectives: 1

PDCs: 2, 3, 5 & 6

The proposed building is arguably on the portion of the land with the greatest slope, estimated to be around 1 in 10, which is less than the 1 in 4 limitation in PDC 2. Accordingly, the proposal is considered to accord with PDC 2. Further, by using the proposed building as retaining the proposal will minimise the risk of land slip and reduces the vertical profile of the building, consistent with PDCs 3 and 5. Cut off drains have been proposed on the sloping land to the rear and side of the building to minimise slope stability, drainage, and erosion issues to these sides of the building. The proposal accords with PDC 6.

Transportation and Access

Objectives: 2

PDCs: 1, 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 25, 26, 28, 33, 34, 35, 36, 39, 40 & 41

The applicant has provided a comprehensive Traffic Impact Assessment prepared by GTA consultants which concludes the site is expected to generate up to 249 vehicle movements in a weekday PM peak hour and 2130 total trips over a daily period. With 30% passing trade assumed based on local traffic already on Mount Barker Road, the site is expected to generate 174 in the PM peak and 1491 new daily vehicle trips on the road network. Analysis of the additional traffic generated by the proposed development during the weekday PM peak indicated the road network will experience a very minor increase in queuing and delays. The Mount Barker Road/Pomona Road/Avenue Road roundabout will continue to perform well with an excellent level of service- level A (being the best level of service based on Austroads). GTA concludes there is adequate capacity in the surrounding road network to cater for the traffic generated by the proposed development with the impact of the development assessed as minor. The applicant has offered some off site works to be approved under the Local Government Act, namely for a footpath to link the development with the balance of the Stirling shopping facilities, widening a small portion of the Pomona Road carriageway, verge treatments, an upgrade the roundabout and a new driveway crossover to 1 Pomona Road (***see recommended condition 14***). Points of note from the GTA report are that the new access is proposed 100 metres east of the roundabout, the site is within 200 metres of a number of bus stops and there is no current bicycle infrastructure. The site will offer 99 car parking spaces (the Council Development Plan requires 90) and 4 bicycle parking spaces. There is a heavy vehicle (19m semi-trailer) turning area proposed within the car park. On balance, Council staff accept the proposal generally meets the expectations of the provisions within this section of the Development Plan.

Land Management Agreement (LMA)

The existing LMA will remain in force for the subject land and will not be amended or altered in anyway by this proposal.

7. SUMMARY & CONCLUSION

Whilst the proposed development is unlikely to be considered to be a small-scale commercial use as it has a large associated car park featuring 99 spaces, the proposed shop building occupies a small portion of the site with a generous percentage of the site to be landscaped areas. Based on this, the low-density character of the locality, it is considered that the policies of the Fringe Policy Area are not compromised by the proposed development. Whilst shops are only envisaged in the Core Policy Area, the development of this large vacant site will promote the District Centre as the primary service centre and community hub for the Council area and will expand the economic base of the region.

The proposed building design is considered to complement the existing character of the locality, the Policy Area and Zone by the use of a small building footprint, appropriate siting (excavated site and deep front setback), its low profile and the use of a variety of materials found locally on older and contemporary residential buildings in the locality.

It is considered that the proposed development will not detrimentally affect the amenity of the locality, particularly the sensitive receptors (residential properties), in regards to traffic, noise, light spill, odours or privacy. The proposed building has been sited as far as practical from these sensitive receptors, includes noise attenuation measures and the proposed business operation restrictions ensure these amenity impacts are minimised. The surrounding road network has adequate capacity to cater for the increase to traffic volumes and the intersection of Mount Barker Road and Pomona Road/Avenue Road roundabout and according to the traffic engineering report, will continue to perform well with an excellent level of service (Level A).

The proposal includes a number of off-site works to ensure traffic safety is not compromised by the proposed development. These off-site works will also improve pedestrian safety, connectivity in the District Centre and the appearance of Pomona Road.

As detailed above, the main concerns the Council administration have relate to the visual impact of the large car park and in particular the size/maturity of the trees proposed at planting, the light box advertising signage and the lack of WSUD measures in the proposal. These matters are addressed in the recommended comments and conditions to the SCAP as detailed below.

It is considered that the proposal is sufficiently consistent with the relevant provisions of the Development Plan, and that the proposal is not seriously at variance with the relevant provisions of the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that the CAP advise the SCAP that it **SUPPORTS** Development Plan Consent being **GRANTED**, subject to the comments and conditions as detailed in the recommendations being incorporated in the final approval.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and advises the SCAP that it SUPPORTS Development Plan Consent being GRANTED to Development Application 19/272/473 by Nielsen Architects for Staged construction of a supermarket (shop), signage, solar panels, fencing, car parking, site works/retaining walls, landscaping & removal of 1 x regulated tree (SCAP relevant authority) at 3 & 5 Pomona Road Stirling, subject to the following Council comments, standard conditions the SCAP may impose and the following additional Council requested conditions:

Comments

- (1) An amended stormwater management plan should be provided that implements at least some Water Sensitive Urban Design (WSUD) techniques. Noting that the watercourse through the site is to be piped and no buffer provided (previous authorisation), and in this proposed development water quality is to be addressed via mechanical measures contrary to PDC 8 of the Stirling Fringe Policy Area, Council requests that other WSUD techniques are considered in the stormwater management plan. As there is a requirement for the landscaped areas to be appropriately maintained in good health and condition (recommended condition 10), irrigation of these areas is essential. It is requested that at least retention tanks for the collection of roof water for re-use is included in the stormwater management plan (Council Wide, Natural Resources, PDCs 8, 10 and 17)

- (2) The desired character statement of the District Centre Zone is unequivocal with regards to signage (advertising) stating that “signs should not be directly illuminated except via dim external lighting” and “internally illuminated signs are not appropriate in the Zone.” It is therefore requested that the signage is amended from light boxes to dim externally illuminated signage. If the SCAP are not inclined to request this amendment, limiting the illumination hours or reduced illumination for certain hours to minimise amenity impacts may also be acceptable compromises for light box signage. If the light box signage is retained, condition 5 is recommended.

- (3) The landscaping plan is further developed to detail the size of the trees at planting and consideration of where mature plantings would be of greatest visual benefit (i.e. the car park area). Given the nature of the locality, and size and location of the proposed car park, some semi-mature or mature trees are considered necessary to offset the vast hardscape car park area. Condition 8 is recommended as a minimum requirement.

Conditions

- (1) **Rubbish Collection**
The hours of rubbish collection from the site shall be restricted to the hours of Division 3 of the Environment Protection (Noise) Policy 2007. That is only between the hours of 9:00am and 7:00pm on a Sunday or public holiday, and 7:00am and 7:00pm on any other day.

REASON: To protect the amenity of the area.

- (2) **Prior to Building Rules Consent Being Granted - Requirement For Water Quality Model**
Prior to Building Rules Consent being granted, a detailed water quality model (e.g. MUSIC model) shall be provided to demonstrate that the proposed stormwater treatment measures (gross pollutant traps) will meet the following targets to the reasonable satisfaction of Council:
 - 90% reduction in litter/gross pollutants
 - 45% reduction in average annual total nitrogen
 - 60% reduction in average annual total phosphorous
 - 80% reduction in average annual total suspended solids

REASON: To ensure the development does not cause adverse water quality impacts.

- (3) **Car Park Lighting**
Any car parking lighting herein approved shall not operate between 10.00pm and 7.00am the following day.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

- (4) **Commercial Lighting**
Any lighting on the building, including the canopies necessary for safety and/or security purposes shall be directed away from adjacent residential properties to prevent light spill nuisance.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

- (5) **Illuminated Signs**
The proposed light box plinth signs shall not operate between 10.00pm and 7.00am the following day. Dimmers shall be installed on the signage to reduce the level of illumination to 75 percent after 7pm.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

- (6) **Opening Hours**
The opening hours of the uses herein approved shall be:
7:00am to 10:00pm 7 days per week

REASON: To ensure the development operates in accordance with the approval.

- (7) **Delivery Times & Delivery Vehicle Type**
All deliveries shall be restricted to within the approved hours of operation, and the 19m delivery vehicles trucks must have a down swept (low level discharge) exhaust system and attenuated compressed air release. In addition, there shall be a maximum of two 19m semi-trailer vehicle movements within a 24 hour period.

REASON: To ensure the development operates in accordance with the approval and does not detrimentally affect the amenity of the locality.

- (8) **Noise Attenuation Measures**
All roof mounted mechanical equipment is to be installed within the designated roof area (north-west corner of the building) behind the building parapet (concrete construction to the west and louvres to the north) as documented in the Nielsen Architects plan DA03.1

The store's refrigeration units are able to be operated at all times during the day and night. Air conditioning, fans and the compactor must not be operated before 7:00am or after 10:00pm.

REASON: To protect the amenity of the area.

(9) **Requirement for mature plantings**

A percentage (minimum 20%) of the trees proposed in the landscaped areas should be planted as semi-mature, specifically a minimum height of 2 metres at the time of planting.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated.

(10) **Timeframe For Landscaping To Be Planted**

Landscaping detailed in plans from Outerspace drawing numbers OS520_CP01 Rev C and CP02 Rev C shall be planted, mulched and irrigation installed prior to occupation and maintained in good health and condition at all times. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased in the next planting season. All the landscaped areas shall be irrigated to the reasonable satisfaction of the Council.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated and ensure the survival and maintenance of the vegetation.

(11) **Protection Of Trees**

The works in relation to the tree(s), outlined in the Arborist's Report prepared by Arborman Tree Solutions and submitted as part of this application as a strategy for management of the tree(s) are to be undertaken simultaneously with any building works on the site.

REASON: To protect the regulated and significant trees from the impact of the development.

(12) **Tree Protection Zone**

A tree protection zone around the trees in the area protected by the LMA over the land (trees 1, 2, 3, 4, 6, 7, 9, 10, 11 & 13) and tree 43 to be retained, is required. The protection zone of each tree is to be determined by an Arborist. During construction each tree protection zone is to be fenced with 1.8 metre high chain mesh material with posts at 3 metre intervals and incorporate clearly legible signs displaying the words "Tree Protection Zone". The fences are to be installed prior to the commencement of development. The following restrictions apply to each tree protection zone:

- a) No destructive excavation is recommended with the area of the proposed development for Tree 11 to determine appropriate management for any roots that may be identified.
- b) No storage of material, equipment or temporary building is permitted within the cordoned off TPZ's.
- c) Nothing is to be attached to the trees, including temporary service wires, nails screws, signs or any other fixing devices.
- d) The cordoned off area of each TPZ should have mulch installed and additional water applied during the development phase. This is to reduce any potential shock or decline to the trees that may occur due to the minor changes in their environment.
- e) All trees that are to remain within the site should have Maintenance Pruning as per Australian Standard AS4970-2009 *Pruning of amenity trees*.
- f) Only landscaping can occur in the tree protection zone, and only when all construction of the proposed development has been completed. The area within

each zone shall be retained at natural ground level and no additional soil or fill shall be placed within the zone.

- g) No other works can occur within tree protection zone without the consent of Council's Arborist during the life of the retained trees.
- h) A project arborist should be appointed to assist in the ongoing management and protection of the trees to be retained and the name and contact details of the appointed person must be provided to Council prior to commencement of development.

REASON: To protect the trees from the impact of the development.

(13) Prior to Building Rules Consent Being Granted - Requirement for Soil Erosion And Drainage Management Plan (SEDMP)

Prior to Building Rules Consent being granted the applicant shall prepare and submit to Council a Soil Erosion and Drainage Management Plan (SEDMP) for the site for Council's approval. The SEDMP shall comprise:

- a major drainage plan,
- a site plan,
- supporting report,
- calculations,
- design sketches that detail erosion control methods and installation of sediment collection devices that will prevent:
 - a. soil moving off the site during periods of rainfall;
 - b. erosion and deposition of soil moving into the remaining native vegetation below the house site; and
 - c. soil moving into watercourses during periods of rainfall; and
 - d. soil transfer onto roadways by vehicles and machinery C

The works contained in the approved SEDMP shall be implemented prior to construction commencing and maintained to the reasonable satisfaction of Council during the construction period.

REASON: Development should prevent erosion and stormwater pollution before, during and after construction.

(14) Off-site works

The off-site works as offered in the planning statement prepared by Ekistics dated 13 March 2018, the traffic report prepared by GTA consultants dated 11 February 2019, and depicted on the plan titled 'site works plan-external' drawing no. DA02.4 prepared by Nielsen Architects dated Feb 2019, all shall be constructed/installed prior to occupation of the proposed development, namely:

- The widening the carriageway of Pomona Road
- Modifications to the island (of the roundabout),
- Removal of car parks and the redundant crossover
- New crossover for adjacent property 1 Pomona Road
- Barrier kerbing
- Concrete footpath (1.5m in width) for the extent depicted
- Pram ramp

- **Landscaping on Pomona Road**

NOTE: A permit under Section 221 of the Local Government Act 1999 is required to be issued for all the works within the Council's road reserve (excluding the new driveway crossovers) and a bond or other suitable financial guarantee shall be entered into to cover the cost of these works, project management and any damage to existing public infrastructure that may arise from the proposed development.

REASON: To ensure the off-site works agreed to be undertaken prior to operation of the approved development. To ensure traffic and pedestrian safety is not compromised and is improved by the proposed development.

NOTES

(1) **Erosion Control During Construction**

Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

(2) **EPA Environmental Duty**

The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes, or may cause, environmental harm.

(3) **Responsibility In Relation To Flooding**

The applicant is reminded that Adelaide Hills Council accepts no responsibility for damage to, or loss of property, as a result of flooding. It is the applicant's responsibility to ensure that all appropriate steps are undertaken to minimise the potential damage to property as a result of flooding.

(4) **Works On Boundary**

The development herein approved involves work on the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a survey being carried out by a licensed land surveyor prior to the work commencing.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Land Management Agreement

Respectfully submitted

Concurrence

Melanie Scott
Acting Team Leader Statutory Planning

Sam Clements
Acting Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
8 May 2019
AGENDA – ITEM 8.4

Applicant: Stephen Silver & Olivia Burke	Landowner: O M Burke & S P Silver
Agent: Alexander Symonds	Originating Officer: Doug Samardzija
Development Application:	19/82/473 19/D005/473
Application Description: Land division - boundary realignment (2 into 2) (non-complying)	
Subject Land: Lot:30 & 31 Sec: P1104 DP:7700 CT:5185/277 & CT:5185/335	General Location: 115 & 117 Woodland Way, Teringie SA 5072 Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/1	Zone/Policy Area: Hills Face Zone
Form of Development: Non-complying	Site Area: 7256m ²
Public Notice Category: Category 1 Non Complying - Land Division	Representations Received: N/A Representations to be Heard: N/A

1. EXECUTIVE SUMMARY

The purpose of this application is for minor boundary realignment between two contiguous allotments to facilitate a better access to the rear of proposed allotment 300. The change to the side boundary redistributes a total of approximately 70m².

The subject land is located within the Hills Face Zone and the proposal is a non-complying form of development. The proposal is a category 1 form of development as no additional allotments are created.

As per the CAP delegations, the CAP is the relevant authority for non-complying land division applications.

The main issue relating to the proposal is impact on native vegetation.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for a boundary realignment involving two titles. The proposal is for a minor boundary realignment which will not result in the creation of an additional allotment. The breakdown of the existing and proposed allotment configurations are listed below:

Existing Allotments

Allotment	Area (m ²)	Currently containing
31	3829m ²	Dwelling and associated outbuildings
30	3427m ²	Dwelling, swimming pool and associated outbuildings

Proposed Allotments

Allotment	Area (m ²)	Containing
301	3765m ²	Dwelling and associated outbuildings
300	3493m ²	Dwelling, swimming pool, tennis court and associated outbuildings

The plan of division includes:

- Re-alignment of the boundary between existing lots 30 and 31, to transfer approximately 70m² from existing lot 31 (proposed lot 301) to existing lot 30 (proposed lot 300)
- The purpose of the realignment is to facilitate better access to the rear of proposed allotment 300

The proposed plans are included as ***Attachment – Proposal Plans*** with other information included as ***Attachment – Applicant’s Professional Reports***.

3. BACKGROUND AND HISTORY

Nil

4. REFERRAL RESPONSES

- **SCAP Consultation Report**
Standard response from SCAP provided in relation to providing a final plan complying with the requirements for plans as set out in the Manual of Survey Practice.
- **SA Water**
SA Water has advised that they have no requirements as per the Section 33 of the Development Act.

The above responses are included as ***Attachment – Referral Responses***.

5. CONSULTATION

In accordance with Schedule 9 (3)(c) of Part 1 of the Development Regulations 2008, this non-complying land division proposal was categorised as a Category 1 form of development, not requiring formal public notification.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject allotments are irregular in shape with a combined area of 7256m². Both of the allotments are used for residential purposes containing a dwelling each with associated outbuilding, with allotment 30 also containing a swimming pool and a tennis court. The rear of both of the allotments is predominantly covered in vegetation. Both allotments are accessed via an independent access point directly from Woodland Way.

ii. The Surrounding Area

The surrounding area is characterised by regular shaped residential allotments of 3000m² or more above. There is a consistent pattern of development within the locality, with the dwellings on each allotment located closer to the road. The rear of the allotments generally contain dense vegetation.

iii. Development Plan Policy considerations

The subject land lies within the Hills Face Zone and these provisions seek:

- *A zone in which the natural character is preserved and enhanced by preserving the native vegetation and fauna habitats close to metropolitan Adelaide*

The following are considered to be the relevant Zone provisions:

Objectives: 1

PDCs: 22

The Objective of the zone anticipates that the natural character of the area is retained through preservation of native vegetation. This is also reinforced by PDC 22 which envisages development occurring if it can be located and designed to maximize the retention of existing native vegetation. The proposal seeks to realign a section of the side boundary between existing allotments 30 and 31 by re-shifting this boundary approximately 3.5m further to the north. This boundary change will incorporate part of the existing access path/driveway currently on allotment 31 into allotment 30. The new boundary will not be located in the area which contains any native vegetation and as such is considered to be consistent with Objective 1 and PDC 22 of the zone.

The Council Wide provisions of relevance to this proposal seek (in summary):

- Orderly and economic development
- Land division that occurs in an orderly sequence allowing efficient provision of new infrastructure and facilities and making optimum use of existing underutilised infrastructure and facilities

Hazards:

Objectives: 5

PDCs: Nil

Objective 5 seeks for development to be located so that it minimises the threat and impact of bushfire on life and property while protecting natural and rural character. As mentioned earlier in the report, the main purpose behind the boundary realignment is to facilitate a better access to the rear of proposed allotment 300. Applicant has stated that the creation of this access would allow for better management and maintenance of the property in particular the rear of the allotment which has been neglected over time and has become a fire hazard. The proposal is therefore considered to achieve the intent of Objective 5 in that it will help the owners to much more effectively manage the rear of the property which would in turn minimise the threat and impact of bushfires.

Land Division:

Objectives: 1

PDCs: 2, 5, 6, 7 & 11

The proposal is for a minor boundary readjustment between two allotments which will not result in the creation of a new allotment or impact on the existing or future uses of the land. The proposal is therefore considered to be orderly, and therefore consistent with Objective 1, and PDCs 2 and 7.

PDC 6(c) states that the design of a land division should incorporate safe and convenient access for each allotment to an existing or proposed road or thoroughfare. Whilst this PDC refers more to the provision of appropriate access to a public road, it can be applied more broadly to access to the rear of allotments, particularly in bushfire prone areas. Given that the main purposes of the boundary realignment is to allow for safer and easier access to the rear of the proposed lot 300 for maintenance purposes, the proposal is considered to be consistent with the general intent of PDC 6(c) as it achieves better access to more areas of the allotment. As mentioned earlier in the report, the realignment of the boundary will not result in clearance of any vegetation nor does the re-aligned boundary pass through an area of native vegetation. The proposal is therefore considered to accord with PDCs 5 and 11(d).

Natural Resources:

Objectives: 1 & 10

PDCs: 37, 38 & 39

Schedule 1- Division 2 part 14 of *Native Vegetation Regulations 2017* prescribes circumstances in which native vegetation may be cleared. As per Section 27(1)(b) of the *Native Vegetation Act 1991*, native vegetation may, subject to any other Act or law to the contrary, be cleared if the clearance is for the purpose of providing a strip of cleared land of not more than 5 metres in width on either side or both sides of an existing fence or of a fence in the course of construction to provide access for the purpose of maintaining or establishing the fence. This section of the Act refers to the native vegetation that is permitted to be cleared without a permit subject to notification to Native Vegetation Council. PDC 38 states that development should be designed to minimise the loss and disturbance of native flora and fauna whilst PDCs 37 and 39 refer to conservation of native vegetation. As mentioned above, the realignment of the boundary by approximately 3.5m to the north will not result in the

boundary being within 5 metres of any native vegetation and as such the proposal is considered to accord with PDC 38. In the statement of support it outlines that the main reason for the boundary realignment is to facilitate easier access to the back of the allotment to allow for management and improvements to the site. One of the improvements is also clearing out any exotic vegetation and landscaping the garden with native plantings. The proposal is therefore considered to accord with PDC 37 and 39 which seek conservation of native vegetation.

7. SUMMARY & CONCLUSION

The proposal involves rearrangement of a boundary between two existing allotments and does not involve creation of new allotments nor does it impact on the current or future use of the land.

The proposal will allow for better access to the rear yard of proposed allotment 300. This will facilitate better enjoyment of this property, and potentially better bushfire preparedness and asset protection due to the improved access for vegetation and general property management purposes.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and as such it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent and Land Division Consent to Development Application 19/82/473 (19/D005/473) by Stephen Silver & Olivia Burke for Land division- boundary realignment (2 into 2) at 115 and 117 Woodland Way, Teringie SA 5072 subject to the following conditions:

Planning Conditions

1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Plan of division prepared by Alexander Symonds Consulting Surveyors, reference A010118, drawing number A010118(PROP(A), revision A, dated 22/01/2019
- Access arrangements plan date stamped by Council 29/03/2019
- Statement of support prepared by Stephen Silver and Olivia Burke dated 26 March 2019 and date stamped by Council 29/03/2019

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

Planning Notes

Nil

Council Land Division Requirements

Nil

Council Land Division Notes

1) Land Division Development Approval Expiry

This development approval is valid for a period of three (3) years from the date of the decision notification. This time period may be further extended beyond the 3 year period by written request to, and approval by, Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee. Please note that in all circumstances a fresh development application will be required if the above conditions cannot be met within the respective time frames.

SCAP Land Division Requirements

1) Requirement For Certified Survey Plan

A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the State Commission Assessment Panel for Land Division Certificate purposes.

REASON: Statutory requirement in accordance with Section 51 of the Development Act 1993.

8. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Referral Responses

Respectfully submitted

Concurrence

Doug Samardzija
Statutory Planner

Sam Clements
Acting Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
8 May 2019
AGENDA – ITEM 8.5

Applicant: Charlene Ackland	Landowner: M A Ackland & B K Ackland
Agent: UPRS Planning Consultants	Originating Officer: Marie Molinaro
Development Application:	18/673/473
Application Description: Change of use to include intensive animal keeping (maximum of 10 dogs) & conversion of domestic outbuilding to kennels & associated building alterations (non-complying)	
Subject Land: Lot:62 Sec: P3239 FP:132753 CT:5795/580	General Location: 193 Murphy Road, Paracombe <i>Attachment – Locality Plan</i>
Development Plan Consolidated : 24 October 2017 Map AdHi/3	Zone/Policy Area: Watershed (Primary Production) Zone
Form of Development: Non-complying	Site Area: 5237m ²
Public Notice Category: Category 3 Notice published in The Advertiser on 22 February 2019	Representations Received: Four Representations to be Heard: Nil

1. EXECUTIVE SUMMARY

The purpose of this application is to seek retrospective approval for the keeping of 10 dogs (intensive animal keeping). Included with the application is the conversion of a domestic outbuilding to dog kennels, with associated building alterations and fenced outdoor run/exercise areas. The proposed conversion of the domestic outbuilding to dog kennel building (intensive animal keeping building) has not yet occurred. The dogs are currently kept in a secure, partly covered area to the south of the proposed kennel building. The removal of the existing kennel area also forms part of the proposal.

The subject land is located within the Watershed (Primary Production) Zone and the proposal is a non-complying form of development. Four opposing representations were received during the Category 3 public notification period. One opposing representor originally wished to be heard, but has now withdrawn their representation.

As per the Council Assessment Panel (CAP) delegations, the CAP is the relevant authority for intensive animal keeping applications.

The main issues relating to the proposal are the potential impacts to water quality (waste management), and residential amenity due to noise (dog barking).

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel (SCAP) be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Retrospective development approval for the keeping of a maximum of 10 dogs (British Bulldogs)
- Conversion of a 138 square metre domestic outbuilding to dog kennels (intensive animal keeping building). Including associated building alterations, comprised of the following:
 - New window to the east elevation
 - Secure dog pen areas attached to the southern elevation. Comprised of seven enclosure/pen areas with associated new openings and attached covered verandah to outbuilding
 - Each enclosure/pen area to be 4m x 2m = 8 square metres and secured with chain-wire mesh fencing (maximum height 1.4m)
 - 75mm thick insulation to be installed inside the building for the comfort of the dogs
 - Existing concrete floor to remain inside the building
 - Gravel soakage pit to be installed between the dog pen areas and exercise areas for drainage soakage associated with the wash down of the dog kennel building
- Creation of two secure grass exercise areas for the dogs with a total combined area 243.5 square metres. The exercise areas are to be secured with chain-wire mesh fencing (maximum height 1.4m)
- The dogs belong to the owner/occupiers of the land, and are pets that are also used for ancillary breeding and show purposes
- The proposal is not a boarding kennel (or similar) for the temporary accommodation of third party dogs

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information & Professional Reports**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
18 August 2014	14/659/473	Variation to development authorisation 13/845/473 to change siting of domestic outbuilding
15 January 2014	13/845/473	Domestic outbuilding (15.2m x 9.1m x 4m wall height) & associated earthworks This is the building proposed to be converted to dog kennels.

It is understood that a retrospective application has been lodged now in order that the applicant/land owners comply with the new separate dog breeding registration requirements of the Dog & Cat Management Act (1995).

Council Regulatory Services have advised that they have no recorded complaints in relation to dog keeping at the subject land.

4. REFERRAL RESPONSES

External (mandatory)

- **Environment Protection Authority (EPA)**

The EPA assessed the proposal only for potential water quality impacts. The EPA are satisfied that the proposal is acceptable from a water quality perspective, subject to two recommended conditions. The conditions being that the dog kennel building must have a concrete floor, and that dog faeces must be collected on a daily basis and stored in sealed containers before being taken off-site. These conditions have been adopted by staff – see *recommended conditions 4 and 5*.

The EPA did also include advisory notice that air quality/noise impacts also need to be considered by the relevant authority. The applicant has provided an environmental noise assessment report, which is considered to demonstrate that any noise impacts are to an acceptable level. The water quality relation restrictions also address odour management. These matters are discussed in further detail below.

Internal (informal)

- **REGULATORY SERVICES**

Advised they have no objection to the proposal, provided separate dog registration is applied for each dog on site. Recommended note 3 reminds the applicant of their obligations re separate registration of the dogs pursuant to the *Dog & Cat Management Act (1995)*.

The above responses are included as **Attachment – Referral Responses**.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act (1993), requiring formal public notification and a public notice. Four opposing representations were received during the public notification period. All were from adjacent, or nearby properties. One representor wished to be heard, but has since withdrawn their representation.

The issues contained in the representations can be briefly summarised as follows:

- Negative impact on residential amenity associated with noise – dog barking
- Concern for animal welfare/safety in an emergency situation (bushfire event in particular)
- Concern regarding existing encroachment issue identified with adjoining property to the rear/west – 242 Paracombe Road, Paracombe. That the dog keeping and associated dog keeping buildings and areas should be fully contained on the subject land

These issues are discussed in detail in following sections of the report. In response to the representations received, the applicant met with the representors to discuss their concerns. The representation concerned with the encroachment matter has subsequently been withdrawn following these discussions.

The applicant and their representative Philip Harnett from URPS planning consultants may be in attendance to answer questions from the Panel members.

Copies of the submissions are included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site’s Physical Characteristics

The subject land has an area of 5237m², and is irregular in shape.

The land contains a dwelling located near the south-eastern corner of the land. The domestic outbuilding proposed to be converted to kennels is to the north of the dwelling.

The on-site waste control system associated with the dwelling is on the southern side of the dwelling.

The western portion of the land along the Murphy Road boundary (primary street frontage) is well vegetated, obscuring views of the existing domestic outbuilding proposed to be converted to dog kennels.

ii. The Surrounding Area

The locality contains a mix of smaller irregular shaped allotments used for residential purposes, and larger allotments used for horticulture and recreational purposes (golf course).

The proposed dog kennel building is approximately 70m south from the nearest dwelling on adjoining allotment, that being 181 Murphy Road, Paracombe.

The subject land is approximately 1.5km south-east of the Township (Houghton) Policy Area boundary. The subject land is approximately 2km south of the Settlement Area (Inglewood) Policy Area boundary within the Watershed (Primary Production) Zone.

iii. Development Plan Policy considerations

a) *Zone Provisions*

The subject land lies within the Watershed (Primary Production) Zone and these provisions seek:

- *The maintenance and enhancement of the natural resources of the south Mount Lofty Ranges*

- *The enhancement of the Mount Lofty Ranges Watershed as a source of high quality water*
- *The long-term sustainability of rural production in the south Mount Lofty Ranges*
- *The enhancement of the amenity and landscape of the south Mount Lofty Ranges for the enjoyment of residents and visitors*

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2, 3 & 4

PDCs: 2, 3, 7, 11, 16, 31, 40, 45 & 47

Form of Development

Objective 1 seeks the enhancement of the natural resources of the Watershed, and in particular Objective 2 seeks the enhancement of the Watershed to maintain high water quality.

The proposal is considered to enhance the Watershed as a source of high quality water as the flooring of the proposed kennel is to be sealed, with dedicated gravel soakage pit installed for drainage of kennel cleaning liquids. This is considered to be an improvement on the existing (albeit unauthorised) kennel arrangement, which is only partly sealed and with no dedicated drainage system.

Recommended condition 3 requires the removal of the existing kennels within three (3) months of completion of the proposed kennels.

In any event, disregarding the existing situation the EPA as the authority on water quality impacts in the Watershed have advised that the proposal is acceptable as the proposal will not result in unacceptable impacts.

The proposal is consistent with Objectives 1 and 2.

Objective 3 seeks the long-term sustainability of rural production in the south Mount Lofty Ranges.

The subject land is a small rural residential allotment. The proposed dog keeping is not considered to prejudice primary production occurring on the adjoining orchard to the east.

The proposal is consistent with Objective 3.

Objective 5 seeks the enhancement of the amenity and landscape for the enjoyment of residents and visitors.

The proposal is considered to enhance the enjoyment of the land for the owners/occupiers as it will allow them to lawfully keep their pet dogs in a kennel building on their property.

The proposal is consistent with Objective 5.

PDCs 2 and 7 relate to building design in the Zone. PDC 2 seeks buildings to be unobtrusive, with this to be achieved through the use of low profile designs, which incorporate varying wall and roof lines, including verandahs to break up building bulk.

PDC 7 seeks additions to buildings to be located on the side which minimizes obtrusiveness and complies with previously mention principles relating to the location and design of buildings.

The addition to the existing building to create the dog pen areas is attached to the southern side of the building, which faces internally. The additional window and verandah are considered to vary the building wall lines and add visual interest.

In any event, the building is not readily visible from Paracombe Road, due to its large setback to the front boundary and existing vegetated screening.

The proposal is consistent with PDC 2 and 7.

PDC 3 seeks for buildings to have a year round water supply, safe and efficient effluent disposal system and should have a safe, clean, tidy and unobtrusive area for the storage and disposal of refuse. This is so the desired natural character of the zone is not adversely affected.

The subject land is connected to SA Water mains water supply, which will be used to clean the kennel building. There are no wet areas inside the proposed kennel building, so there is no need to connect to an effluent disposal area. The proposed dog kennel building and associated exercise areas are well away from the existing on-site waste system servicing the dwelling. The efficiency/effectiveness of the existing on-site waste system is therefore not comprised as a result of the proposal.

Waste (faeces) will be collected daily and stored in a sealed container, prior to disposal off-site. The container is to be stored at the rear of the proposed kennel building, away from public view. **Recommended condition 5** requires the waste receptacle to be unobtrusively located.

The proposal as re-enforced by **recommended condition 5** is consistent with PDC 3.

Conservation

PDC 31 seeks for change of land use not to occur in, or near areas of native vegetation which are likely to be adversely impact on the vegetation.

The dog pen areas and exercise areas are located on a clear area of the site with no vegetation removal required.

The proposal is consistent with PDC 31.

Rural Development

PDC 40 states that in the Zone no new piggeries, feedlots or other intensive uses such as poultry sheds and stables should be established. Existing piggeries and feedlots should be phased out and other existing intensive animal uses should only remain, provided they are not enlarged, except within the Lobethal Abattoir Policy Area.

PDC 40 relates directly to intensive animal keeping uses in the Zone. Dog keeping is a form of intensive animal keeping, however it is not specifically mentioned as form of intensive animal keeping that should be discouraged and phased out. This would appear to be an acknowledgement that dog keeping is a smaller scale form of intensive animal keeping that is more appropriate in the Zone.

The above rational is re-enforced PDC 45 which relates direction to dog keeping. This PDC states that no more than two dogs should be kept on any land for racing, breeding or boarding purposes.

The proposal is at variance with PDC 45 as a maximum of 10 dogs for breeding purposes will be kept on the land.

It is not clear though why PDC 45 only considers a maximum of two dogs and has no performance measures. It gives no consideration to the varying large size allotments in the zone, and their potential carrying capacity and setback to sensitive receptors. Based on this, it is considered to be an arbitrary figure that does not provide much guidance to the assessment of the proposal. Variance with PDC 45 is therefore not considered to be fatal to the proposal.

PDC 47 is considered most applicable as it provides some performance measures to test if the animal keeping is appropriate. The provision states that the keeping of animals should not be undertaken without appropriate regard for the carrying capacity of the land, soil conservation and the prevention of water pollution.

The proposal is retrospective, with 10 dogs being kept on the land already. It is understood that the dogs have been kept on the land for many years and there is no evidence of erosion or poor grass coverage, or any other undesirable impacts. These issues are general quite apparent when too many animals are grazing or being held in an undersized area of land. Based on this, the carrying capacity of the land is considered suitable for this number of dogs.

In regards to soil conservation, recommended condition 7 will require that the surface of the exercise areas be grassed at all times to prevent dust, mud and erosion issues. As discussed above, the keeping of the dogs is not considered to pose an unacceptable risk to water quality. **Recommended conditions 4, 5 and 6** re-enforce the management requirements needed to prevent water pollution.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- *Animals not kept at a density beyond the carrying capacity of the land or water*
- *Animal keeping development site and designed to avoid adverse effects on surrounding development*
- *Intensive animal keeping protected from encroachment by incompatible development*
- *Development located to minimise the threat and impact of bushfires on life and property while protecting natural and rural character*

- *Development located and designed to minimise adverse impact and conflict between land uses*

The following are considered to be the relevant Council Wide provisions:

Animal Keeping & Rural Development

Objectives: 6, 7 & 8

PDCs: 4, 5, 6, 13, 15, 16, 17 & 18

The Council Wide provisions relating to animal keeping and rural development are considered to be the most relevant to the proposal. Accordingly, each relevant Objective and PDC has been noted in full in the discussion below.

Objective 6

Animals not kept at density beyond the carrying capacity of the land or water.

As discussed in the Zone discussion, 10 dogs have been kept on the land for many years without adverse effect on the land condition, which demonstrates that the carrying capacity of the land is sufficient. Water access or over use is not an issue as the subject land is connected to SA Water mains water supply. The proposal is consistent with Objective 6

Objective 7

Animal keeping development sited and designed to avoid adverse effects on surrounding development.

Dog barking noise is considered to be the most likely adverse effect on the surrounding locality. Noise impact is discussed further in the 'Interface Between Land Uses' section of this report.

Objective 8

Intensive animal keeping protected from encroachment by incompatible development.

Incompatible development in this instance is considered to be sensitive receptors to intensive animal keeping development, such as residential development.

The surrounding area is in the Watershed (Primary Production) Zone. Land division to create additional allotments is non-complying in this Zone, so it is considered unlikely that further additional dwellings could be constructed nearer to the subject land, which could lead to land use conflicts resulting from reduced setbacks. The adjoining allotment to the rear/east does not contain a dwelling. There is ample area on this adjoining allotment to site one possible future dwelling away from the proposed dog kennel building, with a similar or greater setback than the existing dwellings in the locality. The proposal is considered to be consistent with Objective 8.

PDC 4

Planning, design and undertaking of primary industry, rural, horticulture, horse keeping or animal keeping development should minimize impacts that ensure acceptable outcomes relating to:

a) *stormwater management and disposal or reuse*

The existing stormwater roof run-off management arrangements will remain for the proposed kennel building as it is an existing structure. It is understood that roof water run-off is directed via a sealed system to an existing water storage tank, with overflows contained on-site.

Cleaning of the kennels will result in additional water run-off. The kennels are to be cleaned daily, with water run-off directed to a gravel soakage pit in front of the kennel area away from the stormwater (roof water) runoff. This method of water run-off disposal is acceptable to the EPA.

b) *waste management and disposal*

Waste management and disposal is considered in detail, against PDC 6. See discussion below.

c) *chemical storage and handling*

There is no chemical storage or handling associated with the proposal.

d) *emissions of dust, noise, odour or spray drift*

The proposal will not create any dust issues provided grass coverage is maintained, or spray drift emissions.

In terms of odour a site inspection by staff revealed no odour issues with the current dog keeping practices. The maintenance schedule of the proposed dog keeping building involves daily cleaning which will assist with managing odour.

The applicant advised that dog mortalities will be resolved by cremation on-site. Cremation could lead to possible odour issues, however given the small number of dogs involved, cremation would be a very infrequent occurrence.

Noise is discussed further in the report.

e) *fire management*

Criterion e) is considered to mainly apply to ensuring that rural activities do not create an increased fire hazard, due to issues such as development not maintaining or providing fire breaks and tracks.

However, for the assessment of this proposal, criterion e) has been considered more broadly in terms of one representors concern, namely that the proposed use is not appropriate in a high bushfire risk area (fire management).

The land is in the Watershed (Primary Production) Zone, in this Zone rural activities involving animal keeping are expected. The majority of the Watershed (Primary Production) Zone is in a high bushfire risk area. Considering the above, the dog keeping numbers in high bushfire risk area are very low in comparison to livestock numbers on many rural properties throughout the district. The subject land is connected to a sealed, all-weather road, with mains water supply which is considered to assist with protecting animal safety in the event of an emergency. The dogs belong to the owners of the land, which is also considered to assist with

quick evacuation of the land if required (e.g. ease of containing and transporting the dogs).

Therefore, the risks associated with animal keeping at the subject land are considered to be reasonable.

f) vegetation management

The dog keeping areas are already cleared of vegetation.

g) use of appropriate buffers

Buffers are not considered necessary for this use.

h) land sustainability and protection from denudation

The proposed surface of the exercise areas are grass covered. **Recommended condition 7** requires grass coverage to be maintained to the reasonable satisfaction of Council at all times to prevent denudation and erosion.

i) watercourse protection

Watercourse protection, relative to setbacks to watercourses is discussed further under PDC 13.

The proposal is considered to be consistent with PDC 4.

PDC 5

Animal keeping and associated activities should not create adverse impacts on the environment or the amenity of the locality

The proposed animal keeping is not considered to create adverse impacts on the environment. Water quality matters have been addressed and there is no clearing of vegetation required to facilitate the dog keeping exercise areas. In terms of the amenity of the locality, amenity impacts relating to noise and odour are discussed further in the report. The proposal is consistent with PDC 5.

PDC 6

Storage facilities for manure, used litter and other wastes should be designed and sited:

a) to be vermin proof

b) with an impervious base

c) to ensure that all clean rainfall runoff is excluded from the storage area

d) outside the 1 in 100 year average return interval flood event area.

Dog faeces are to be collected daily and stored in a sealed container. **Recommended condition 5** requires the waste receptacle to be located in an area away from public view. The proposal as reinforced by **recommended condition 5** ensures compliance with PDC 6. Dog food, although not a manure, used litter or other waste as detailed in PDC 6, is to be stored inside the proposed dog kennel building in sealed containers.

PDC 13

Intensive animal keeping operations and their associated components, including holding yards, temporary feeding areas, movement land and similar, should not be located on land within any of the following areas:

- a) *800 metres of a public water supply reservoir*
The subject land is approximately 3.4km from Millbrook Reservoir to the east and 2.2km from Kangaroo Creek Reservoir to the south-east.
- b) *the 1 in 100 year average return interval flood event area of any watercourse*
There are no mapped flood prone areas within the locality.
- c) *200 metres of a major watercourse (third order or higher stream)*
The subject land is approximately 2.2km from the River Torrens, which flows into the Kangaroo Creek Reservoir.
- d) *100 metres of any other watercourse, bore or well used for domestic or stock water supplies*
The subject land is approximately 260m from the nearest mapped watercourses to the east and west.

The dog keeping area is approximately 70m from the nearest irrigation bore on nearby site, namely 214 Murray Road, Paracombe. This is a reduced setback, but considered to be acceptable as the proposed animal keeping is considered to be low-scale, and therefore does not pose an unacceptable risk to water quality.

- e) *2000 metres of a defined and zoned township, settlement or urban area (except for land based aquaculture)*
The subject land is approximately 1.5km east of the nearest defined township and 2km from the nearest separately defined settlement area.

The proposal is less than 2km from the Houghton Township, but the reduced setback is not considered to be fatal to the proposal. The proposed intensive animal keeping is considered to be low-scale, and the potential impacts relating to water quality and noise are considered acceptable.

- f) *500 metres of a dwelling (except for a dwelling directly associated with the intensive animal keeping facility).*
The proposed kennel building is 70m from the nearest dwelling not on the subject land. This is a significant shortfall in distance sought by criterion f). However, the reduced setback is not considered to be fatal to the proposal.

The setback distance set-out in criterion f) is the same as set-out in the Environment Protection Authority (EPA) publication titled- *Evaluation Distances for Effective Air Quality and Noise Management*. This document also recommends a 500m separation distance from dog kennels to sensitive uses.

It is recognised that the proposal has a significantly lesser separation distance at 70m from the closest non-associated dwelling (sensitive use), than the EPA recommended separation distance.

However, compliance with the *Environment Protection (Noise) Policy 2007* as discussed later in the report is considered to negate a reduced separation distance between land uses from a noise perspective. This is noting that the *Evaluation Distances for Effective Air Quality and Noise Management 2016* publication is a guide only, including a mechanism for an applicant to demonstrate that a separation distance, other than the recommended distance is appropriate. Consequently, the distances quoted in the document should not be adopted as absolute criteria, but rather as indicative distances that may be adjusted having regard to specific site circumstances.

The proposal is considered to be sufficiently consistent with PDC 13.

PDC 15

Intensive animal keeping facilities and associated wastewater lagoons and liquid/solid waste disposal areas should be site, designed, constructed and managed to avoid adverse odour impacts on nearby sensitive land uses.

There are no associated wastewater lagoons associated with the proposal. Solid waste (faeces) will be collected on a daily basis and stored in a sealed container for disposal off-site.

A site inspection undertaken by Council staff revealed no odour issues with the current dog keeping practices.

The proposal is consistent with PDC 15.

PDC 16

The floor of kennels should be constructed of concrete or similar impervious material and be designed to allow for adequate drainage when kennels are cleaned.

The existing floor area of the proposed kennel building is constructed of concrete. **Recommended condition 4** requires the floor to remain as concrete and to be maintained in good condition at all times.

The proposal is consistent with PDC 16.

PDC 17

Kennels and exercise yards should be designed and sited to minimise noise nuisance to neighbours through:

- a) orientating their openings away from sensitive land uses such as dwellings*
- b) siting them as far as practicable from allotment boundaries.*

The new openings to the existing building to be converted to the dog kennel building are located on the southern side of the building. This is away from the nearest dwelling not on the subject land, which is 70m to the north.

The dog keeping area on the subject land is in close proximity to the rear/eastern side boundary. However, the adjoining property to the rear is an orchard with no residential development.

The proposal is considered to make good re-use of an existing building on the land. The building is currently surplus to the applicant's needs for domestic storage. Housing the dogs in a fully enclosed building is considered to be an improvement on the current kennelling arrangement.

The proposal is consistent with PDC 17.

PDC 18

Kennels should only occur where there is a permanently occupied dwelling on the land.

It is assumed that the intent of this PDC is to ensure that there will be a person/persons present at all times to monitor and intervene if necessary to control dog barking noise nuisance.

The land contains a permanently occupied dwelling, and the dogs are the pets of the owners of the land who occupy the dwelling. Therefore, there is considered to be a high level of monitoring and behaviour intervention available to control dog barking.

The proposal is consistent with PDC 18.

Interface Between Land Uses

Objectives: 1

PDCs: 1, 2, 7 & 13

PDC 7 relates specifically to noise generating activities. This PDC seeks that noise emitting development should include noise attenuation measures that achieve the relevant *Environment Protection (Noise) Policy 2007* criteria when assessed at the nearest existing noise sensitive premises.

The applicant has provided an environmental noise report prepared by Sonus (Acoustic Engineers). The environmental noise report has predicted the anticipated noise levels by undertaking noise modelling, and comparing those levels against the criteria set-out in the *Environment (Noise) Policy 2007*.

The report concludes that:

"The predicted noise levels from ten dogs barking simultaneously and continuously over the default assessment period of the Policy (15 minutes) at the closest dwelling to the north is predicted to be 39 dB(A) ..."

The predicted noise level will be lower if the dogs are inside the kennels, if less than 10 dogs are present or if the barking is not continuous."

The predicted noise level 39dB(A) is below the 45dB(A) noise threshold set-out as the acceptable night time noise level in the Noise Policy and the higher 52dB(A) threshold during the day. This is achieved without any noise attenuation measures such as modifications to the proposed kennel building or acoustic fencing. The insulation to be installed in the proposed dog kennel building is not a required as an

acoustic treatment. Its primary purpose is to assist with temperature control in the building for the comfort of the dogs. The proposal is therefore consistent with PDC 7.

It is highlighted in the acoustic report that the typical noise issues associated with boarding kennels are not present with this proposal. **Recommended condition 2** includes an advisory note to the applicant that a change of operation to a dog boarding kennel (or similar) is contrary to what is proposed, and would require a separate development authorisation (i.e. change of use from dog keeping to dog boarding kennel or similar).

PDC 13 relates to rural interface issues and in summary seeks the minimisation of adverse impacts resulting from rural development. In relation to intensive animal keeping, this is to be minimised by not locating such uses on land adjacent townships and maintaining an adequate separation between the intensive animal keeping and townships, and other sensitive uses.

As discussed above, the subject land is considered to be adequately separated from the Houghton Township and the Inglewood Settlement Area. The dog keeping area has a considerably reduced setback to the nearest non-associated dwelling than that sought by criterion f) of PDC 13 of the Council Wide Animal Keeping & Rural Development Module. However, the reduced setback is considered to be acceptable for the following reasons:

- The proposed intensive animal keeping is low-scale (maximum 10 dogs)
- The proposed intensive animal keeping is for the keeping of the land owner/applicant's dogs. The dogs are pets that are also used for breeding and show purposes. Therefore, there will not be increased traffic movements associated with the proposal as there would be for intensive animal keeping for temporary boarding purposes (i.e. boarding kennel)
- The environment noise report concludes that noise from dog barking is below the *Environment (Noise) Policy 2007* threshold for a rural industry area
- There are no anticipated air quality (odour) issues
- Potential water quality impacts are not unacceptable

Other Matters

The adjoining property owner to the rear/east of the subject land (242 Paracombe Road, Paracombe) arranged for a survey to be undertaken, which identified an encroachment issue. The fencing between the two properties is not located on the boundary, and water storage tanks and outbuilding installed by the applicant are on the adjoining property. The owners followed up with their own survey, which revealed the proposed dog keeping building is also partly on the adjoining property (rear corner only).

This is an existing encroachment anomaly that is not being made worse by the proposal.

This situation has been discussed with the applicant's representative as a potential building rules assessment issue. It is understood that the applicant has engaged the private certifier Katnich Dodd to undertake the building rules assessment. Building rules matters relating to a possible reduced boundary setback will need to be resolved by the applicant and Katnich Dodd, and cannot prevent a planning decision.

The applicant has indicated that they may resolve the encroachment matter by lodging a separate land division (boundary realignment) application to re-adjust the boundary. That is, they may look to acquire the land in dispute from the adjoining property owner and incorporate it into their site and therefore the status quo is to remain in terms of fencing location, which will negate the need to re-locate the encroaching structures. Whilst this is subject to a separate assessment, land division in the Watershed (Primary Production) Zone is anticipated to correct encroachments.

As a survey has already been undertaken, it is not considered necessary to condition a further survey to be undertaken by the applicant.

7. SUMMARY & CONCLUSION

The proposal is for intensive animal keeping, that being the keeping of a maximum 10 dogs in the Watershed (Primary Production) Zone. Included with the proposal is the conversion of, and alterations to an existing outbuilding to intensive keeping building (dog kennels).

Intensive animal keeping is non-complying in the Watershed (Primary Production) Zone. However, the proposal is considered to be a low-scale form of intensive animal keeping, separate from more large scale intensive animal keeping such as feedlots and piggeries, which are clearly discouraged in the Zone.

The proposed intensive animal keeping will not prejudice primary production, and the EPA as the authority on water quality impacts are satisfied that the proposal does not pose an unacceptable risk. Therefore, the proposal is consistent with the key Objectives of the Zone seeking the long term sustainability of rural production, enhance amenity for residents and visitors to the area, maintenance of natural resources, and the protection of water quality.

Potential amenity impacts from the proposal relating to noise (dog barking) is considered to be negligible as demonstrated by the environment noise assessment report (acoustic) report. The report concludes that at the nearest non-associated dwelling noise levels are below the noise threshold level as set out in the *Environment Noise Protection Policy (2007)*.

Compliance with the noise policy is considered to sufficiently demonstrate that the level of noise will not unreasonably impact on adjacent residential land uses, despite the reduced setback distance to sensitive receptors as stipulated in PDC 13 of the Animal Keeping & Rural Development section, and the EPA publication *Evaluation Distances for Effective Air Quality and Noise Management 2016*.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent to Development Application 18/673/473 by Charlene Ackland for Change of use to include intensive animal keeping (maximum of 10 dogs) & conversion of domestic outbuilding to kennels & associated building alterations (non-complying) at 193 Murphy Road, Paracombe subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Amended site plan (ref. 18ADL-0269, revision 4) by URPS, received by Council 13 February 2019
- Amended kennel elevations (ref. 18ADL-0269, revision 1) by URPS, received by Council 13 April 2019
- Amended floor plans (ref. 18-ADL0269, revision 2) by URPS, received by Council 13 April 2019
- Environmental Noise Assessment Report (ref. S5848C1) by Sonus, received by Council 6 February 2019
- Amended statement of effect (revision 4) by URPS, received by Council 13 February 2019

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Maximum Number of Dogs

No more than 10 dogs shall be kept on the subject land.

NOTE: Keeping of more than 10 dogs, or the keeping of dogs on a temporary basis as a boarding kennel (or similar) on the subject land will require a separate development approval.

REASON: To ensure the proposed development is undertaken in accordance with the approved details.

(3) Removal Of Existing Dog Kennels Structure

The existing dog kennels structure, located between the proposed dog kennels building and the dwelling on the subject land shall be removed within three (3) months of the dogs being kept in the proposed dog kennel structure.

REASON: To ensure the proposed development is undertaken in accordance with the approved details.

(4) Dog Kennel Flooring

The proposed dog kennel building flooring shall be of concrete construction. The existing concrete flooring shall be maintained in good condition at all times.

REASON: EPA condition.

(5) Waste Storage

An impervious receptacle with a closed fitting lid shall be provided on-site for the temporary storage of faeces or other wastes generated by the dog keeping. Faeces shall be collected daily and placed in the receptacle. The collected wastes shall be removed at least once in every week, and then disposed of off-site. The waste receptacle shall be located in a screened area not visible from Murphy Road.

REASON: To ensure no adverse impacts on water quality, and the amenity of the locality is maintained.

(6) Water Washdown Management

Water from the maintenance and cleaning of the proposed dog kennel building shall be directed to the swale as shown on the approved site plan. The swale shall be constructed within one (1) month of occupation of the kennels.

REASON: To ensure no adverse impacts on water quality.

(7) Maintenance of Exercise Yard Surface Lighting

The exercise yard areas associated with the dog keeping shall be maintained in a satisfactory condition at all times, and managed to ensure that the grass coverage is maintained at all times to the reasonable satisfaction of Council.

REASON: Development should be undertaken to prevent erosion.

(8) External Finishes

The external finishes of the additions to the proposed dog kennel building shall be of materials and colours to match or complement those of the existing building to the reasonable satisfaction of Council.

The only exception being the fencing around the kennel building and the exercise yards, which shall be chain mesh

REASON: The external materials of buildings should have surfaces which are of a low light-reflective nature and blend with the natural rural landscape and minimise visual intrusion.

(9) Lighting

Any flood lighting for the proposed dog kennel and exercise yards shall be directed and shielded in such a manner as to not cause nuisance to adjacent properties.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

NOTES

(1) **Development Plan Consent**

This Development Plan Consent is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced, the date on which the appeal is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the Development Plan Consent, or a fresh development application will be required. The twelve (12) month period may be further extended by written request to, and approval by, Council. Application for an extension is subject to payment of the relevant fee.

(2) **Works Near Boundary**

The development herein approved involves work within close proximity to the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant.

(3) **Separate Dog Registration Required**

This consent does not convey separate dog registration approval for the keeping of dogs on the land, pursuant to the Dog & Cat Management Act (1995). For further information visit: <http://www.ahc.sa.gov.au/Resident/pets-animals/dogs#registration>

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information & Professional Reports
Referral Responses
Representations
Applicant's Response to Representations

Respectfully submitted

Concurrence

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Statutory Planner

Sam Clements
Acting Manager Development Services