

COUNCIL ASSESSMENT PANEL MEETING

10 March 2021

AGENDA – 9.1

Applicant: John Nitschke	Landowner: John Nitschke Nominees Pty Ltd & J V Nitschke & L A Nitschke
Agent: Adelaide Hills Development Service and Botten Levinson Lawyers	Originating Officer: Melanie Scott
Development Application:	19/210/473
Application Description: Change of use from store to include light industry (manufacturing) and building alterations & additions to create 7 separate tenancies, associated car parking, landscaping & earthworks and 3 x 144,000 litre water tanks in addition to the existing farming use (non-complying)	
Subject Land: Lot:16 Sec: P5240 FP:156551 CT:5439/561	General Location: 359 Nairne Road Woodside Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/3	Zone/Policy Area: Watershed (Primary Production) Zone - Onkaparinga Valley Policy Area
Form of Development: Non-complying	Site Area: 8.08 hectares
Public Notice Category: Category 3 Non Complying Notice published in The Advertiser on 29 May 2020	Representations Received: 3 Representations to be Heard: 2

1. EXECUTIVE SUMMARY

The purpose of this application is to change the use of the large building on the land to include light industry and create tenancies in the existing storage and office space associated in addition to the existing farming use. There is also an addition to the building and some new external openings proposed to the existing building, an associated new hardstand area, 3 x 144,000 litre water tanks, car parking, landscaping and earthworks.

The subject land is located within the Watershed (Primary Production) Zone - Onkaparinga Valley Policy Area Zone and the proposal is a non-complying form of development. Two representations in opposition and one representation in support of the proposal were received during the Category 3 public notification period.

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

The large building was constructed in stages by Langseeds in the late 1970s and 1980s and the subject site has had a contentious history since the cessation of the Langseeds operation on the site. Most notably was compliance action with a former owner and former occupier for an unauthorised change of use to warehouse and manufacturing without development approval.

Subsequently Mount Barker Rural applied to use the site as a service trade premise in 2011 and this application was eventually lapsed with the passing of time and failure to provide additional information. It is considered that on balance, formalising certainty of use for the building will be a positive outcome for both Council and the current owner.

This application is retrospective and there is an appeal against an Enforcement Notice currently in the ERD Court concerning the site.

Council considers the changes made on-site an intensification of the use of the land, and the building alterations building work. Council has agreed that there are existing use rights for the parking of four trucks on site as part of the owners' farming operations.

The main issues relating to the proposal are rural amenity, stormwater and appropriateness of the proposal.

The proposal is considered a sensible reuse of an existing building and the impacts on the northern elevation have been mitigated with the addition of landscaping and the location of water tanks in consideration of the existing use of the adjacent northern land.

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:

- Change of use to include an area of 1,152m² as light industry as 1 tenancy
- Retention of existing office associated with storage
- Retention of existing area of storage (3,844m²) as 6 tenancies
- Additions to existing building (345m²)
- New openings to the northern elevation of the existing building
- Hardstand area of approximately 4,500m² including associated earthworks
- 34 car parks and landscaping
- Opening hours 8.00am to 6.00pm 7 days per week

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

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
19 December 1986	86/314/473	Carport
17 January 1986	86/010/473	Hay Shed
23 April 1983	83/119/473	Office/Storeroom
22 September 1980	83/361/473	Seed storage shed extension
24 September 1979	4-169	Seed storage shed
17 December 1979	4-197	Sign
26 November 1979	4-186	Install air conditioning in dwelling
23 July 1979	4-145	Dwelling
25 June 1979	4-137	Car shed

In addition an application was lodged 27 July 2006 for of a change of use from warehouse to 75% warehouse and 25% manufacturing applicant by a company called AgFloat. The application was refused due to non-supply of information in May 2007 which resulted in a section 84 notice and subsequent vacation of the site.

It is unclear how long the unauthorised uses have been on the land. The hardstand was installed sometime between June 2016 and January 2017. Sometime between 2012 and the current day a number of sliding doors were installed on the northern elevation of the existing building. These two actions have changed the way the site operates by enabling all weather vehicle access to the northern and eastern elevations of the building and Council considers both these acts an intensification of use of the site.

The plans have been amended in response to representations and discussion with Council administration with detail on areas of each space, stormwater management, relocation of car parking, survey details of actual land levels in relation to the hardstand and landscaping proposed on the northern boundary. The statement of effect has also been amended to refer to the updated plans. It is considered that the changes made do not alter the essential nature of the development in accordance with Section 39(4) of the *Development Act 1993*.

4. REFERRAL RESPONSES

EPA

The EPA is satisfied provided the development is undertaken in accordance with the plans and specifications submitted with the application, that the proposal will have neutral or beneficial impact on water quality within the Mount Lofty Ranges Water Protection Area. The EPA have recommended one condition and a note (refer condition 8, note 4).

AHC EHO

Council's Environmental Health Officer has granted approval to install a waste water treatment system (refer 20/W208/473).

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. Three (3) representations were received as a result of the public notification. Of these, two representations are opposing the proposal, and one is in support of the proposal. All were from adjacent and nearby properties.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Shane & Bronwyn Skinner	25 Wuttke Road Woodside	Self
James Price & Dee-Anne Hunt	353 Nairne Road Woodside	Masterplan – Greg Vincent

The applicant and/or their representatives – Adelaide Hills Development Services and Botten Levinson Lawyers may be in attendance.

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

- Amenity of the locality
- Creation of a hardstand
- Increased vehicle movement
- Intensification of use
- Hours of operation
- Car parking

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 8.08 hectares in area and a rectangular shape. The land slopes gently up from a low point at Nairne Road (western boundary) to higher by some 8 metres over its 360 metres at the eastern boundary. The subject land contains a house, associated outbuildings and a large building (approximately 5,000m²) historically used as a seed store. There is limited vegetation on the site most of appears to have been planted since the 1980s. Some of the vegetation is on the eastern and southern boundary. DEWNR mapping indicates two bores on the subject land. The balance of the land has historically been used for pasture.

ii. The Surrounding Area

To the west of the subject land is the Crest Land Division and the nearby Department of Defence lands. The allotments to the north and south of the subject land are similar in size and could best be described as rural living. The eastern allotments vary more in size with some smaller rural residential lots and a large landholding which is used for horticulture.

iii. Development Plan Policy considerations

a) Policy Area/Zone Provisions

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

Policy Area

- Retention of the existing rural character by ensuring the continuation of farming and horticultural activities

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

Objectives: 1

PDCs: N/A

The Policy Area provisions of development control do not have a significant contribution to make to the assessment of this proposal. However, the sole objective of the Policy Area seeks the retention of the existing open rural character by continuing farming and ensuring buildings blend with the existing landscape. The hardstand that has been installed is approximately 3,900m² of pasture that has been converted to assist in a reuse of the existing large building on the site. In the context of the site, the hardstand is a small percentage area.

The proposed addition to the building is within the existing footprint of the building and is sited away from the public realm. The screen of existing mature trees to the east is considered to assist with the blending of the building with the existing landscape. Given the existence of the large building on site on balance the proposal is considered to not prevent the continuation of farming and horticultural activities in accordance with the Policy Area's intention.

Zone

The subject land lies within the Watershed (Primary Production) Zone. The Zone provisions seek the following:

- *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 preservation and restoration of remnant native vegetation 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, 5

PDCs: 1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 42, 44

The building is existing and the proposed extension is behind the existing building, and the works proposed do not have any impact on native vegetation or watercourses. On balance the proposed extension is considered in accordance with PDCs 1, 2, 7 & 8. The onsite waste system has been upgraded as an adjunct to this application ensuring the proposal is in accordance with PDC 3.

PDC 9 sets expectations for driveway and access tracks. Arguably the hardstand adjacent the northern elevation is part of an access track. With the exception of the portion of the hardstand adjacent the north eastern portion of the buildings little earthworks have been conducted to facilitate access. The proposed addition to the building has access openings to the east and arguably would not be readily accessible without the filling that has occurred to a depth of between 3 and 4 metres at its extremity. Generally the fill is an average of 1 metre in depth. On balance the proposal is considered in be in accordance with PDC 9.

Originally no landscaping was proposed as part of the proposal. Through negotiation amended plans have been submitted proposing landscaping adjacent the northern boundary and the proposed car parking area. The proposal is considered to be in accordance with PDC 10.

The building exists on site and the proposed extension is to the rear of the building. Glimpses of the existing building is seen when driving along Nairne Road with the building being set back approximately 300 metres from the road.

The neighbours to the north have questioned the proximity of the extension to their property boundary. However it is considered that the addition blends with the existing building and at approximately 50 metres from the shared boundary on balance the proposal is considered in accordance with PDC 11.

PDC 13 sets parameters for the establishment of industry in the zone. Of note the industry portion of the proposed use of the building is approximately 1,152m² (23%) of the total of 4,996m² available building area. Additionally it is acknowledged the amended proposal locates the car parking associated with the light industry on the hardstand (11 spaces). The proposed sheet metal industry is not associated with the processing of local primary produce and arguably would be more appropriate in an industrial area. The proposed light industry does support primary producers with the production of various feed products, for example hay feeders, free range chicken huts and grain feeders for stock. Whilst the proposal is finely balanced against this PDC, the scale of the industrial use in relation to the total built form and consideration that it does produce products used in primary production add weight to the proposal being appropriate if the impacts of the use are managed. The impacts on primary production are considered in the discussion below.

As previously argued the proposal does not detract from the natural and landscape character of the region as the building has existed since 1980 and arguably is a part of the landscape as expected in PDC 14. It is considered important the building is reused as falling into disrepair could impact the landscape to a greater degree.

PDC 15 goes further to discuss intensification of uses and rural character. The industrial portion of the proposal is in the centre of the building and the applicant did provide an acoustic assessment which indicated the industrial use of the site will generate noise to acceptable levels.

The acoustic assessment provided by the applicant noted that if vehicle movements were removed from any noise assessment on site the noise readings on site were well within EPA noise limits. The northern side of the building is proposed for storage use facilitated by the new access doors and the adjacent hardstand. The storage use itself is considered appropriate however the activity associated with storage, being vehicle access and the hardstand to facilitate that is finely balanced. The activities on the northern side of the building are not in accordance with PDC 15, however they can be mitigated. It is considered the amendments to the plans, including landscaping, along with conditions in relation to hours of operation and container storage will adequately mitigate the representors' concerns.

As mentioned previously in this report the light industrial proposal is considered on balance an appropriate intensification and reuse of portion of the building on site. However the hardstand to the north of the subject building and the uses proposed on that side of the building are more finely balanced when considered against PDCs 15, 16 & 17 with regards to primary production capacity. The hardstand has removed a portion of the land available for primary production with approximately 4,500m² of land no longer available for pasture. In the context of the site and the area available for pasture the loss of this portion of the land to hardstand will have a negligible effect on the land available for primary production. However, the hardstand's removal of 4,500m² of available agricultural land is in direct conflict with PDCs 16, 17, 42 & 44.

It appears the introduction of the new doors on the northern side of the building and the introduction of the various storage tenancies has required the hardstand to facilitate access and car parking and in particular, all weather access to both the northern and eastern elevations. Also the proposed extension creates multiple new access points to the building on the eastern elevation. It is considered the use of the hardstand by the land owner for access to his own agricultural storage areas and storage of his agricultural machinery will counter balance the loss of the land to primary production somewhat.

b) Council Wide provisions

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

- orderly and economic development

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

Animal Keeping and Rural Development

Objectives: 1, 2, 3 & 5

PDCs: 1 & 4

The majority of the subject site will be used as it is now for storage purposes in accordance with PDC 1. The proposal has been amended to include a plan for management of stormwater from the handstand via an easement to a neighbouring allotment. Noise has been addressed with the provision of an acoustic assessment with regards to light industry. The amended plans propose landscaping to the north of the hardstand. The proposed landscaping along with conditions regarding hours of operation and the length of time shipping containers can be on site are considered on balance to address representor concerns. The activities proposed on site are not generally waste generating activities, however a condition is recommended to manage this (refer recommended condition 9). On balance the proposal is considered to be in accordance with PDC 4.

Bulk Handling and Storage Facilities

Objectives: 1

PDCs: 1, 2, 4

PDC 1 does suggest facilities for handling, storage and dispatch of commodities in bulk should be located in a primary production zone as well as industry zones and be sited and designed to minimise impacts on the environment and nearby sensitive land uses.

On balance given the landscaping proposed adjacent the hardstand the proposal is considered to be in accordance with PDC 1.

PDC 2 sets design standards for storage facilities. The proposal does include areas for manoeuvring of vehicles and the surface of the hardstand does appear to be a material which minimises dust. Aside from access, all vehicle movements are on site. Landscaping is currently proposed adjacent the northern property boundary but not security fencing. The latter would affect the amenity of the site and is not viewed as essential. Although the neighbouring allotment to the north is currently screened by their own landscaping and a building, there is considered to be some benefit to additional landscaping in managing amenity issues with noise and dust. The proposal does increase the intensity of use of the site for storage as it has multiple tenants and the focus of the storage activities is on the northern portion of the site which previously was only pasture. Given the proposal is for reuse of an existing building and the proposed landscaping, on balance the proposal is considered in accordance with this PDC.

Site access is existing and is in accordance with PDC 4.

Design and Appearance

Objectives: 1, 2

PDCs: 1, 3, 8, 9, 18, 27

The buildings are in place so in context of the existing built form the addition is considered in accordance with PDC 1. The extension is a modest addition of 345m² in the shadow of the existing building and is not expected to alter the exterior appearance of the building greatly, other than access being created on the eastern elevation. On balance the proposal is considered to be in accordance with PDC 1. It is noted the existing building is light in colour, some portions appear to have been painted a cream/pale eucalypt colour and some are galvanised. The proposed addition will be finished in the same materials as the existing building. On balance the proposal is considered to be in accordance with PDC 3 which requires non reflective materials.

Hazards

Objectives: 1, 4, 7

PDCs: 2, 3, 22

The applicant has proposed a solution for stormwater from the hardstand which includes an easement over neighbouring land. The building has been in place for 40 years and no flooding has been reported. On balance the proposal is considered to be in accordance with PDCs 2 & 3.

A representor has raised the issue of the nature of the fill in the north eastern portion of the site being contaminated. The applicant's agent has stated "There is no evidence the fill on the land comprises recycled bitumen or indeed any other contaminant. Our client instructs us that the fill does not comprise recycled bitumen nor any other contaminants. Further, the fill on the land does not form part of this application therefore it is not appropriate to raise this issue in a representation. In any event, we note that if any part of the land were found to be contaminated this would be an issue

for the Environment Protection Authority (EPA) and would be properly dealt with by the EPA pursuant to the *Environment Protection Act 1993*."

It is recommended that a note regarding site contamination be included in any approval granted (refer note 5). On balance the proposal is considered to be in accordance with PDC 22.

Industrial Development

Objectives: 1, 4, 6

PDCs: 1, 3, 4, 6, 9

The proposal is not an agricultural industry, but in part the proposal is to change 1152m² of the building which has existing use rights as a bulk handling and storage facility for agricultural products to light industry. The existing use and associated office is considered to be in accordance with PDC 1 with regards to being located centrally location on the site and access. The other uses on the site do not propose offices or permanent office staff.

Forward entry and exit to the site in accordance with PDC 2 is available. The buildings are set back approximately 300 metres from the road and the contours of the land ensure the proposal is in accordance with PDC 4 in terms of impact on visual amenity from the road.

The industrial portion of this proposal is located centrally on the site and is greater than 100 metres from adjacent sensitive receptors. An acoustic assessment provided with the application suggests the industrial portion of the proposal is in accordance with PDC 6 as it will cause minimal disruption to the amenity of the area.

Parking is off street and has been provided in accordance with PDC 9 and table 4 with regards to Industry, store and warehouse. The plan would require 48 car parks and this was proposed in the publically notified documents. The amended proposal has 34 carparks proposed and 14 have been relocated from the eastern boundary to the northern hardstand. It is unlikely 34 carparks will be required, so the short fall is considered acceptable. The car parking calculations are shown in the table below:

DP requirements	Proposal area	Parks required	Parks proposed
3.3 per 100 metres total floor area of the office component	42 m ²	1.3	
Plus for the non-office component 2 per 100 square metres up to 200 square metres	200m ²	4	
1.33 per 100 square meters between 200 and 2000 square metres	1800m ²	23.4	
.67 per 100 square metres over 2000 square metres	3000m ²	20	48

Interface Between Land Uses

Objectives: 1, 2, 3

PDCs: 1, 2, 7, 8

The proposal has adequately addressed the amenity issues identified in PDC 1 particularly with the addition of landscaping on the northern boundary. It is recommended that conditions are imposed to reinforce the hours of operation, delivery, collection and waste vehicles and the placement of shipping containers on the land to further minimise potential amenity impacts.

As the proposal is for the reuse of portion of an existing large building it is considered to be in accordance with PDC 2 as it is already on the land and evidence has been provided to suggest the other amenity impacts can be managed. The nearest dwelling is some 172 metres from the building and associated hardstand. The dwelling on the subject land is the nearest dwelling to the building and the neighbouring land to the north does not currently contain a dwelling. The northern elevation has been somewhat ameliorated by proposed landscaping and any future dwelling will be a minimum of 71 metres from the building and a minimum of 45 metres from the hardstand. The northern land has a large shed in proximity to the boundary with the subject land and a significant existing screen of vegetation on their own land.

As previously discussed an acoustic assessment was provided with the application. Council note this report indicates no sensitive receptors to the north of the subject building, records hours of operation to be 8am – 6pm seven days a week with up to 13 small vehicle and 4 larger vehicle movements per day with the exception of the harvest periods between February and April each year. The acoustic assessment noted “the dominant noise source controlling the predicted environmental noise levels at all receiver locations are the vehicle movements”. Finally the acoustic assessment concluded the predicted noise levels meet the relevant noise limit at the nearest existing noise affected premises without the need for additional acoustic treatment. A representor did raise a concern that the acoustic assessment use of EPA standards for agricultural industry may have been inappropriate. However, it is noted the noise level for agricultural industry is less than general industry and the acoustic assessment concludes the noise breakout from the light manufacturing tenancy are well below the allowable level. Council is generally satisfied the proposal is in accordance with PDCs 7 & 8.

Natural Resources

Objectives: 1, 2, 3, 6, 7, 10

PDCs: 1, 2, 11, 13, 14, 15, 18

As previously discussed the proposal is considered for many reasons to minimise impact on the environment and natural assets largely as is it reuse of an existing building and is considered in accordance with PDCs 1 & 2. In addition to existing onsite stormwater management an easement has been proposed over neighbouring land through a pipe and then a swale for management of stormwater from the hardstand and the proposal is considered in accordance with PDCs 13, 14, 15 and 18.

Orderly and Sustainable Development

Objectives: 1, 3, 10

PDCs: 1, 3

By re-using an existing building and locating the industrial use centrally within the building to minimise impacts on neighbours the proposal is considered in accordance with PDC 1. Further in the opinion of staff the proposal does not jeopardise the continuance of adjoining land uses in accordance with PDC 3.

Siting and Visibility

Objectives: 1

PDCs: 1, 4, 5, 7, 9, 10

As the proposal repurposes portion of an existing building which is well set back from the road and adjoining boundaries the visual impact of the proposal on rural and natural character of the area is considered in to be in accordance with PDC 1. A very small portion of the fill on the site is greater than 1.5 metres in depth in the north eastern portion of the hard stand. The fill is approximately 25 metres from the northern boundary and 8 metres from the eastern boundary. Given the batter has been in place for 2 -3 years without subsidence no treatment is proposed. On balance the proposal is considered in accordance with PDC 4.

PDC 7 concerns the external appearance of buildings as previously addressed in this report. The proposal is considered in accordance with PDC 7. Whilst there are often shipping containers on the northern hardstand there is no intention to permanently have them there and conditions have been suggested to manage containers on site.

The hardstand and driveway north of the building is a black compact gravel surface which appeared to not be too dusty on-site inspection. It is not spray sealed. On balance the proposal is in accordance with PDC 9.

There is existing vegetation on the site and neighbouring sites which may need some enhancement for the parking proposed on the hardstand particularly in the north western portion. The addition of landscaping on the northern boundary of the subject land ensures on balance the proposal is in accordance with PDC 10.

Transportation and Access

Objectives: 2

PDCs: 14, 28, 32, 39

All loading and unloading is on site in accordance with PDC 14 and there is only one access point to the site in accordance with PDC 28. The proposed driveways and hardstand with the exception of the north eastern portion are in accordance with PDC 32. The additional fill in the north eastern portion is considered minor in the scheme of the site. Currently 48 car parking spaces have been identified for the site. The parking proposed adjacent the eastern boundary was raised by a representor as an issue however those carparks have been consolidated with the carparks proposed on the hardstand. The parking identified is in excess of the number of staff expected on site by the current tenants. However, given the broad nature of the change of use the development plan requires a greater number of car parks which may be activated by a

change in tenancy. It is recommended the parking be line marked in accordance with Australian standards. (refer recommended condition 12).

Waste

Objectives: 1

PDCs: 1, 2, 5, 6

A new on site waste system will be installed as a part of any approval for this site and a hard waste collection area has been identified to the rear of the site. The proposal is considered in accordance with PDCs 1, 2, 5 & 6.

7. SUMMARY & CONCLUSION

This application is retrospective. There is an active section 84 enforcement matter in the ERD Court concerning the site. In particular it is unclear how long the unauthorised uses have been on the site and there is some dispute about the hardstand north of the building even being development. The hardstand was installed sometime between June 2016 and January 2017. Sometime between 2012 and the current day a number of sliding doors were installed on the northern elevation of the existing building. These two actions have changed the way the site operates by enabling all weather vehicle access to the northern and eastern elevations of the building. Council considers that the proposed activities are an intensification of the use of the land and an additional to the use of the land for storage and agriculture. Also during this time Council has agreed to the parking of four trucks on site as part of the owners farming operations.

All the aforementioned has the potential to impact on the rural amenity of the northern neighbours in particular, noting these neighbours do not have a dwelling on site. The addition of the proposed landscaping along the northern boundary will act as a screen of the development and the hardstand for the northern neighbours. Further car parking proposed on the eastern boundary has been consolidated into the hardstand area. There is an argument general storage in a rural area is inappropriate, hence the non-complying nature of the proposal. Had the proposal been for a new building it would have been unlikely to garner Council support. However, the proposal is for a sensible re-use of an existing building which was in danger of falling into disrepair. Whilst some consideration was given to limiting the type of goods stored in the building to those associated with agriculture, that avenue of enquiry would lead to ongoing site management issues. The proposal for approximately 1/5th of the building to be used for an industry which supports agricultural activity is considered acceptable. Council are therefore recommending that the use of the remainder of the building for storage of goods is acceptable and the application has afforded an opportunity to add some conditions to the operation of the site to maintain amenity and bring the building up to modern building fire safety requirements.

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 19/210/473 by John Nitschke for a change of use from store to include industry (manufacturing) including building alterations & additions & car parking (non-complying) at 359 Nairne Road Woodside 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 drawing A6 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021
- Amended floor plan drawing A7 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021
- Amended North and East elevation plan drawing A 8 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021
- Amended West and South elevation plan drawing A9 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021

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

(2) Shipping Containers

The number of shipping containers on the land must comply with the following criteria:

- Shipping containers shall only be associated with delivery of goods to the land
- Shipping containers shall not be used for additional storage space
- No more than three (3) shipping containers shall be kept on the land at any one time
- All shipping containers shall be unpacked and removed within 48 hours of delivery
- Shipping containers must only be placed on the hardstand area on the northern side of the building between the car parking and the building and should not inhibit safe access and egress

REASON: To maintain and enhance the visual amenity of the locality.

(3) Hours of Operation

The operating hours of the light industry and the storage tenancies shall be 8.00am to 6.00pm seven days a week.

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

(4) Stormwater Management – Soakage Trench

All roof run-off and surface run-off generated by the development hereby approved shall be managed on-site in accordance with the civil design to prevent trespass onto adjoining properties and to the satisfaction of Council.

The stormwater management system shall be constructed, and connected to the approved overflow (including overflow from rainwater tanks), within one month of Development Approval.

REASON: To minimise erosion, protect the environment and to ensure no ponding of stormwater resulting from development occurs on adjacent sites.

(5) Timeframe For Landscaping To Be Planted

Landscaping detailed in the amended proposed site plan from Michael Watson Architect drawing number A6 project number NIT 004 dated 23 February 2020 shall be planted in the planting season following Development Approval and maintained in good health and condition at all times. Any such vegetation shall be replaced in the next planting season if and when it dies or becomes seriously diseased.

REASON: To maintain and enhance the amenity of the locality.

(6) Maximum number of tenancies and further Building Works

In accordance with the plans herein approved the maximum number of tenancies shall not exceed seven (7). A separate approval will need to be made be sought for any changes to the approved configuration or number of tenancies.

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

(7) EPA Condition

The wastewater management system must be installed and operational in accordance with the *On-site Wastewater Management Report prepared by Maxwell Consulting Engineers marked Version (A) dated 28 August 2020* and the *Stormwater and Wastewater Plan prepared by Michael Watson Architect marked Project Number NIT 004 (A11) dated 2 November 2020* within three (3) months of Development Approval being granted.

(8) Removal Of Solid Waste

All solid waste including food, leaves, papers, cartons, boxes and scrap material of any kind shall be stored in a closed container having a close fitting lid. The container/s shall be stored in an area close to the building and not in the car parking area.

REASON: To maintain the amenity of the locality.

(9) Delivery, Collection and Waste vehicle movement

Delivery, collection and waste vehicle movements to the site shall be with the span of operating hours in condition 4 with the exception of Sundays.

REASON: To maintain the amenity of the locality.

(10) Commercial Lighting

Flood lighting shall be restricted to that necessary for security purposes only and 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.

- (11) **Gravel carparking Designed In Accordance With Australian Standard AS 2890.1:2004.**
All car parking spaces, driveways and manoeuvring areas shall be designed, constructed, and line-marked in accordance with Australian Standard AS 2890.1:2004. Line marking and directional arrows shall be clearly visible and maintained in good condition at all times. Driveways, vehicle manoeuvring and parking areas shall be constructed of compacted gravel prior to occupation and maintained in good condition at all times to the reasonable satisfaction of the Council.

REASON: To provide adequate, safe and efficient off-street parking for users of the development.

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) **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.

(3) **Department of Environment and Water (DEW) - Native Vegetation Council**

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](http://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.

(4) **EPA Notes**

The applicant is reminded of its general environmental duty, as required by section 25 of the *Environment Protection Act 1993*, to take all reasonable and practicable 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:

- EPA information sheets, guidelines documents, codes of practice, technical bulletins etc can be accessed on the following web site: <http://www.epa.sa.gov.au>

(5) Site Contamination Investigations

Council has relied on the site investigations undertaken as evidence there are no known contaminants present to prevent the site being used for residential use. There can be no complete guarantee that contaminants are not present at significant concentrations in some areas. Should site works or other research uncover additional information in relation to site contamination, persons having benefit of this authorisation may need to undertake further investigations.

(6) Additional Signage Requires Separate Development Application

A separate development application is required for any signs or advertisements (including flags and bunting) associated with the development herein approved.

9. ATTACHMENTS

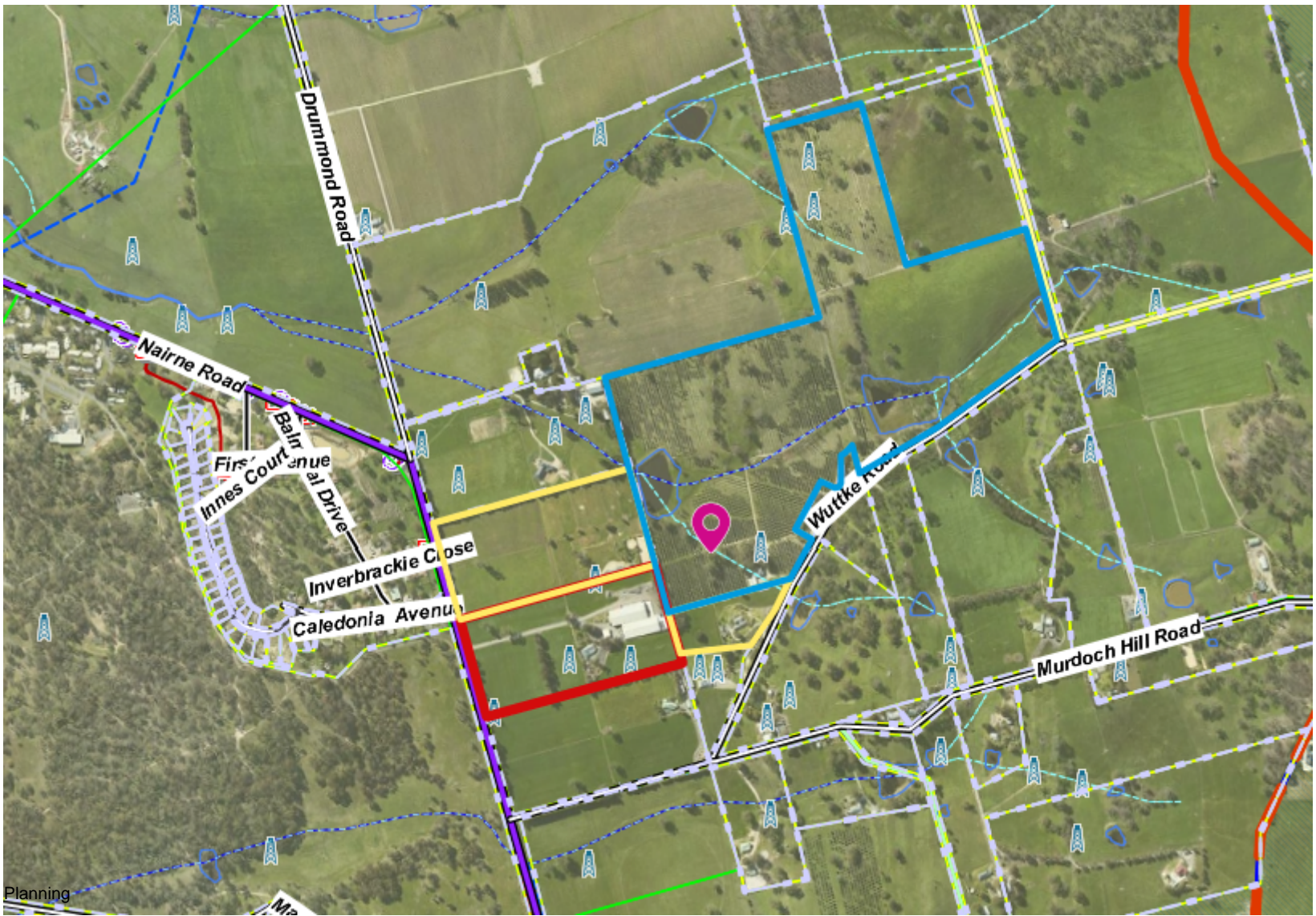
Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Referral Responses
Representation
Applicant's response to representations
Publically Notified Plans

Respectfully submitted

Concurrence

Melanie Scott
Senior Statutory Planner

Deryn Atkinson
Assessment Manager



Annotations

- Representor 2 (Supports)
- Representor 3 (Opposes)
- Representor 1 (Opposes)
- Subject Site

Planners Summary

- PlanningSummary

AHC Core

- Parks
- Townships
- RoadsStreetView
 - ADJOINING LGA RD
 - AHC & PRIVATE
 - AHC RD
 - DPTI RD
 - PRIVATE RD
 - SHARED RD

- PropertyOwner
- Parcels
- Roads
- Suburbs
- Rivers
 - River
 - Creeks
 - Streams

Flood Study Data

- TorrensFloodZones_20Yr

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500 m



Planning

1

Site Plan

1 : 1000

ADJACENT BUILDING

403.71

413

412

410

PROPERTY BOUNDARY

NEW SCREENING SHRUBS AND TREES: MELALEUCA, BANKSIA AND ACACIA SPP

PASTURE

EDGE OF FILL

34 CARPARKS

FIRE-APPLIANCE ACCESS ON EXISTING GRAVEL

432,000-LITRE
STATIC WATER
STORAGE

EDGE

BATTER

EXISTING MATURE EUCALYPTS

410

411

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EXISTING MATURE

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EXISTING MATURE

GRAVEL DRIVEWAY

35009

EXISTING WAREHOUSE

PROPOSED
ADDITION

EXISTING WAREHOUSE

EXISTING
SHED

HYDRANT

EXISTING MATURE
EUCALYPTS

EXISTING
HOUSE

WATER SUPPLY PIPELINE

EXISTING
TANKS

PROPOSED GRAVEL FIRE-APPLIANCE ACCESS ROAD

PASTURE

EXISTING MATURE
EUCALYPTS

PASTURE

EXISTING WATER SUPPLY PIPELINE

EXISTING
BORE

BOUNDARY

BOUNDARY

201.00

201.10

403.00

**ADELAIDE HILLS COUNCIL
RECEIVED 23 February 2023**

Michael Watson Architect

Mob 0432 990 960

216 Mount Bold Road, Bradbury, S.A. 5153

michaelwatsonarch@bigpond.com



RETROSPECTIVE APPLICATION FOR ALTERATIONS TO A
WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE, S.A. FOR
CARLTON NITSCHKE INVESTMENTS PTY.LTD.

Proposed Site Plan

Project number NIT 004

Date 23.2.20

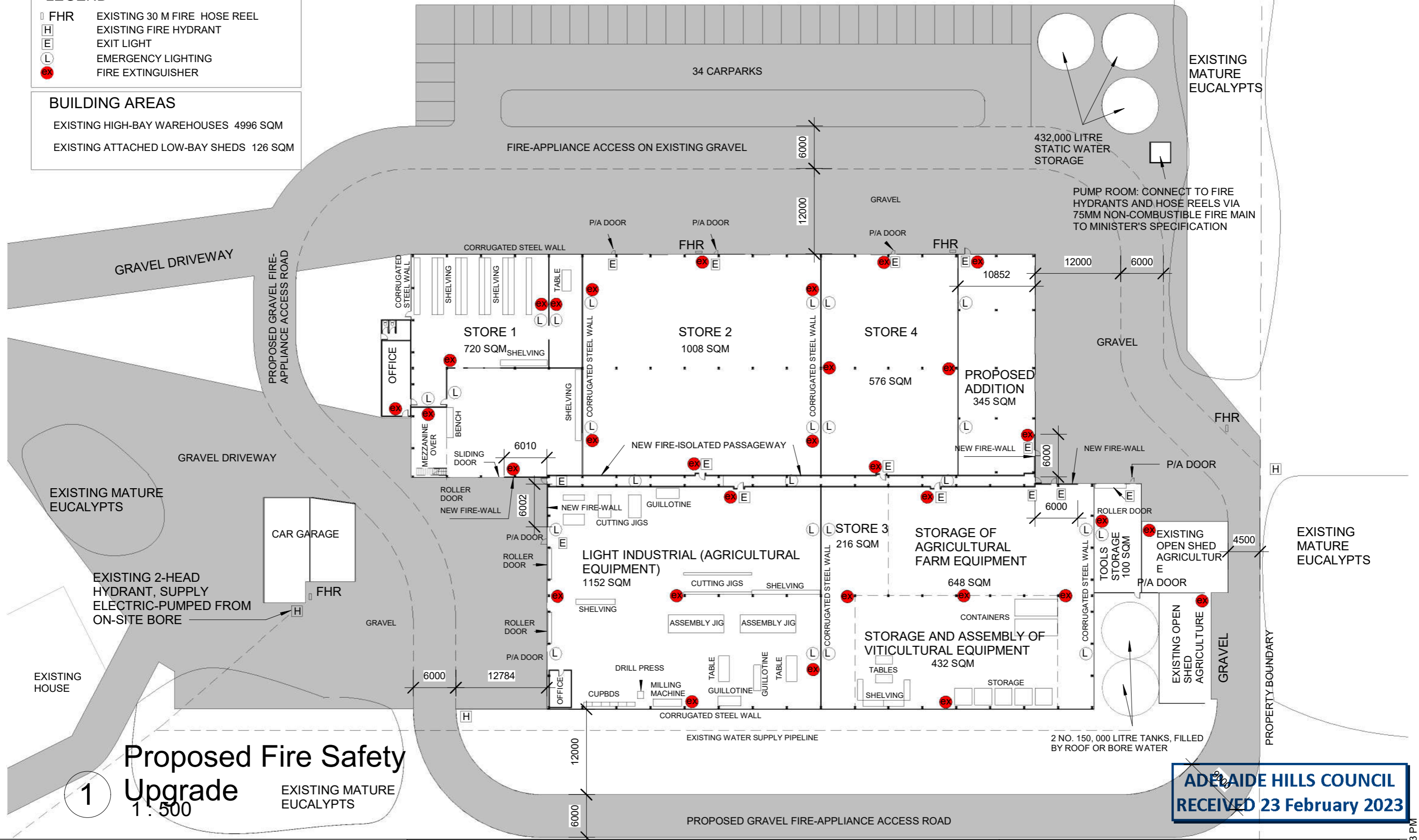
Drawn by MRW

Scale 1 : 1000

A 6

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- LEGEND**
- FHR EXISTING 30 M FIRE HOSE REEL
 - H EXISTING FIRE HYDRANT
 - E EXIT LIGHT
 - L EMERGENCY LIGHTING
 - EX FIRE EXTINGUISHER
- BUILDING AREAS**
- EXISTING HIGH-BAY WAREHOUSES 4996 SQM
 - EXISTING ATTACHED LOW-BAY SHEDS 126 SQM



Proposed Fire Safety Upgrade
1:500

ADELAIDE HILLS COUNCIL
RECEIVED 23 February 2023

Michael Watson Architect
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michaelwatsonarch@bigpond.com

RETROSPECTIVE APPLICATION FOR ALTERATIONS TO A WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE, S.A. FOR CARLTON NITSCHKE INVESTMENTS PTY.LTD.

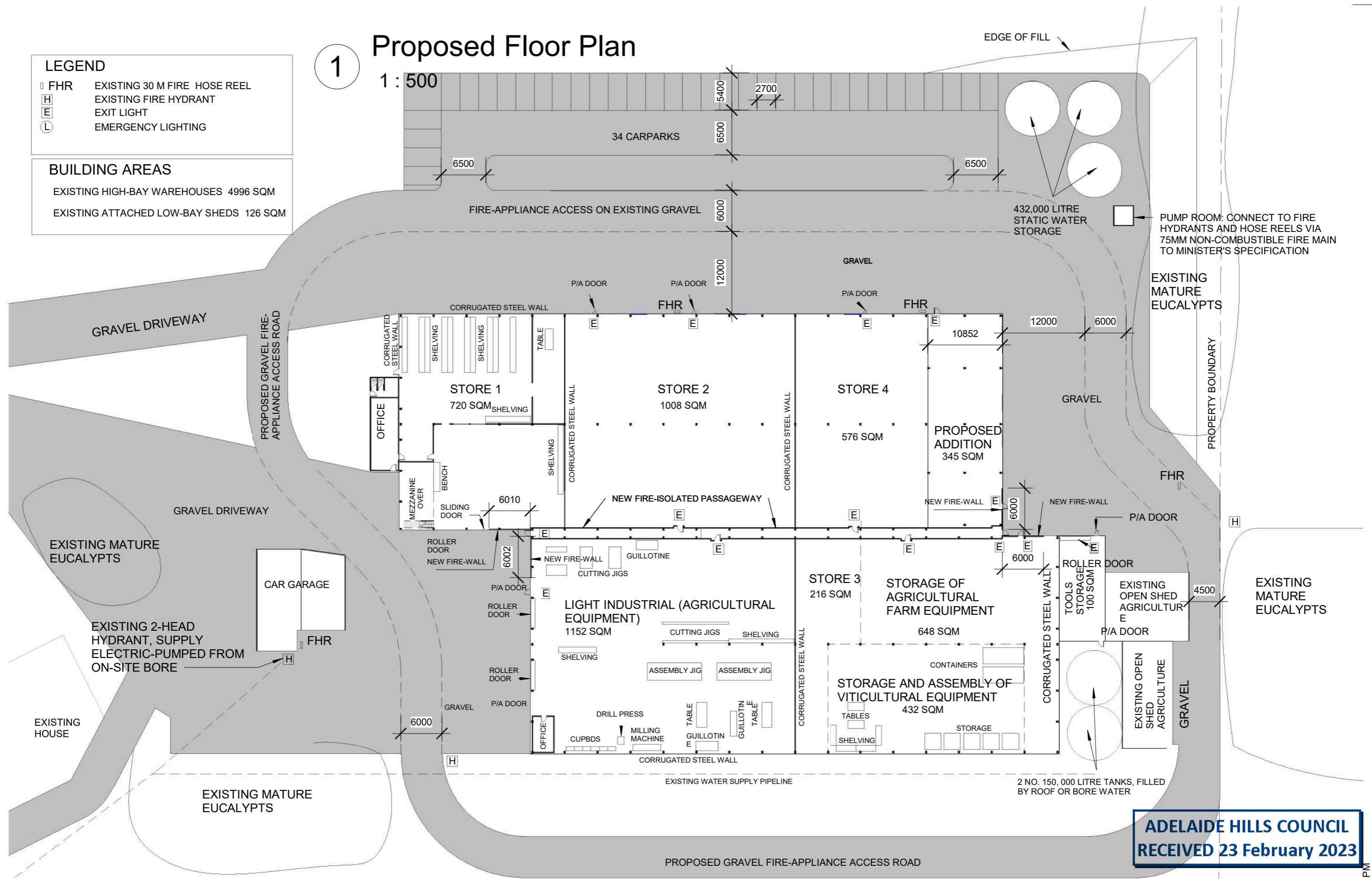
Proposed Fire Safety Upgrade		A 12
Project number	NIT 004	
Date	23.2.20	
Drawn by	MRW	Scale 1:500

23/02/2021 3:07:43 PM

1 Proposed Floor Plan

1 : 500

- LEGEND**
- FHR EXISTING 30 M FIRE HOSE REEL
 - H EXISTING FIRE HYDRANT
 - E EXIT LIGHT
 - L EMERGENCY LIGHTING
- BUILDING AREAS**
- EXISTING HIGH-BAY WAREHOUSES 4996 SQM
 - EXISTING ATTACHED LOW-BAY SHEDS 126 SQM



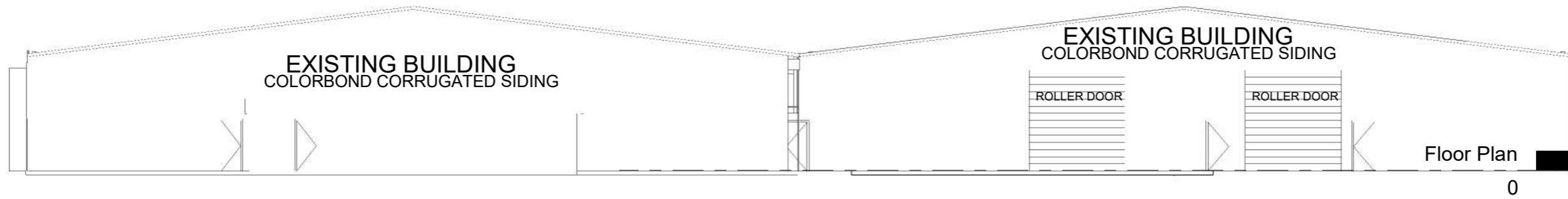
**ADELAIDE HILLS COUNCIL
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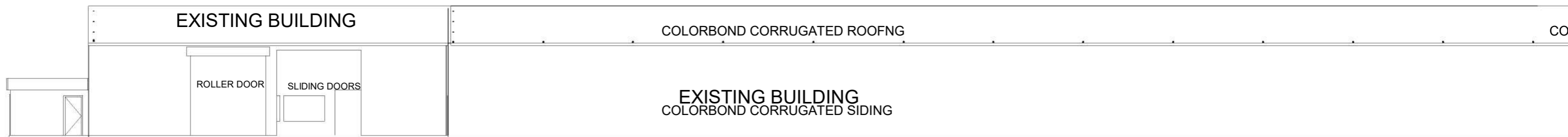
**RETROSPECTIVE APPLICATION FOR ALTERATIONS TO A
 WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE, S.A. FOR
 CARLTON NITSCHKE INVESTMENTS PTY.LTD.**

Proposed Floor Plan		A 7
Project number	NIT 004	
Date	23.2.20	
Drawn by	MRW	Scale 1 : 500

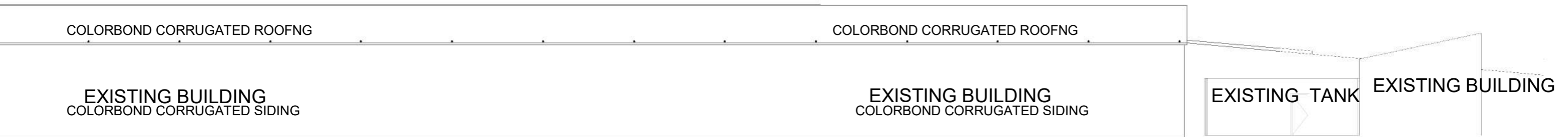
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1 Proposed West Elevation
1 : 200



2 Proposed South Elevation
West End
1 : 200



3 Proposed South Elevation
East End
1 : 200

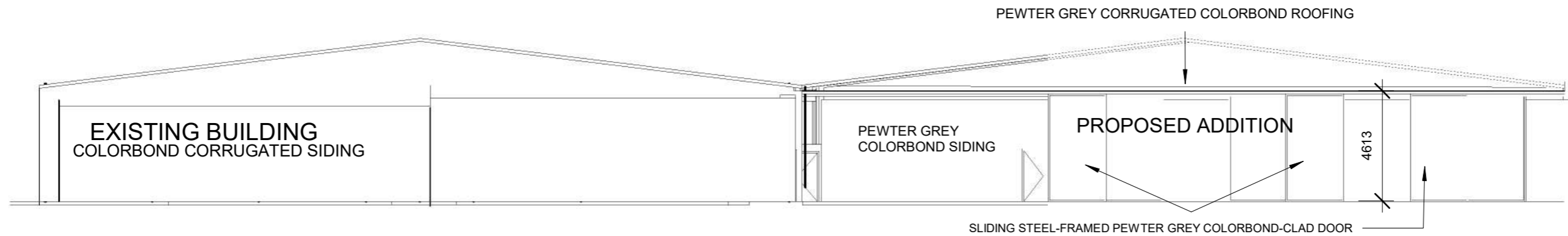
**ADELAIDE HILLS COUNCIL
RECEIVED 23 February 2023**

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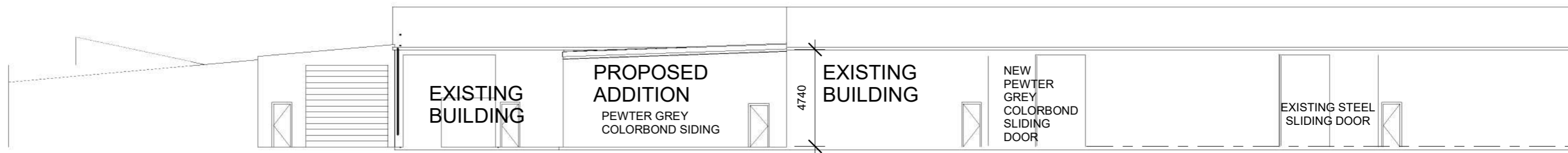
RETROSPECTIVE APPLICATION FOR ALTERATIONS TO A
 WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE, S.A. FOR
 CARLTON NITSCHKE INVESTMENTS PTY.LTD.

Proposed West and South Elevations		
Project number	NIT 004	A 9
Date	23.2.20	
Drawn by	MRW	Scale 1 : 200

23/02/2021 3:06:54 PM



1 East Elevation
1 : 200



2 Proposed North Elevation
East End
1 : 200

3 Proposed North Elevation
West End
1 : 200



Michael Watson Architect
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 216 Mount Bold Road, Bradbury, S.A. 5153
 michaelwatsonarch@bigpond.com

RETROSPECTIVE APPLICATION FOR ALTERATIONS TO A
 WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE, S.A. FOR
 CARLTON NITSCHKE INVESTMENTS PTY.LTD.

Proposed North and East Elevations

Project number	NIT 004	A 8
Date	23.2.20	
Drawn by	MRW	Scale 1 : 200

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Combined Statement in Support/Statement of Effect

Development Regulations 2008, Regulation 17(1) and (4)

DA 19/210/473

Development Application seeking Development Plan Consent for a reconfiguration of an existing storage and office facility, the addition of agricultural light industry uses in an existing building, water tanks, landscaping and car parking

23 February 2021

**ADELAIDE HILLS COUNCIL
RECEIVED 23 February 2023**

Statement of Effect pursuant to Regulation 17(1) and (4) of the *Development Regulations 2008*

Development Application seeking Development Plan Consent for a reconfiguration of an existing storage and office facility, the addition of agricultural light industry uses in an existing building, water tanks, landscaping and car parking

BACKGROUND

We act for Carlton Nitschke Investments Pty Ltd, John Nitschke Nominees Pty Ltd (ACN 007 758 947) and John and Lynette Nitschke, who control the land at 359 Nairne Road, Woodside, comprised in Certificate of Title Volume 5439 Folio 561 (**Land**).

Mr John Nitschke is the applicant for DA 19/210/473 which in its initial form, sought development plan consent for development described by the Council as "*change of use from warehouse (storage of seed) to stores, industry, office and truck parking, including addition to building - non-complying*" (**the Application**).

This Statement of Effect is prepared pursuant to section 39 (2)(d) of the *Development Act 1993 (Act)* and *Regulation 17(4)* of the *Development Regulations 2008 (Regulations)*. Regulation 17(5) provides that a Statement of Effect must include :

- (i) *a description of the nature of the development and the nature of its locality; and*
- (ii) *a statement as to the provisions of the Development Plan which are relevant to the assessment of the proposed development; and*
- (iii) *an assessment of the extent to which the proposed development complies with the provisions of the Development Plan; and*
- (iv) *an assessment of the expected social, economic and environmental effects of the development on its locality; and*
- (v) *any other information specified by the relevant authority when it resolves to proceed with an assessment of the application (being information which the relevant authority reasonably requires in the circumstances of the particular case).*

This combined Statement of Effect and Statement in Support replaces and supersedes all other Combined Statement of Effect and Statement of Supports previously submitted with this application.

In preparing this Statement, we have reviewed the proposal against the relevant provisions of the Adelaide Hills Council Development Plan (consolidated 24 October 2017).

Before dealing with the matters required by regulation 17, we will set out variations to the Application that our clients now seek, pursuant to section 39(4) of the Act.

**ADELAIDE HILLS COUNCIL
RECEIVED 23 February 2023**

Varied application and amended plans

Subsequent to discussions with the Council's planning and compliance officers, my clients have decided to vary the Application. This Statement therefore also constitutes

a formal request to vary my clients' application and the plans pursuant to section 39 (4)(a) of the Act.

Accordingly, please find **enclosed** the following amended and new plans, which form part of the varied application, prepared by Michael Watson (Architect):-

1. "Existing Floor Plan" dated 9 April 2020;
2. "Existing Building North and East Elevations" dated 9 April 2020;
3. "Existing Site Plan" dated 9 April 2020;
4. "Existing Building West and South Elevations" dated 9 April 2020;
5. "Locality Plan" dated 9 April 2020;
6. "Proposed Site Plan" dated 23 February 2021
7. "Proposed North and East Elevation plans" dated 23 February 2021
8. "Proposed Floor Plan" dated 23 February 2021
9. "Proposed West and South Elevation plans" dated 23 February 2021
10. "Proposed Fire Safety Upgrade" dated 23 February 2021

The nature of the variations to the Application are described in detail below. Before dealing with them, I provide the following views as to the lawful existing use of the Land, which is relevant to the approach to the assessment of this application as varied herein.

Legal principles - interpreting an existing use

The principles for construing a lawful existing use were set out in *Royal Agricultural Society of NSW v Sydney City Council*¹ and have been applied by the South Australian Supreme Court and other Courts on a number of occasions.

The existing use principles establish that it would be unjust to deprive a landowner of the right to use land for an existing purpose. Accordingly, the Courts have established that whilst the interpretation of an existing use will vary on the facts of each case, the nature of the existing use should be liberally construed:-

...the general approach to be taken is one of construing the 'use' broadly. It is to be construed liberally such that confining the user to precise activity is not required. What is required is the determination of the appropriate genus which best describes the activities in question...In determining that genus, attention should be focused on the purpose for which the determination is being made. This is a town planning purpose. If therefore considers the use from the perspective of the impact of the use on the neighbourhood...²

It is clear from the cases that it is only necessary to identify the broad "genus" of the existing use, when construing the nature and scope of existing use rights. It is generally the wrong approach to conduct a detailed analysis of individual processes and activities on land when construing the existing use.

In some cases, the level of generality at which an existing use can be characterised will be affected by the specificity of a condition of approval or other specific restriction on a previous land use³. However, those cases will be relatively rare and generally speaking, the broad, liberal approach to the interpretation of an existing use will be appropriate.

Lawful existing use of the Land

**ADELAIDE HILLS COUNCIL
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¹ *Royal Agricultural Society of NSW v Sydney City Council* (1987) 61 LGRA 305 per McHugh JA at [309-310].

² *Mitcham v Fusco* [2002] SASC 423, citing with approval *North Sydney Municipal Council v Boyts Radio and Electrical Pty Ltd* (1989) 67 LGRA 344, per Kirby P.

³ See for example, *Mount Barker District Council v Palma* [2002] SASC 423 at [31].

I am instructed that the Council holds the following statutory approvals granted under planning legislation for the Land:

- (i) DA 18/13 "alterations and additions";
- (ii) DA 563/4 - 361/83 - "seed storage shed extension" granted 28 November 1983;
- (iii) DA 563/4 - 314/86 - "car port";
- (iv) DA 563/4-119/83 - "office/storeroom" granted 26 April 1983;
- (v) DA 563/4 - 101/86 - "Hay shed";
- (vi) DA 4/252 - "storage shed extension" dated 6 September 1980;
- (vii) DA 4/169 - "seed storage shed" (ref S:W: 12/7) dated 20 November 1979;
- (viii) DA 4/137 - "car shed";
- (ix) DA 4/145 - "dwelling".

It is tolerably clear from at least the existing statutory approvals and the associated approved plans provided to us, that the main building on the Land enjoys lawfully existing use rights in the nature of a "store" and an "office".

The Land more broadly also appears to enjoy lawful existing use rights for residential uses (the dwelling) and agricultural or farming type uses, which I understand were conducted historically on the land since before planning controls were promulgated.

The Council has described the nature of the lawful existing use rights for the main building as a "warehouse" albeit there is no evidence to support that suggestion. The historic approved plans show a use in the nature of a store and small office with associated toilet facilities.

While there are references occasionally in some of the approvals to "hay shed" or "seed storage shed", it is difficult to see why the approvals should be read down as limiting the storage of certain goods or for a certain type of business. In my view, consistent with the approach of the Courts, the lawful use of the main building should be **broadly construed** as a "store" and "office".

In addition to the above, the parking of trucks and other heavy vehicles on the land is part of the general farming use of the land. My client parks heavy vehicles and equipment from time to time on the land. The vehicles are used for, amongst other things, hay carting, farm staff amenities, site administration, ploughing, planting, harvesting, stock transport and similar farm-related activities. It follows that the heavy vehicle parking at the land is ancillary and subordinate to the broad farming and storage uses of the land and the main building. The parking of trucks and other heavy vehicles is therefore within the existing use rights for farming purposes.

THE LAND AND THE LOCALITY

The land is some 8.1 hectares in area and is of a regular shape. It has a single frontage to Nairne Road. As mentioned, it contains a large existing building of some 5,000 m² in total floor area (which has historically been approved for and used as a store and office), a single detached dwelling (which is presently tenanted) and associated outbuildings and structures, including aboveground water tanks, hardstand manoeuvring areas, car parking and landscaping.

Large portions of the land are vacant albeit I am instructed that some of those have previously been used for low intensity agricultural activities from time to time.

The broader locality includes the Inverbrackie Detention Centre (to the west across Nairne Road), scattered dwellings and horticultural and farming uses generally to the north, east and south. The closest dwellings to the land are located along Wuttke Road and Murdoch Hill Road, generally to the south and east of the site.

DESCRIPTION AND NATURE OF THE PROPOSED DEVELOPMENT

Bearing in mind the nature of the lawful existing use rights, the proposed development (as varied) is for a reconfiguration of an existing storage and office facility, the addition of agricultural light industry uses in an existing building, water tanks, landscaping and car parking

Need for the proposed development

My client seeks development plan consent for the proposed development so that a productive use can be made of its substantial existing storage and office building, which would otherwise be in part vacant and unused.

My clients operate a farming and mining business at Hahndorf. They wish to continue using a portion of the building as an overflow agricultural storage facility for their own farming equipment (see Schedule attached), given that the main building offers a safe and secure area for this storage to continue.

However, as the balance of the building is not presently required for their own storage, they wish to lease those portions to other local businesses. In particular, our clients saw an opportunity to add value to the local primary production industry by accommodating local agricultural businesses, Aussie Feeders (agricultural light industry), Malcolm Villers (storage of viticultural equipment) and Mr Trevor Flowers (pallet storage for a nursery), into the building. Our clients also wish to utilise the general storage areas by leasing a portion of the warehouse to the furniture and homewares company, Living by Design. This business, which began in the Adelaide Hills as Balhannah by Design, seeks storage space for furniture and homeware goods.

The remainder of the areas of the building are now proposed to be used simply for low-key storage (and a small continuing office use) for other local businesses on a short-term basis, commensurate with the existing use rights for the building as a "store" and "office".

My client proposes to accommodate all of the small agricultural and other businesses in the building pursuant to informal, ongoing short term (typically 12 month) leases. If my client requires portions of the building for its own agricultural/farm storage purposes, then it would terminate the leases with others and again occupy those portions of the building as needed. There is no land division proposed or required as part of the proposed leases or the proposed development generally.

By reference to the **attached** "current uses" plan, I will describe the use of the main building in further detail below.

"Store 1" and "Office" - Casa Light and Power

The area labelled "Store 1" and "Office" will be used for the continuation of the lawful and existing store and office uses of this portion of the building, albeit for lighting and sound equipment storage by Casa Light and Power.

Casa Light and Power is a small local business which provides lighting and audio services to the music and entertainment industry.

Casa Light and Power's storage use will involve attendance by no more than one employee of Casa at any one time and the very occasional use of a single, one tonne van. Their use of the building will continue the storage and office uses of the building and for no other purposes.

No more than a maximum of four (4) vehicle movements will occur per day in association

with this store component, albeit for the vast majority of the time there will be no vehicle movements because the light and sound equipment will only be accessed occasionally, when required for use off-site by Casa.

The area labelled "office" on the plans is lawful and existing and was approved on or about 26 April 1983 by DA 563/4-119/83. The office area will be used by Casa Light and Power for their ancillary administrative and office-type activities during ordinary business hours. It does not need to be assessed again as part of this application given it appears to be lawful. No substantial waste will typically be generated by this component, other than occasional paper waste.

"Store 2" and "Store 4" - Living by Design

The areas labelled "Store 2" and "Store 4" will be for the continuation of a store use, albeit for the storage of furniture by "Living by Design".⁴

Similarly, the storage use of this area of the building will involve low numbers of vehicle movements and no more than a maximum of five (5) deliveries in any one week by the use of a semi-trailer, during ordinary business hours. The furniture/homewares are delivered in a shipping container. The shipping container is placed next to their tenancy and unloaded. The shipping container is placed on the land temporarily only.

The semi-trailer will attend at the site to load or unload the shipping container(s). There will be no permanent parking of the semi-trailers or shipping containers on land in association with this store use. There will be occasional collections and deliveries only.

No appreciable waste will be generated by this storage use.

"Store 3" - pallet storage by Trevor Flowers

The area labelled "Store 3" will be used for pallet storage by a local person, Mr Tony Flowers, who I am instructed operates a plant nursery off-site.

The storage of pallets in this small area of the building (some 216 m² in total floor area) will not generate meaningful additional traffic and will only be accessed on a very infrequent basis such that it will be almost impossible to detect this storage component in the context of the existing and proposed use as a whole. No appreciable waste will typically be generated by this storage use.

"Storage of viticultural equipment " - Malcolm Villers

The area marked "Storage and Manufacture of Viticulture Equipment" will be used for the storage of grape harvesting equipment by a local viticultural operator, Mr Malcolm Villers.

I outline the nature of this component of the use below:-

1) Storage component

The grape harvesting equipment and machinery will only be accessed during 8.00 am - 6.00 pm and only at harvest (generally February to April) and vintage times. There will be minimal vehicle movements associated with this storage area for most of the year. When being collected or deposited, the grape harvesting equipment will be collected by a large vehicle and one or two employees will usually attend when collecting or depositing the harvesting

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⁴ <https://livingbydesign.net.au/>
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equipment. There will be no servicing, repairs or maintenance and no fabrication or manufacturing activities associated with this component. There will be no appreciable waste typically generated by this storage use.

Occasionally, viticultural equipment is packaged and sent off site. The volume of equipment sent off site is minimal and varies throughout the year. The process of packing the equipment is straightforward. The equipment is placed on a pallet, wrapped in plastic and cardboard placed around it as the outer layer. Minimal noise is generated from the packing of the equipment itself.

"Storage of agricultural farm equipment" - Nitschke family farm

The area marked "Storage of Agricultural Farm Equipment" will now be used by my clients for the storage of their farming and agricultural equipment, tools and machinery in portion of the building totalling some 1,224 m².

My clients' family has operated a farming enterprise at 185 Balhannah Road, Hahndorf since the 1860s. Over that time, the farm has grown into a substantial enterprise.

Mr and Mrs Nitschke and their family still operate the farming business and its associated businesses which now include drilling and clover seed production, hospitality services and other commercial operations.

Given the expansion of the Hahndorf farm over time, the Nitschke family now require the use of the main building on the Land to safely and securely store some of the farming equipment as overflow from that stored at the Hahndorf farm.

Accordingly, **enclosed** is a Farming Machinery and Equipment Storage Schedule, which catalogues the typical range of farming and agricultural equipment that my clients now propose to store in the main building in this area.

Importantly, there will be not be any permanent truck parking in association with the farming equipment storage use. The operational needs of the Nitschke family farms do necessitate the parking of various trucks from time to time at the land. No trucks are proposed to be permanently parked on the land. The purpose of the heavy vehicles is for the conveyance of farm machinery, fertilizer, baled hay etc from farm to farm. Importantly, the parking of trucks and other heavy vehicles on the land is part of the general farming use of the land.

This storage use component will not involve any employees working permanently on site. No appreciable waste will typically be generated by this farm storage use. Similarly to the other storage uses, the depot use will only require the attendance of a single person at the land with a heavy vehicle as and when required, to either collect or deposit the farming and agricultural machinery stored there.

Similarly, this storage use will be a very low-key one. My client estimates that a maximum of two truck movements per day (one in, one out) and during daylight hours. However, in the main, no movement whatsoever will be associated with this depot use, given that most of the equipment to be stored there is overflow from the farm and is not required regularly.

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"Light Industry (Agricultural Equipment)" - Aussie Feeders

The area marked "Light Industry (Agricultural Equipment)" will be used by "Aussie Feeders"⁵, a poultry feeder fabrication company, for the fabrication of livestock

⁵ <https://www.aussiefeeders.com>

(predominantly poultry, sheep and cattle) feeders and other types of similar equipment such as chicken nesting trailers, hay cradles, etc.

The business to be conducted in the main building by Aussie Feeders will occupy portion of the building (some 1152 m²). It will involve no more than seven (7) employees at any one time at the Land. Those employees will be involved in the fabrication of animal feeders and similar agricultural equipment (hay cradles, nesting trailers, etc) entirely within the existing building.

The fabrication activities will involve processes that not require mechanical machinery or equipment and will be conducted in a manner that does not generate significant noise. At most, the manufacturing processes will largely involve welding and other hand construction of the metal components associated with the various agricultural equipment. The fabrication processes will predominantly occur during ordinary business hours and certainly not during any night time period for the purposes of the *Environment Protection (Noise) Policy*.

The materials, transport of the materials and fabricated poultry feeders will not be of a scale that detrimentally affects the amenity of the locality by any noise, vibration, fumes or otherwise and will not cause any dangerous or congested traffic conditions on any nearby road.

The proposed poultry feeder fabrication activities will involve up to six (6) domestic sized vehicle movements per day (staff vehicles) and perhaps two (2) larger truck movements per month (when the poultry feeders, fabricated on site, are being transported for use elsewhere). The vehicles associated with this new use will use the longstanding existing car parking area and driveways.

This light industry component will generate low waste. I am instructed that in addition to the usual Council kerbside collection service, approximately one large steel waste bin may be collected in association with the proposed use per month, albeit it may be less frequent than this.

In this way, the proposed agricultural equipment fabrication component of the main building will be defined as a "light industry" as that term is defined in the *Development Regulations 2008*.

"Tool storage" - Mr Paul Tucker

The small enclosed area labelled "tool storage" on the Proposed Floor Plan will be used predominantly for the storage of tools and various other similar domestic-type repair items used by a local person, namely Mr Paul Tucker.

I am instructed that Mr Tucker performs very occasional maintenance to a domestic sized vehicle in this area and performs various other low-key repairing or servicing activities as a hobby. The land is a convenient location for him to occasionally attend to low-key hobby-type servicing to a car he owns. The various activities are not undertaken in the course of trade or commerce and are not an "industry" as defined.

The use of the tool store area will be very infrequent. Given that the use of that area is predominantly storage of a domestic type and scale, it is properly described as being incidental to the broader storage facility and need not be seen as a separate and independent land use in its own right. It will be used by a single person who will have negligible vehicle movements or other impacts on the amenity of the locality.

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THE DEVELOPMENT PLAN

The land is located in the Watershed (Primary Production) Zone and the Onkaparinga Valley Policy Area 10 according to the Council's relevant Development Plan (consolidated on 24 October 2017).

The following provisions of the Zone are of particular relevance to the assessment of this application.

Watershed Primary Production Zone

Objectives 1, 2, 3, 4, 5, 6

Principles of Development Control 12, 13, 14, 15, 16, 17, 31, 35, 42-44, 48.

Industrial Development

Objectives 1, 2, 5

Principles of Development Control 3, 6, 7, 8, 9, 13, 14

Interface Between Land Uses

Objectives 1, 2, 3

Principles of Development Control 1, 2, 7, 8, 11-12, 13, 15, 16

Orderly and Sustainable Development

Objectives 1, 2, 3, 4, 6, 7, 8, 9, 10, 11-12

Principles of Development Control 1, 2, 3, 7, 9, 12, 15-17

Transportation and Access

Objectives 1, 2, 4, 5

Principles of Development Control 1, 2, 8, 12, 13, 14, 16, 25, 26, 29, 30, 32, 34-36,

Waste

Objectives 1, 2

Principles of Development Control 1, 2, 3, 5, 6.

DEVELOPMENT PLAN ASSESSMENT

Proper approach to assessment of non-complying development

The courts have established that, although a non-complying development application is subject to different procedure, its non-complying nature does **not** make it subject to a different approach to the assessment of its merits. Such assessment should be undertaken in the same manner as that of an “*on-merit*” development application.

In its decision in the case of *City of Mitcham v Heathhill Nominees Pty Ltd*⁶, the Full Court of the South Australian Supreme Court stated, in the leading judgement of Justice Bleby:

*the resolution of the question [whether the proposed development is properly classified as “non-complying” development] does not affect whether provisional Development Plan Consent should be granted or withheld.*⁷

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⁶ [2000] SASC 46.

⁷ *Ibid*, at [32].

The Full Court further clarified, in its decision in *Klein Research Institute Ltd v District Council of Mount Barker & Ors*,⁸ in the leading judgement of Justice Williams, as follows:

*"Whilst the proposed development stands to be assessed procedurally as 'non complying' development (but with restrictions imposed by s35(3) and (4)), the development in other respects stands to be assessed upon its merits as a matter of planning judgment."*⁹

I now apply the most relevant provisions of the Plan (outlined above) to the varied development now proposed in this Application.

Planning merits

In any planning assessment, the principle components determinative of whether consent should be granted are:

- (i) Is the land use generically appropriate?
- (ii) Have functional or operational issues such as traffic, noise, odour, been satisfactorily attended to; and
- (iii) have aesthetic issues been appropriately resolved?

The answer to the above issues in this case, is "yes" and the result is that the proposal is deserving of the grant of development plan consent. I address these issues in further detail below.

(i) Proposed use is suitable in the Zone

When considering the impacts of the proposal against the provisions of the Watershed (Primary Production) Zone, it is important to consider the factual and other circumstances in which the development is to be implemented. This was emphasised by the Supreme Court in *Courtney Hill v SA Planning Commission*:

*...the Development Plan is not applied in a "theoretical vacuum". The assessment of a proposed development against the provisions of the Development Plan must be undertaken having regard to the factual and historical context in which the proposed development will be implemented, and having regard to relevant surrounding circumstances.*¹⁰

Importantly, the storage component of the proposed use of the existing building must, in my submission, be considered in the context that the building has lawful existing use rights as a store and office (as defined).

In my submission, having regard to the legal principles articulated above, the question of what goods are stored in any particular building, or which business is operating the store or office uses of the building is substantially irrelevant to the question of whether or not the broad genus of the lawful existing use of those portions of the building has changed. Indeed, the broad genus of those parts of the building are proposed to remain as a "store" and "office".

Having regard to the legal authorities including *Royal Agricultural Society of NSW*

⁸ [2000] EDLR 482.

⁹ Ibid, at [12].

¹⁰ *Courtney Hill Pty Ltd v SAPC* (1990) 59 SASR 259.

*v Sydney City Council*¹¹, it is unhelpful to enquire into semantic questions of the purposes of the storage or the individual activities or transactions that occur as part of it. Those issues are irrelevant when identifying the broad genus of an existing use.

In any event, the acceptability or otherwise of the reconfiguration of an lawful existing use (here, the store and office uses) must be considered **in the context of the existing approved use** (and all of the traffic movements and amenity impacts that would have taken place in association with that lawful existing use).

Clearly, the existing storage and office use of the land is highly relevant to the planning assessment of this application, because it is relevant to the factual and historical context in which it will be implemented. In *Holds v City of Port Adelaide Enfield and Anor*¹² His Honour Justice Kourakis held:

In assessing an application for new development against the Development Plan, the nature and scope of an existing approval is a relevant consideration. The pre-existing approval is necessarily a relevant consideration because the effect of a proposed development on the locality in which it is to be undertaken cannot sensibly be addressed without considering the existing approval, and the nature of the development which might be constructed pursuant to that approval, even if the application for a development, or the application for a variation of the existing approval is refused.

From a land use perspective, in my submission **the only changes of use** that needs to be assessed afresh as part of this Application are the introduction of the new agricultural "light industry" uses by Aussie Feeders and Malcolm Villers and the acceptability of any additional amenity impacts associated with the reconfiguration of the existing store and office uses.

The new agricultural light industry uses are to be directly associated with and will support and enhance primary production and agriculture. Those components will be compatible with the long-term sustainability of rural production in the Adelaide Hills Council area generally, as it will support an existing business operating within the agricultural industry.

Clearly, the manufacture of the animal feeders, hay trailers and associated agricultural equipment and the production of the Harvest Technology at the land will:

- (i) be associated with the processing of primary products;
- (ii) is a support and service industry to primary producers;
- (iii) is appropriately located at the land given that the land already contains a large floor plate building suitable for carrying on such a use.

The new agricultural light industry uses will enhance the operations of primary producers in the area by providing important services to those agricultural businesses. The uses will not produce any adverse impacts on local residents as it will produce minimal or no appreciable noise or other impacts on amenity.

Further, the proposed continuation and new uses of the existing building will clearly not prejudice any primary production activities. Indeed, a large portion of the building will continue to be used for agricultural storage activities. Those

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¹¹ *Royal Agricultural Society of NSW v Sydney City Council* (1987) 61 LGRA 305 per McHugh JA at [309-310].

¹² [2011] SASC 226, per Kourakis J (as he then was) at 41.

areas that are to be used by other local businesses are simply being used as such because my client (a farming family) does not require those areas itself has not experienced demand for additional agricultural storage areas from other local businesses. This of itself demonstrates that primary production activities are not being prejudiced by the proposed use and that land required for such is not being removed by the proposed development.¹³

The balance land itself is not (other than existing car parking and driveway areas) has not been used for productive primary production purposes for many years and this will not be affected by the approval of the proposed development.

In this sense, the only proposed **new** use of the building (agricultural light industry) will have a direct connection to primary production and agriculture and is acceptable having regard to the principles of the Watershed (Primary Production) Zone Objectives 1 and 3 and PDCs 13 - 14 , 16 - 17 and 42-44.

(ii) Amenity impacts

Similar to the land use (and bearing in mind the approach in *Holds* above), the long-standing existing storage and office uses of the existing main building is a highly relevant consideration when assessing whether or not the amenity impacts of the proposed development are acceptable.

In this case, the use of heavy vehicles at the land would always have been associated with the existing hay and seed storage of the existing building. It is also likely that some farming and agricultural equipment would have been stored in the building from time to time, as is the case with any farm storage building.

The numbers and frequencies of vehicle movements (including heavy vehicles) would not be unreasonably increased from the typical and expected numbers of agricultural and other heavy vehicle movements that would have been associated with the existing storage operations on the land.

As mentioned, the new agricultural light industry use of the existing building will not generate any appreciable odour, noise, fumes or other detrimental impacts on the amenity of the locality for the reasons given above. It will not operate in the night-time period pursuant to the *Environment Protection (Noise) Policy*. On my instructions, it has operated for some time already, without apparent complaint from local residents. That new use is properly considered as a light industry use (as defined).

The proposed development will occur entirely within an existing building. Vehicles attending at the land to collect or deliver goods to be stored at the existing storage building will use existing driveways and car parking areas and will not generate significant additional traffic movements that would have any noticeable impact on the amenity of the locality or persons residing in it.

Similarly, there will be no servicing, repairs or maintenance undertaken in association with the storage activities by my client or any of its tenants at the Land. It follows that there will be no risk of soil or water contamination by the proposed users of the building (and no associated effluent runoff etc). No bunding or other similar measures are required in association with the proposed uses, which are simply storage and manufacture of small agricultural equipment.

In terms of noise generated by the development, we confirm the predicted site

¹³ See Zone PDCs 16-17.
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noise levels comply with the relevant noise limits as set out in the Council's Development Plan. Marshall Day has undertaken an acoustic assessment of the proposed development and determined that the predicted noise levels are appropriate and there is no need for specific acoustic treatment of any form.¹⁴

(iii) No aesthetic or visual impacts of concern

There will be no aesthetic or visual impacts of concern arising from the proposed development. The existing and new uses will all occur in an existing building and there are no new external building works proposed as part of this application.

As referred to above, the parking of trucks and other heavy vehicles on the land is part of the general farming use of the land and can lawfully occur at the land currently as a result of existing use rights.

Put simply, the proposed development and all of the component uses of the existing building are on any view minor and low-key. Further, they support the long-standing continuation of primary production and agricultural uses in the Zone generally.

(iv) Environmental matters adequately dealt with

As mentioned, it is important to recognise the proposal for what it is, largely continuation of storage and office uses. Those uses inherently do not generate large volumes of waste or contaminants. There will be no servicing, repairs or maintenance of any of the farming or viticultural equipment stored at the land. It will be storage only.

The only waste generation worthy of mention will be that associated with the Aussie Feeders use of the building. The waste generated by that component will be low-key and collections will be infrequent. The steel waste storage receptacle can be located inside the building and moved outside when required occasionally for collection.

Even the agricultural light industry use of the existing building will not involve storage or use of spray painting or other chemical pollutants that may otherwise cause risk to land or water in the locality.

In my submission, the proposed use of the building will not give rise to any environmental issue of concern. It will satisfy the relevant provisions of the Plan relating to waste, including Council Wide Waste Objectives 1 and 2 and PDCs 1, 2, 3, 5 and 6.

(v) Conclusion - proposal worthy of consent

The proposed use largely continues an existing store and office use. The proposed new agricultural light industry use is appropriate for the land and the existing building for reasons given above.

The proposed development satisfactorily attends to issues of amenity on owners and occupiers of adjacent land and other land in the locality. It will not create any other environmental or planning impact of concern. It is worthy of the grant of development

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¹⁴ Acoustic report prepared by Marshall Day Acoustics titled "359 Nairne Road, Woodside Environmental Noise Assessment" dated 21 April 2020 forms part of the development application documents.

plan consent and we commend the varied application to the Council and the State Planning Commission in due course.

ASSESSMENT OF EXPECTED SOCIAL, ECONOMIC & ENVIRONMENTAL EFFECTS

As mentioned, the rear portion of the land has remained vacant and unused for a substantial time. My clients have decided to pursue the development application in order to utilise the rear portion of the land to its full potential. My clients also feel that the proposal will create a useful service for the expected future population growth in the northern Adelaide area and create employment opportunities which will benefit the local and broader community.

Social

The proposed development will have a positive social effect on the local and broader community. As mentioned, the proposal will service both the agricultural/primary production industry locally and the use of the existing building for storage will assist local businesses (including my client's own business) who require a secure facility for that purpose, where those facilities are either lacking or are cost oppressive in the area.

Economic

The proposed development will support the operations and economic viability of multiple local businesses by providing a secure, sheltered storage area for stock in trade of my client's business and the other businesses that are now proposed to be accommodated in the existing building.

Further, the proposed development will support the continuation of jobs for Aussie Feeders and Malcolm Villers (for the manufacture of agricultural equipment and technology in support of ongoing viable primary production) and the other small businesses that will rely on the facility as a low key storage facility for their stock in trade.

Clearly, the proposed development will also support the ongoing viability of my clients' successful farming enterprise, by providing a convenient storage facility for its agricultural equipment and machinery that cannot be stored elsewhere.

In this way, the proposed development will clearly stimulate the local economy and in particular, will support the efficient and economic continuation of both my client's farming operations and other small local businesses by providing a more cost effective storage alternative. It will clearly have a positive economic impact.

Environmental

The proposed development is largely for the continuation and reconfiguration of a lawful existing storage use of an existing building, together with a new light industry use (which by definition does not detrimentally affect the amenity of the locality or the amenity within the vicinity of the locality).

It is on any view a relatively low-key use. The storage components themselves are innocuous and do not produce any environmental impact of concern.

Any environmental impacts from the proposed development can be appropriately managed. We repeat that there is no servicing or repair activities to be carried out to the machinery and equipment being stored at the land.

As mentioned above, there will be no conflict between the proposed development and adjacent land uses. The closest off-site residences (i.e., other than that owned by my clients) are over 100 metres away from the proposed development.

The proposal is clearly capable of being implemented and managed so that it will not have an adverse impact on the environment.

Having outlined the social, economic and environmental impacts of the proposal, I turn now to provide a brief summary of the approach to assessment, before addressing the Council's current Development Plan.

CONCLUSION

The designation of a kind of development as non-complying affects the procedures governing the processing of an application, but is not determinative of whether development plan consent should be granted or refused.¹⁵

There is no presumption against the granting of consent to an application simply because it is non-complying. In this case, a significant proportion of the proposal includes reconfigurations of existing lawful uses of an existing building.

The proposal has been assessed against the relevant provisions of the Development Plan as being consistent with those provisions and is worthy of the grant of development plan consent.

Accordingly, the Council should, pursuant to regulation 17(3)(b), resolve to proceed with an assessment of the application forthwith.

The application has profound planning merit, supports the continuation of agriculture and primary production activities in the zone and throughout the Adelaide Hills. It is worth of the grant of development plan consent and of concurrence by the State Commission Assessment Panel (SCAP).

My clients are happy to provide whatever further information is reasonably required by the Council to assess the application. Otherwise, I look forward to the Council's prompt assessment and approval of the application.

Yours faithfully

Pip Metljak
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¹⁵ *Klein Research Institute Ltd v District Council of Mount Barker & Ors* [2000] EDLR 482.
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MARSHALL DAY
Acoustics 

359 NAIRNE ROAD, WOODSIDE
ENVIRONMENTAL NOISE ASSESMENT

Rp 001 R01 20190861 | 21 April 2020

AMENDED 12/05/2020

Project: 359 NAIRNE ROAD, WOODSIDE

Prepared for: Carlton Nitschke Investments Pty Ltd
C/-
Adelaide Hills Development Services
PO Box 1508
Mt Barker SA 5251

Attention: Peter Meline

Report No.: Rp 001 R01 20190861

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1.0 INTRODUCTION

Carlton Nitschke Investments Pty Ltd are seeking Development Plan Consent for reconfiguration of existing facilities and the addition of additional light industry uses to an existing building at 359 Nairne Road, Woodside, South Australia (DA 19/210/473).

Marshall Day Acoustics Pty Ltd (MDA) has been engaged by Adelaide Hills Development Services, on behalf of Carlton Nitschke Investments Pty Ltd, to undertake an environmental noise assessment of the proposed site operations.

The following report details the proposed site location, operations, relevant environmental noise legislation and a noise assessment of proposed site operations.

A glossary of acoustic terminology used within this report is included in Appendix A.

2.0 SITE DESCRIPTION

2.1 Site location

The subject site is located at 359 Nairne Road, Woodside, South Australia.

The site is bounded by the following:

- Nairne road immediately west
- Existing commercial warehouse facility to the north
- Residential dwellings to the east and south

The nearest noise-affected premises to the site have been identified from site survey and a review of public available imagery.

The nearest noise-affect premises considered for this assessment are detailed in Table 1.

Table 1: Nearest identified noise-affected premises

Reference	Address	Approximate distance to site
R1	41 Wuttke Road	250 m east
R2	25 Wuttke Road	200 m east
R3	17 Wuttke Road	180 m south east
R4	41 Murdoch Hill Road	180 m south

The site location and surrounding environment is provided in Appendix B.

2.2 Site operations

The site is proposed to operate during normal daylight business hours, 8am to 6pm, 7 days a week.

The site consists of seven (7) tenancies, catering from general storage, to light industry metal fabrication as follows:

- Store 1 and Office - Casa Light and Power: existing store for lighting and sound equipment storage and office use
- Store 2 - Living by Design: storage of furniture by "Living by Design"
- Store 3 - pallet storage by Trevor Flowers: used for pallet storage
- Storage and packing of viticultural equipment – Aussie Wine Group: used for the storage and packing of grape harvesting equipment. The equipment is manufactured offsite, but then brought to this site for testing (bolts, belt tensions, all settings, then connected to an electric

powered power pack to check individual operation). The unit is packed and shipped with forklifts used to get the products onto the trucks.

- Storage of agricultural/farm equipment: used for storage of their farming and agricultural equipment, tools and machinery
- Light Industry (Agricultural Equipment) – Aussie Feeders: fabrication of livestock feeders and other types of similar equipment
- Tool store: used predominantly for the storage of tools and various other similar domestic-type repair items

A copy of the site layout is provided in Appendix C.

Noise generating activities proposed on the site include vehicle movements transporting items for storage, delivery of goods and metal fabrication within the light industry tenancy.

Site vehicle movements are expected to only occur during daylight hours and will involve multiple vehicles; up to thirteen (13) small vehicles per day and up to four (4) large vehicle movements per day. Harvesting vehicle movements are likely to only occur between February and April during harvest time and will involve large vehicles transporting harvesting equipment.

2.3 Ambient noise levels

Ambient noise levels were measured between 17 September and 20 September 2019, at a location representative of the background noise level at the nearest noise-affected premise.

The measurements indicate background noise levels during the proposed time of operation typically ranging 30-40 dB $L_{A90,15min}$.

Further details on the measured noise levels are provided in Appendix D.

2.4 Planning considerations

The site and surrounding environment are located within the Adelaide Hills Council.

With reference to the Adelaide Hills Council Development Plan, consolidated 8 August 2019, the site and surrounds are within the Watershed (Primary Production) Zone, specifically Policy Area 10 *Onkaparinga Valley*.

A copy of the relevant land zoning map is provided in Appendix E. The relevant Council principles of development control are provided in Appendix F.

3.0 NOISE ASSESSMENT CRITERIA

3.1 Overview

The Adelaide Hills Council Development Plan, Council Wide Principle of Development Control 7 requires [new 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 relevant policy is the *Environment Protection (Noise) Policy 2007* (EPP). The EPP provides a methodology and objective noise criteria, relevant for the assessment of new proposed or existing premises. This is a broad policy designed to secure the noise objectives of the *Environment Protection Act 1993*. The objective criteria are developed in accordance with World Health Organization guidelines aiming to balance social, economic and environmental considerations in the management of noise issues.

3.2 Noise criteria

The EPP separates the day into two different time periods; day (7am – 10pm) and night (10pm – 7am). The noise limits for each time period is determined, with consideration of the assigned land use category, principally promoted by the relevant Council Development Plan, for both the noise source and nearest existing noise-affected premises.

However, the Adelaide Hills Council Development Plan, Watershed (Primary Production) Zone Principle of Development Control 62(e) states:

Agricultural industries, [...] should not generate noise of greater than 40 decibels during the hours of 10 pm to 7am and 47 decibels between 7 am to 10 pm respectively as measured at the nearest neighbouring dwelling or boundary of a vacant allotment.

As proposed site operations occur only during normal day hours, site operations should be designed to meet the day noise level, 47 dB L_{Aeq} , at the nearest existing noise-affected premises or boundary of a vacant allotment.

4.0 NOISE ASSESMENT

An assessment under the EPP compares the predicted noise level of a noise source at the nearest noise affected premises to the relevant noise limit. The predicted noise level is the A-weighted equivalent noise level of the noise source over a 15-minute period ($L_{Aeq,15min}$), adjusted for any audible characteristics.

Details regarding the noise modelling considerations are included in Appendix G.

Noise level data used in this assessment is summarised in Appendix H and is based on measurements of operations as proposed at the site.

4.1 Assumptions

The following assumptions have been considered in the assessment of the noise associated with the facilities:

- Maximum of 13 light vehicles/entering and exiting on any given day
- Maximum of 4 large vehicles/entering and exiting on any given day
- Existing light manufacturing building, constructed from sheet metal with thermal insulation. Two (2) roller doors are located on the west facade and are open during the day

4.2 Predicted noise levels

The following 15-minute day period scenario which is assumed to be representative of operations that would produce highest expected noise levels at the surrounding environment has been modelled:

- Light Industry (Agricultural Equipment) tenancy
 - All plant equipment within building operating continuously for 15 minutes
- Vehicle movements:
 - Three (3) light vehicles arriving and departing the site
 - One (1) large vehicle arriving and departing the site
- Packing of viticultural equipment – Aussie Wine Group
 - Testing of equipment inside building
 - Loading of equipment to trucks using forklifts (external building) (5 minutes)

The predicted noise levels from the modelled scenario at the nearest identified noise-affected premises are provided in Table 2.

Table 2: Predicted noise levels, dB $L_{Aeq,15min}$

Receiver reference	Noise level
R1	43
R2	42
R3	42
R4	41

The predicted noise levels in Table 2 meet the relevant noise limit at the nearest existing noise-affected premises, without the need for additional acoustic treatment. The dominant noise source controlling the predicted environmental noise levels at all receiver locations are the vehicle movements.

For reference, the predicted noise levels excluding vehicle movements, i.e. just noise breakout from the light manufacturing tenancy and during testing of the Aussie Wine Group equipment is provided in Table 3. The predicted noise levels are well below the allowable level 47 dB L_{Aeq} .

Table 3: Predicted noise levels excluding vehicle movements, dB $L_{Aeq,15min}$

Receiver reference	Noise level
R1	32
R2	30
R3	27
R4	29

5.0 SUMMARY

It is proposed to reconfigure an existing storage, light manufacturing and office facility at 359 Nairne Road, Woodside.

The site is located in the Adelaide Hills Council, and planning requirements in the Development Plan require the proposal to comply with specific noise criteria.

Site measurements and a noise model of the site noise activities have been undertaken. The predicted site noise levels meet the relevant day time noise limit, defined in the Adelaide Hills Council Development Plan, Watershed (Primary Production) Zone Principle of Development Control 62(e) at the nearest existing noise-affected premises, without the need for specific acoustic treatment.

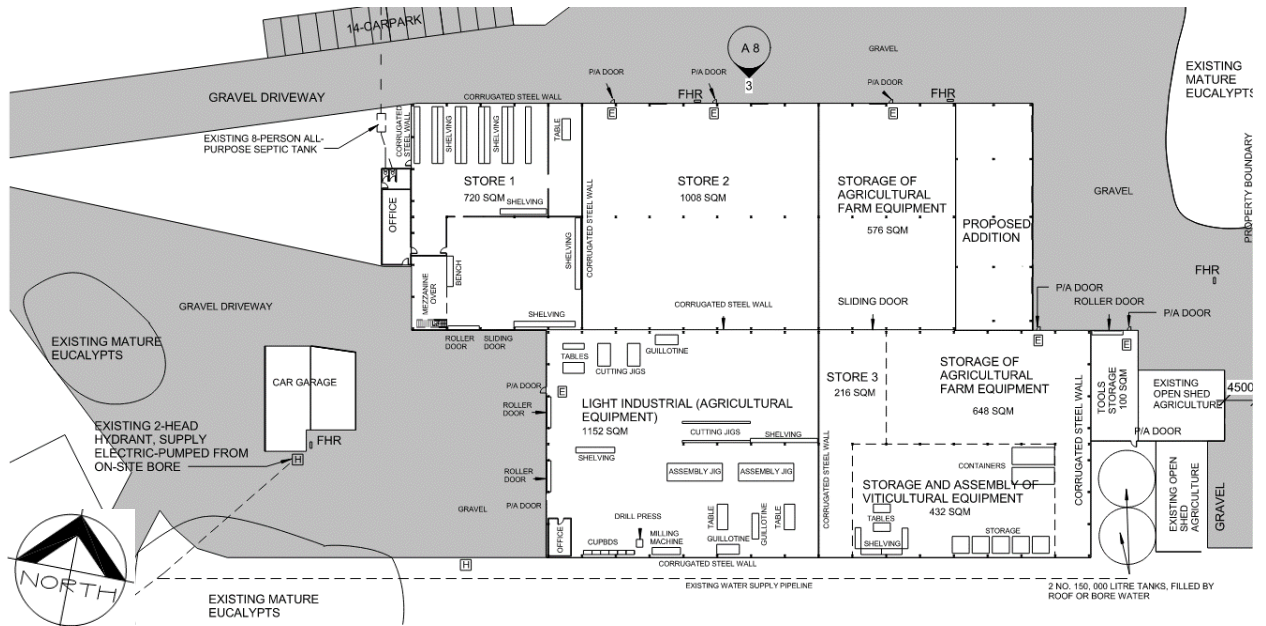
APPENDIX A GLOSSARY OF TERMINOLOGY

Ambient	The ambient noise level is the noise level measured in the absence of the intrusive noise or the noise requiring control. Ambient noise levels are frequently measured to determine the situation prior to the addition of a new noise source.
A-weighting	The process by which noise levels are corrected to account for the non-linear frequency response of the human ear.
dB	Decibel: The unit of sound level. Expressed as a logarithmic ratio of sound pressure P relative to a reference pressure of $P_r=20 \mu\text{Pa}$ i.e. $\text{dB} = 20 \times \log(P/P_r)$
Frequency	The number of pressure fluctuation cycles per second of a sound wave. Measured in units of Hertz (Hz).
Hertz (Hz)	Hertz is the unit of frequency. One hertz is one cycle per second. One thousand hertz is a kilohertz (kHz).
$L_{Aeq(t)}$	The equivalent continuous (time-averaged) A-weighted sound level. This is commonly referred to as the average noise level. The suffix "t" represents the time period to which the noise level relates, e.g. (8 h) would represent a period of 8 hours, (15 min) would represent a period of 15 minutes and (2200-0700) would represent a measurement time between 10 pm and 7 am.
L_{A90}	The noise level exceeded for 90% of the measurement period, measured in dBA. This is commonly referred to as the background noise level.
L_{wA}	A-weighted Sound Power Level A logarithmic ratio of the acoustic power output of a source relative to 10-12 watts and expressed in decibels. Sound power level is calculated from measured sound pressure levels and represents the level of total sound power radiated by a sound source.

APPENDIX B SITE LOCATION AND SURROUNDS



APPENDIX C SITE LAYOUT



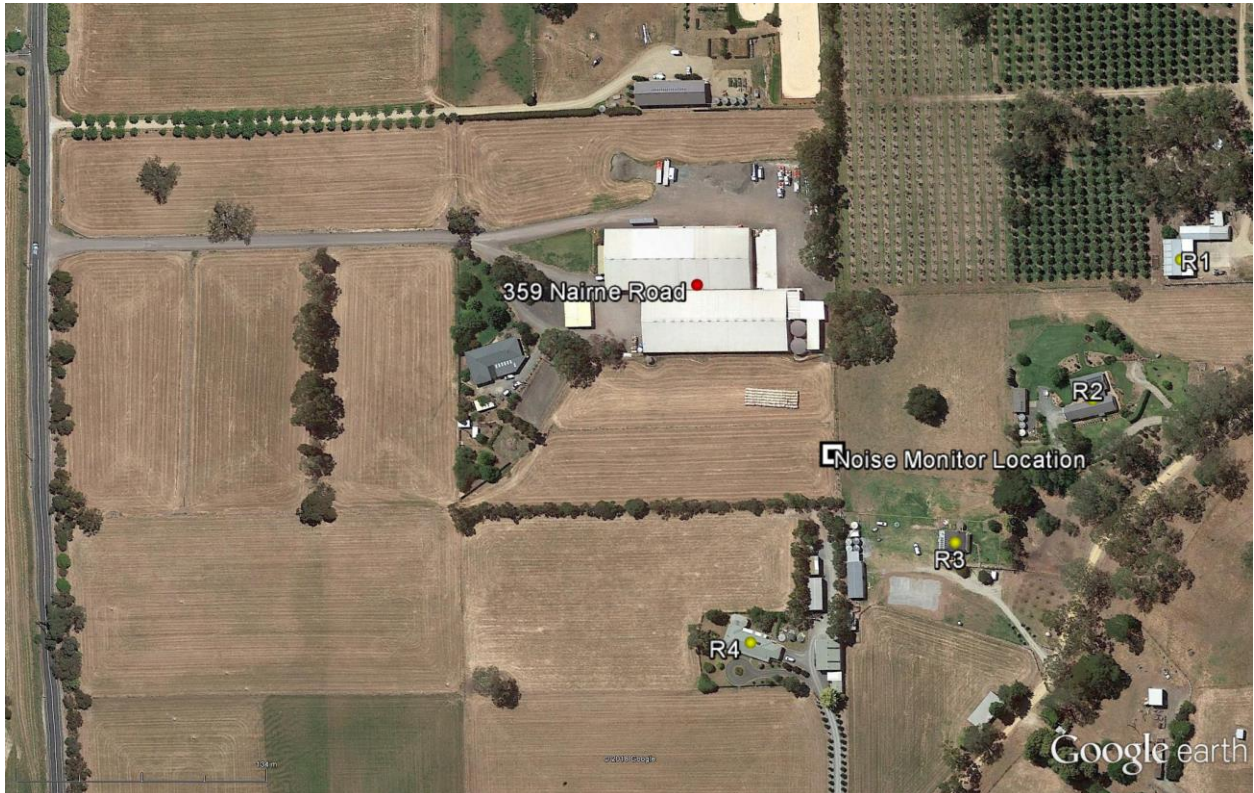
APPENDIX D AMBIENT NOISE LEVEL

Ambient noise levels were measured between 17 September and 20 September 2019, at a location representative of the background noise level at the nearest noise-affected premise to the site.

Measurements were obtained using a Class 1 01dB DUO environmental noise monitor (serial no: 10433). A calibration check conducted prior to and after the measurement survey using a 01dB Cal21 sound level calibrator (serial no: 34134142) and confirmed no significant drift (<0.5 dB) in the reference level.

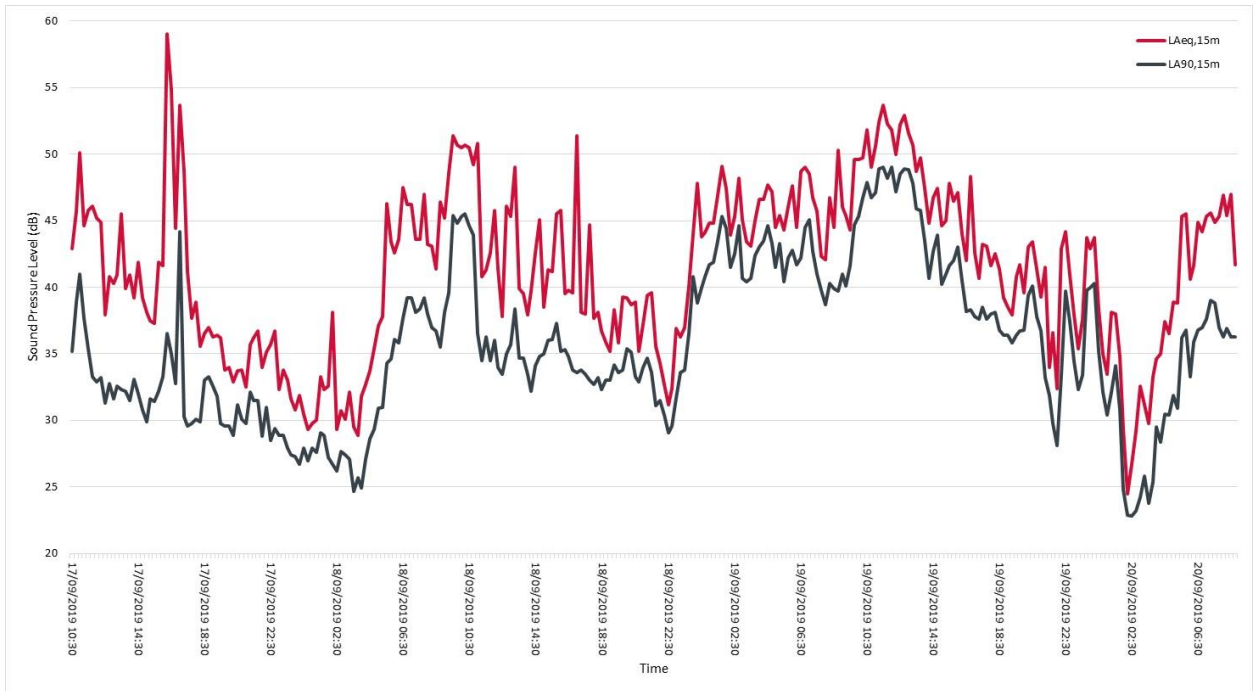
The measurement location is shown in Figure 1.

Figure 1: Noise monitor location



A summary of the measured noise levels are provided in Figure 2.

Figure 2: Measured ambient noise levels



APPENDIX E ZONING MAP



APPENDIX F ADELAIDE HILLS COUNCIL DEVELOPMENT PLAN

COUNCIL WIDE

INTERFACE BETWEEN LAND USES

PRINCIPLES OF DEVELOPMENT CONTROL

1 Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:

(b) noise

2 Development should be sited and designed to minimise negative impacts on existing and potential future land uses desired in the locality.

Noise Generating Activities

7 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.

8 Development with the potential to emit significant noise (e.g. industry) should incorporate noise attenuation measures that prevent noise from causing unreasonable interference with the amenity of noise sensitive premises

WATERSHED (PRIMARY PRODUCTION) ZONE

OBJECTIVES

- 1. The maintenance and enhancement of the natural resources of the south Mount Lofty Ranges.*
- 2. The enhancement of the Mount Lofty Ranges Watershed as a source of high quality water.*
- 3. The long-term sustainability of rural production in the south Mount Lofty Ranges.*
- 4. The preservation and restoration of remnant native vegetation in the south Mount Lofty Ranges.*
- 5. The enhancement of the amenity and landscape of the south Mount Lofty Ranges for the enjoyment of residents and visitors.*
- 6. The development of a sustainable tourism industry with accommodation, attractions and facilities which relate to and interpret the natural and cultural resources of the south Mount Lofty Ranges, and increase the opportunities for visitors to stay overnight.*

PRINCIPLES OF DEVELOPMENT CONTROL

62) Agricultural industries, mineral water extraction and processing plants and wineries should not:

- d) Generate significant additional traffic noise or other nuisance which would detract from residents' or other land holders' enjoyment of the locality;*
- e) Generate noise of greater than 40 decibels during the hours of 10 pm to 7 am and 47 decibels between 7 am to 10 pm respectively as measured at the nearest neighbouring dwelling or boundary of a vacant allotment; and*

APPENDIX G NOISE MODELLING METHOD

A 3-dimensional computer model was created in the environmental noise modelling program SoundPLAN v8.1 to predict noise levels from the proposed development to the nearest noise-affected premises in the vicinity of the subject site. The noise model has been used to calculate noise levels at the nearest noise-affected premises in accordance with ISO-9613-2:1996 *Acoustics – Attenuation of sound during propagation outdoors – Part 2: General method of calculation* (ISO 9613-2). The noise model enables the calculation of noise levels over a wide area, and accounts for key considerations including site arrangement, terrain and atmospheric conditions.

The ISO 9613-2 standard specifies an engineering method for calculating noise at a known distance from a variety of sources under meteorological conditions that are favourable to sound propagation. The standard defines favourable conditions as downwind propagation where the source blows from the source to the receiver within an angle of +/-45 degrees from a line connecting the source to the receiver, at wind speeds between approximately 1 m/s and 5 m/s, measured at a height of 3 m to 11 m above the ground. Equivalently, the method accounts for average propagation under a well-developed moderate ground based thermal inversion.

Accordingly, predictions based on ISO 9613-2 account for the instances when local atmospheric conditions at the site favour the propagation of sound to surrounding receptor locations. Under alternative atmospheric conditions, such as when the wind is blowing from a receiver location to the development site, the noise levels would be lower than calculated.

To calculate far-field noise levels according to the ISO 9613-2, the noise levels of each source are firstly characterised in the form of octave band frequency levels. A series of octave band attenuation factors are then calculated for a range of effects including:

- Geometric divergence
- Air absorption
- Reflecting obstacles
- Screening
- Ground reflections.

The octave band attenuation factors are then applied to the noise data to determine the corresponding octave band and total calculated noise level at relevant receiver locations.

Geometry data for the model has been sourced from public aerial photography, visual inspections of the area, and building heights defined based on standard assumed heights per floor level. The geometries in the model are simplified representations of the built environment that have been configured to a level of detail that is appropriate for noise calculation purposes.

The following inputs have been referenced in the noise model to predict noise levels from onsite activities.

- Receivers at 1.5 m (single storey) and 4.5 m (two storey) above ground level.
- Receiver locations positioned according to public aerial imagery (imagery sourced from Google Earth)
- Flat ground, to negate potential shielding provided by terrain (conservative)
- Emission data for each source at the site as detailed in Appendix H.
- Noise levels calculated to the receiver building facade. Reflections from the receiver buildings own facade are not included (i.e. free-field noise levels)

APPENDIX H NOISE LEVELS OF SITE OPERATIONS

Noise level data measured from on-site survey and previous noise surveys conducted by MDA have been used to assess noise levels associated with the site operation.

H1 Metal fabrication noise levels

Internal noise measurement of existing light metal fabrication operations within the site is detailed in Table 4.

Table 4: Internal reverberant level metal fabrication workshop, dB L_{eq}

Source	Octave band centre frequency (Hz)							
	63	125	250	500	1000	2000	4000	A
Measured internal level	63	68	69	68	66	66	65	73

H2 Aussie Wine Group noise levels

Noise levels associated with the Aussie Wine Group tenancy are based on measurements by MDA of similar type equipment. In the absence of being able to measure noise levels during the testing of equipment within the tenancy, an estimated but considered conservative noise level has been assumed.

The noise levels used for this assessment are detailed in Table 5.

Table 5: Aussie Wine Group, dB L_{eq}

Source	Octave band centre frequency (Hz)							
	63	125	250	500	1000	2000	4000	A
Forklift loading	96	94	92	90	89	82	95	98
Internal level during testing of equipment	85	85	80	80	75	75	75	83

H3 Vehicles noise levels

Vehicle noise levels have previously been measured by MDA. The calculated sound power level for vehicle types as proposed on the site and used in this assessment are detailed in Table 6.

Table 6: Vehicle sound power levels dB L_w

Source	Octave band centre frequency (Hz)							
	63	125	250	500	1000	2000	4000	A
Light Vehicles	93	91	89	89	89	86	79	93
Large Vehicles	109	111	106	101	100	98	93	106



Environment Protection Authority
GPO Box 2607 Adelaide SA 5001
211 Victoria Square Adelaide SA 5000
T (08) 8204 2004
Country areas 1800 623 445

EPA Reference: 34809

19 November 2020

Ms Marie Molinaro
Statutory Planner
Adelaide Hills Council
PO Box 44
WOODSIDE SA 5244

**ADELAIDE HILLS COUNCIL
RECEIVED 19 November 2020**

Dear Ms Molinaro

ADVICE FOR REGARD - Non-complying development within the Mount Lofty Ranges Water Protection Area

Development Application No.	473/210/19
Applicant	John Nitschke (Peter Meline and Associates)
Location	A16 FP156551 HD Onkaparinga, 359 Nairne Road, Woodside SA 5244
Activity of Environmental Significance	Schedule 8 Item 10(a) - non-complying development in the Mount Lofty Ranges Water Protection Area
Proposal	Change of use from store to include industry (manufacturing) including building alterations & additions & car-parking (non-complying)

Decision Notification	A copy of the decision notification must be forwarded to: Client Services Officer Environment Protection Authority GPO Box 2607 ADELAIDE SA 5001
------------------------------	--

I refer to the above development application forwarded to the Environment Protection Authority (EPA) in accordance with Section 37 of the *Development Act 1993*. The proposed development involves an activity of environmental significance as described above.

The following response is provided in accordance with Section 37(4)(a)(i) of the *Development Act 1993* and Schedule 8 Item 10(a) of the *Development Regulations 2008*.

In determining this response the EPA had regard to and sought to further the objects of the *Environment Protection Act 1993*, and also had regard to:

- the General Environmental Duty, as defined in Part 4, Section 25 (1) of the Act; and
- relevant Environment Protection Policies made under Part 5 of the Act.

Please direct all queries relating to the contents of this correspondence to Stephen Both on telephone (08) 8204 2129 or facsimile (08) 8124 4673 or email Stephen.Both@sa.gov.au.

THE PROPOSAL

The proposal seeks retrospective approval to partially change the use of an existing single storey building from warehouse/store to light industry/manufacturing comprising general fabrication work, including the welding of agricultural farm equipment.

The EPA understands that approval is also required for a new addition (345 square metre floor area) to the rear of the existing northern warehouse building and for the creation of an additional 14 on-site car parking spaces with associated drainage and earthworks.

SITE DESCRIPTION

The site of the proposed development is located at 359 Nairne Road Woodside, which is more particularly described as Allotment 16 in Filed Plan 156551 Certificate of Title Volume 5439/Folio 561, Hundred of Onkaparinga.

The subject land is also situated within the:

- Mount Lofty Ranges Water Protection Area
- Western Mount Lofty Ranges Prescribed Water Resources Area
- Mount Lofty Ranges Watershed
- Mount Lofty Ranges Watershed Priority Area 3
- Watershed (Primary Production) Zone and Onkaparinga Valley Policy Area 10 *of the Adelaide Hills Council Development Plan (consolidated 24 October 2017)*.

The subject land is regular in shape, has a frontage to Nairne Road and provides a total site area 8.1 hectares. The land is developed with a large existing commercial building with a total floor area of approximately 5,000 m² (which has historically been approved for and used as a store and office).

The land also contains a single storey detached dwelling (which is presently tenanted) with associated outbuildings and structures, including a number of aboveground water tanks, hardstand manoeuvring areas, on-site carparking and landscaping.

The wider locality includes the Inverbrackie Detention Centre to the west, across Nairne Road, and a scattering of dwellings and horticultural/farming uses generally located to the north, east and south. The closest dwellings to the site of the development are located along Wuttke Road and Murdoch Hill Road, generally to the south and east.

CONSIDERATION

Advice in this letter includes consideration of the location with respect to existing land uses and is aimed at protecting the environment and avoiding potential adverse impacts upon the locality.

When assessing development applications (DAs) referred to the EPA in accordance with the

requirements of the Development Act, section 57 of the Environment Protection Act ('the EP Act') states that the EPA must have regard to, and seek to further, the objects of the EP Act and have regard to the general environmental duty, any relevant environment protection policies and the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (now the *Green Industries SA Act 2004*).

In its assessment of the proposal, the EPA considered the following plans and supporting documents that were submitted with the application:

- *The Combined Statement in Support/Statement of Effect for DA 19/210/473 prepared by Botten Levinson Lawyers dated May 2020*
- *Site and Elevation Plans prepared by Michael Watson Architect marked Project Number NIT 004 (A1 - A10) dated 9 April 2020*
- *The Environmental Noise Assessment Report for 359 Nairne Road Woodside prepared by Marshall Day Acoustics dated 21 April 2020*
- *The On-site Wastewater Management Report prepared by Maxwell Consulting Engineers marked Version (A) dated 28 August 2020*
- *The Stormwater and Wastewater Plan prepared by Michael Watson Architect marked Project Number NIT 004 (A11) dated 2 November 2020.*

The referral trigger of this DA to the EPA was for the proposed land use being non-complying in the MLR WPA, as per Schedule 8 of the Development Regulations. The EPA has therefore only provided an assessment of the potential water quality impacts that may arise from the proposed development.

The site has been inspected by EPA staff as part of the EPA's assessment of this application. The site has also been viewed using mapping information available to the EPA, including recent aerial imagery, and considered according to existing knowledge of the site and the locality.

ENVIRONMENTAL ISSUES

Water Quality

The subject land is within a highly water-sensitive area being located within Mount Lofty Ranges Water Protection Area proclaimed under Part 8 of the Environment Protection Act. The EPA considers that any development, and its likely consequences, in such a sensitive location should have a neutral or beneficial environmental effect.

Water quality in South Australia is protected by the Environment Protection Act and the associated *Environment Protection (Water Quality) Policy 2015* (hereafter the Water Quality Policy). The Water Quality Policy places a general obligation on persons undertaking activities, and occupiers of land, to take all reasonable and practicable measures (not being measures that themselves cause environmental harm) to avoid the discharge or deposit of waste into any waters (including the Council stormwater system and groundwaters), or onto land where it is reasonably likely to enter any waters (including by seepage, infiltration or carriage by wind, rain, stormwater, or the rising of the water table).

As referenced above, the site of the development is located within Priority Area 3 of the Mount Lofty Ranges Watershed. The EPA considers that development within Priority Area 3 catchments should only occur where the proposed land use has a neutral or beneficial impact on water quality.

Activities and new developments within Priority Area 3 of the Watershed have the lowest risk of polluting raw mains water supplies. However, these activities and new developments still present risks that need to be carefully considered and managed. When assessing whether water quality impacts from the proposed development would be neutral or beneficial water quality impacts, the additional volumes of wastewater and organic load that would be generated (in comparison to what is currently approved) needs to be considered.

Wastewater/Stormwater Management

During its assessment of the application, the EPA identified that the proposed change of use would likely result in an increase in the number of staff currently employed or working from the site. Given this, the EPA raised concerns with the applicant regarding the adequacy of the existing wastewater system currently servicing the site. To ascertain the adequacy of the current system, the applicant engaged Maxwell Consulting Engineers to assess the impacts associated with the proposed increase in staff and to provide an on-site wastewater management report.

The report provided by Maxwell Consulting (dated 28 August 2020) concluded that *"while an existing septic system and accompanying soakage trench exists on-site, both systems must be decommissioned as neither will be sufficiently sized to accommodate the projected wastewater loads"*.

The Maxwell Report further confirms that the applicant is proposing to install a new 10EP aerobic treatment system which would account for the wastewater loads for up to 25 staff per day, and would therefore allow for the future expansion of existing operations from the site. The EPA notes that secondary treated effluent would be disposed of via surface irrigation through an existing vegetated island and a proposed new garden bed.

The EPA has assessed the additional information and plans provided by the applicant and is now satisfied with the final adaptation to the application which includes significant improvements to wastewater management at the site. The additional information provided includes an increased capacity to cater for staff at the site, and proposed improvements to the location of the soakage area and measures to ensure that risks to water quality are minimized. In addition, the EPA notes that barriers to prevent stormwater from entering the proposed relocation of the soakage trench, (which is currently a stormwater discharge area) have also all been included in the application.

The EPA wishes to point out that maintenance of the wastewater and stormwater management systems must be undertaken to ensure that risks to the environment are minimised. In regard to wastewater management, the EPA is satisfied that the proposed development poses a low risk to water quality provided that all facets of wastewater management adhere to the *On-site Wastewater Systems Code 2013*.

Construction Management

The EPA notes that the proposed includes a new addition to the rear of the existing northern warehouse building as well as the inclusion of additional on-site car parking for 14 vehicles, all of which will involve significant soil disturbance.

During these works, the provisions of the Water Quality EPP should be applied. All reasonable and practicable measures must be taken to minimise the potential for pollution, including minimising soil erosion and containing all construction waste generated on site.

Further guidance may be sought from the EPA's *Stormwater pollution prevention code of practice for the building and construction industry* http://www.epa.sa.gov.au/files/47790_bccop1.pdf and the EPA's *Handbook for Pollution Avoidance on Commercial and Residential Building Sites* http://www.epa.sa.gov.au/files/7619_building_sites.pdf

CONCLUSION

Provided the development is undertaken in accordance with the plans and specifications submitted with the application, the EPA is satisfied that the proposal would have a neutral or beneficial impact on water quality within the Mount Lofty Ranges Water Protection Area.

ADVICE

The planning authority is advised to attach the following condition to any approval:

1. The wastewater management system must be installed and operational in accordance with the *On-site Wastewater Management Report prepared by Maxwell Consulting Engineers marked Version (A) dated 28 August 2020* and the *Stormwater and Wastewater Plan prepared by Michael Watson Architect marked Project Number NIT 004 (A11) dated 2 November 2020* within three (3) months of Development Approval being granted.

The following notes provide important information for the benefit of the applicant and are requested to be included in any approval:

- The applicant is reminded of its general environmental duty, as required by section 25 of the *Environment Protection Act 1993*, to take all reasonable and practicable 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.
- EPA information sheets, guidelines documents, codes of practice, technical bulletins etc can be accessed on the following web site: <http://www.epa.sa.gov.au>

Yours faithfully

Hayley Riggs
Delegate

ENVIRONMENT PROTECTION AUTHORITY

**CATEGORY 3
PUBLIC NOTIFICATION**

DEVELOPMENT 19/210/473

John Nitschke

For

**Change of use from store to include industry (manufacturing)
including building alterations & additions & car-parking
(non-complying)**

At

359 Nairne Road Woodside SA 5244

COMMENCEMENT DATE: 29 May 2020

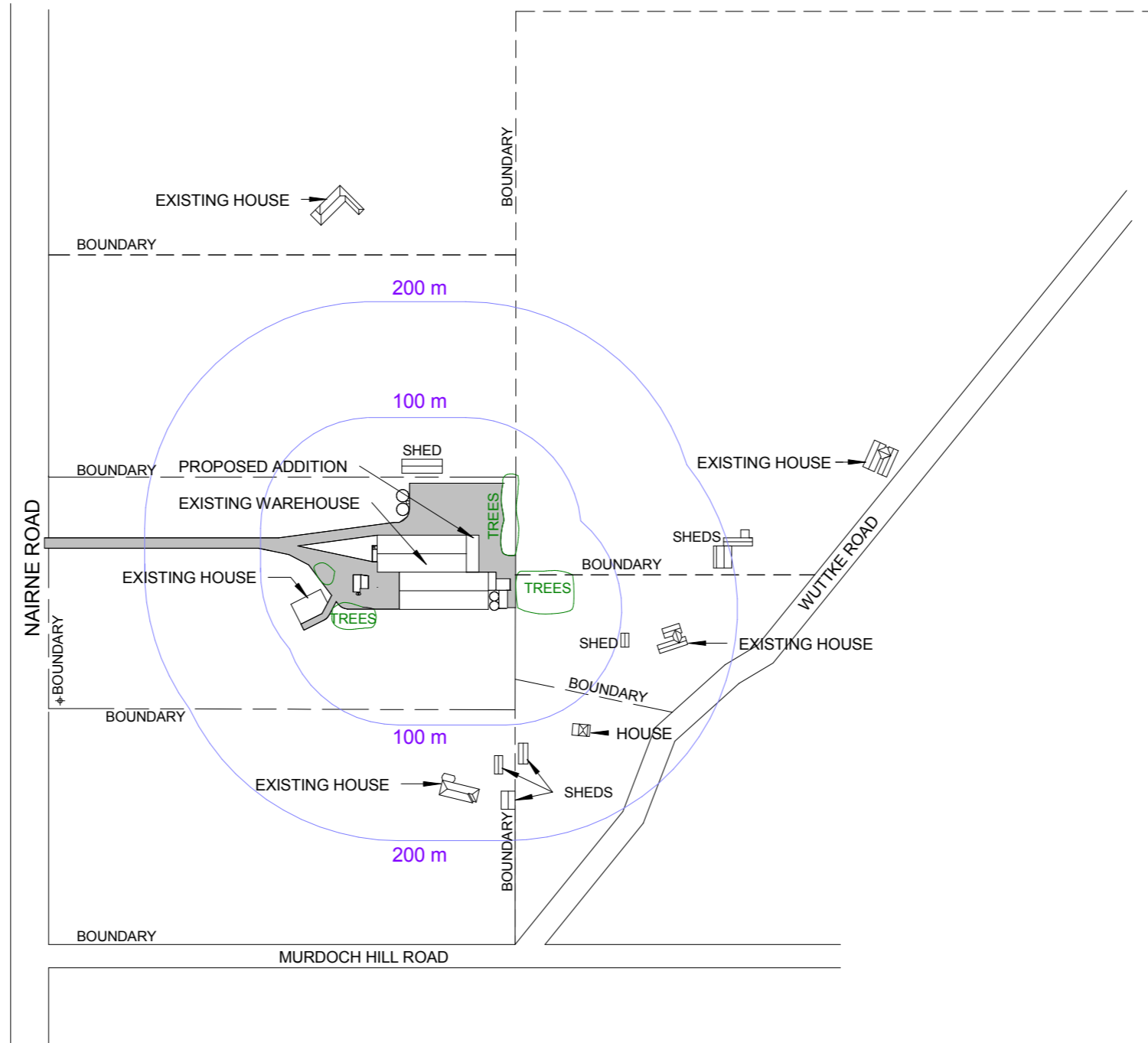
CLOSING DATE: 15 June 2020

**ZONE: Watershed (Primary Production)
Policy Area: Onkaparinga Valley**

CONTACT OFFICER: Marie Molinaro

FOR PUBLIC DISPLAY ONLY

Date to be displayed:	29 May 2020
Date to be removed:	15 June 2020

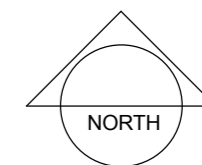


1

Locality Plan

1 : 5000

AMENDED 12/05/2020



Michael Watson Architect

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 michaelwatsonarch@bigpond.com
 www.adelaidearchitect.com.au



**RETROSPECTIVE CHANGE OF USE AT A
 WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
 S.A. FOR CARLTON NITSCHKE INVESTMENTS
 PTY.LTD.**

Locality Plan

Project number	NIT 004	A 5	
Date	9.4.20		
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BOUNDARY

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1

Existing Site Plan

1 : 1000

PASTURE

GRAVEL DRIVEWAY

416

GRAVEL
A 8
3

EXISTING MATURE
EUCALYPTS

416

EXISTING
SHED

EXISTING SHED

417

EXISTING MATURE
EUCALYPTS

HYDRANT

EXISTING SHED

EXISTING
HOUSE

WATER SUPPLY PIPELINE

EXISTING MATURE
EUCALYPTS

418

419

201.10

BOUNDARY

PASTURE

EXISTING MATURE
EUCALYPTS

PASTURE

EXISTING WATER SUPPLY PIPELINE

418

419

EXISTING
BORE

201.00

BOUNDARY

BOUNDARY

403.00

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RETROSPECTIVE CHANGE OF USE AT A
WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
S.A. FOR CARLTON NITSCHKE INVESTMENTS
PTY.LTD.

Existing Site Plan

Project number NIT 004

Date 9.4.20

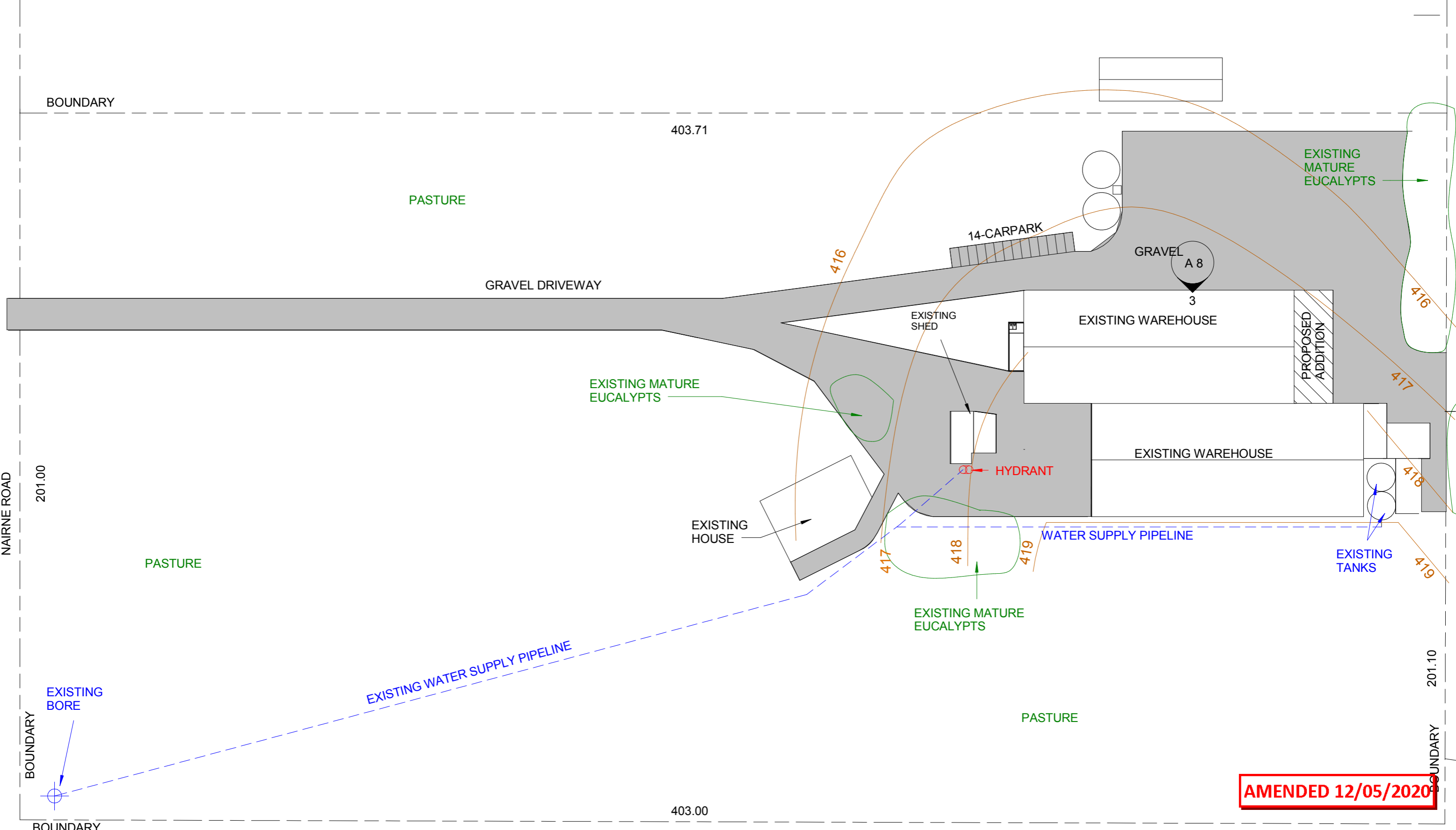
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**RETROSPECTIVE CHANGE OF USE AT A
 WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
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 PTY.LTD.**

Proposed Site Plan

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AMENDED 12/05/2020

LEGEND

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- E EXIT LIGHT
- H EXISTING FIRE HYDRANT
- H PROPOSED DOUBLE-HEAD FIRE HYDRANT

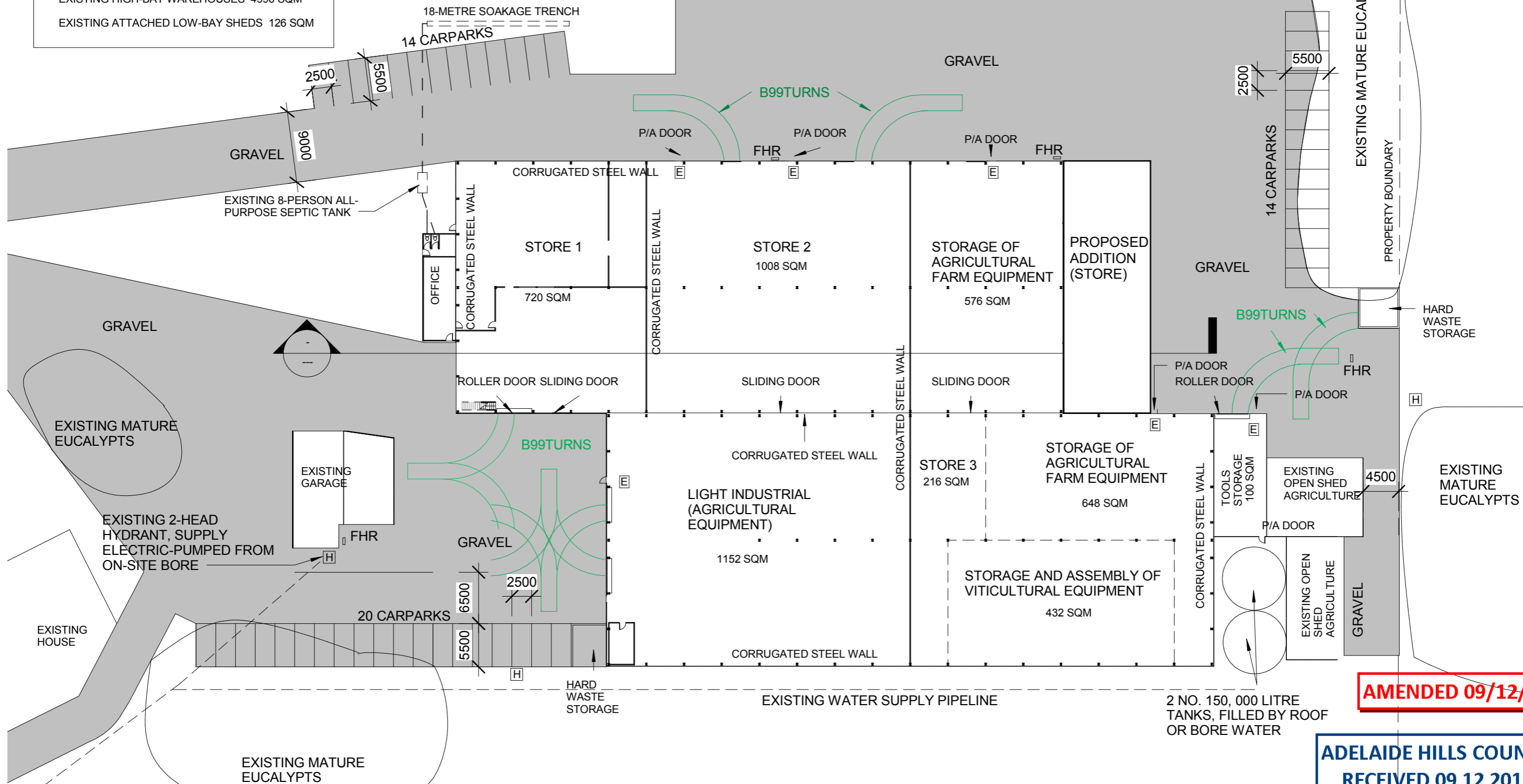
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AREA WAREHOUSES	5122 SQM	
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200 - 2000 SQM:	1.33 / 100SQM:	24 PARKS
> 2000 SQM:	0.67 / 100 SQM:	20 PARKS
		TOTAL: 48 PARKS

BUILDING AREAS

- EXISTING HIGH-BAY WAREHOUSES 4996 SQM
- EXISTING ATTACHED LOW-BAY SHEDS 126 SQM

1 **Carparking Plan**
1 : 500



AMENDED 09/12/19

**ADELAIDE HILLS COUNCIL
RECEIVED 09 12 2019**

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**RETROSPECTIVE CHANGE OF USE AT A
WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
S.A. FOR CARLTON NITSCHKE INVESTMENTS
PTY.LTD.**

Carparking Plan

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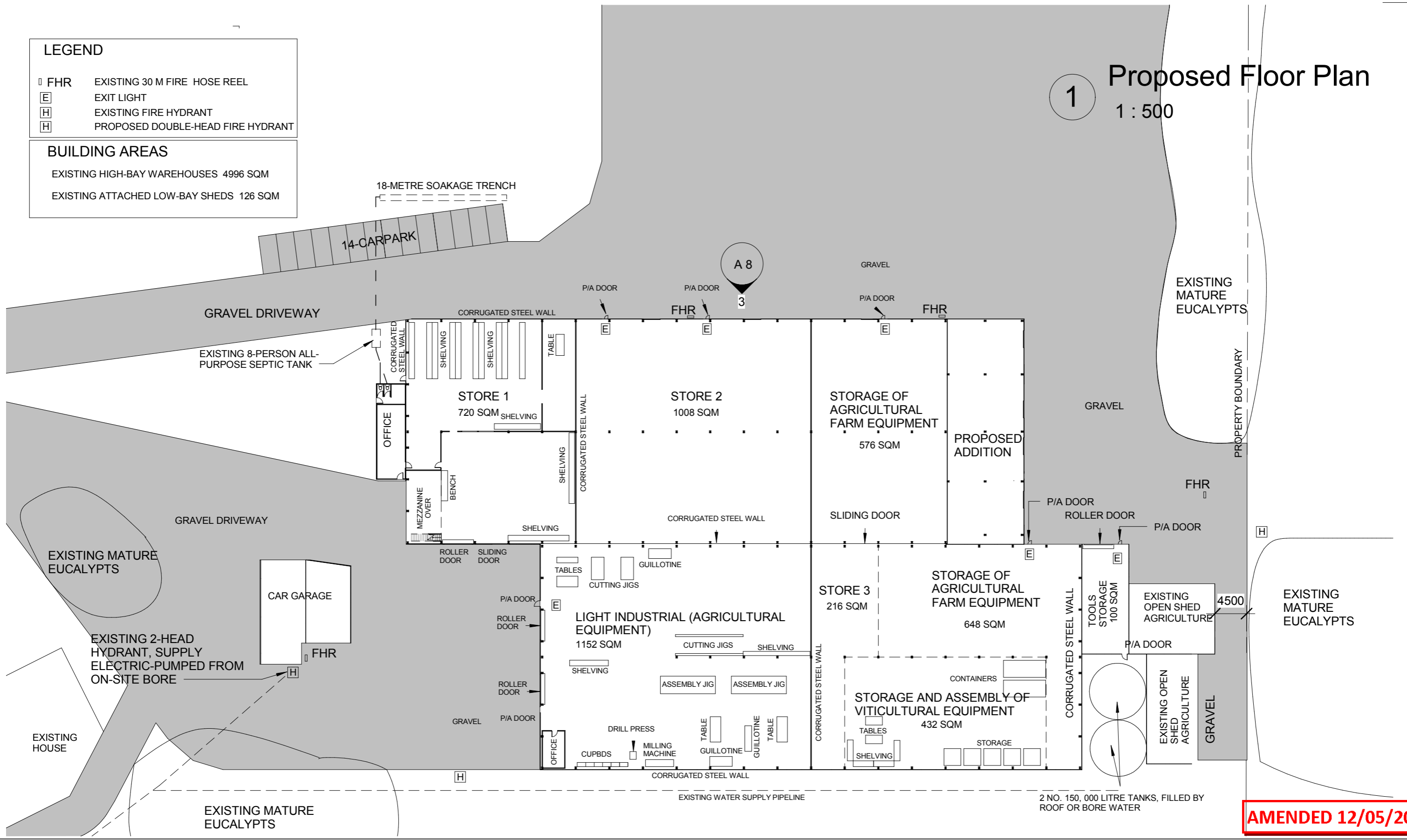
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- FHR EXISTING 30 M FIRE HOSE REEL
- ⊞ EXIT LIGHT
- ⊞ EXISTING FIRE HYDRANT
- ⊞ PROPOSED DOUBLE-HEAD FIRE HYDRANT

BUILDING AREAS

- EXISTING HIGH-BAY WAREHOUSES 4996 SQM
- EXISTING ATTACHED LOW-BAY SHEDS 126 SQM

1 Proposed Floor Plan
1 : 500



Michael Watson Architect

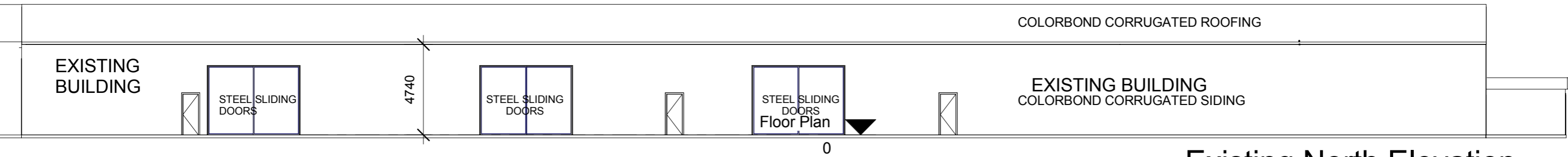
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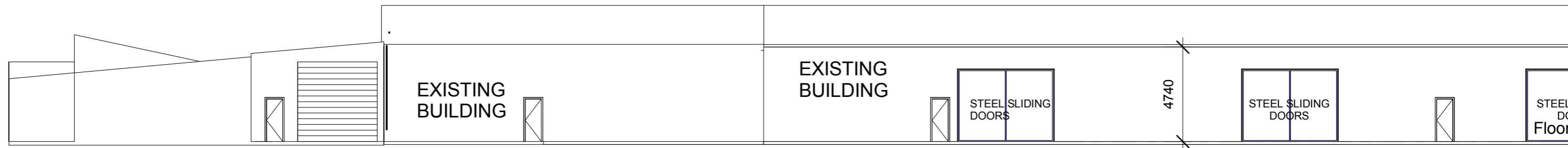
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Proposed Floor Plan

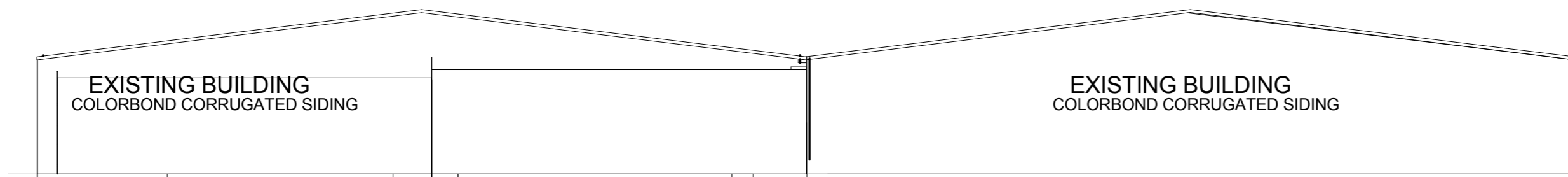
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Date	9.4.20	
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1 Existing North Elevation West End
1 : 200



2 Existing North Elevation East End
1 : 200



3 Existing East Elevation
1 : 200

Michael Watson Architect

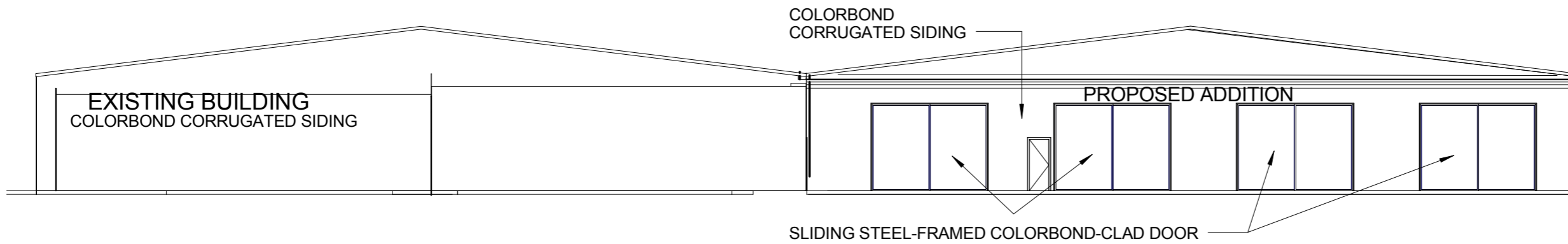
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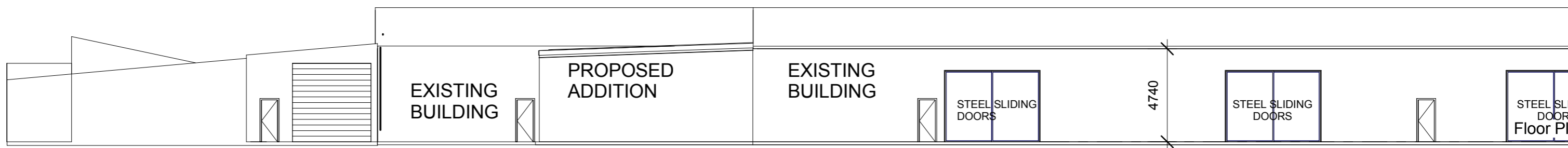
RETROSPECTIVE CHANGE OF USE AT A
WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
S.A. FOR CARLTON NITSCHKE INVESTMENTS
PTY.LTD.

Existing Building North and East Elevations

Project number	NIT 004	A 3
Date	9.4.20	
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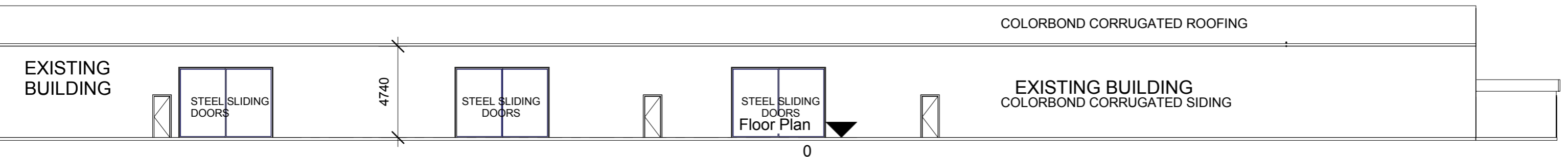


1 East Elevation
1 : 200



2 Proposed North Elevation
East End
1 : 200

3 Proposed North Elevation
West End
1 : 200



AMENDED 12/05/2020

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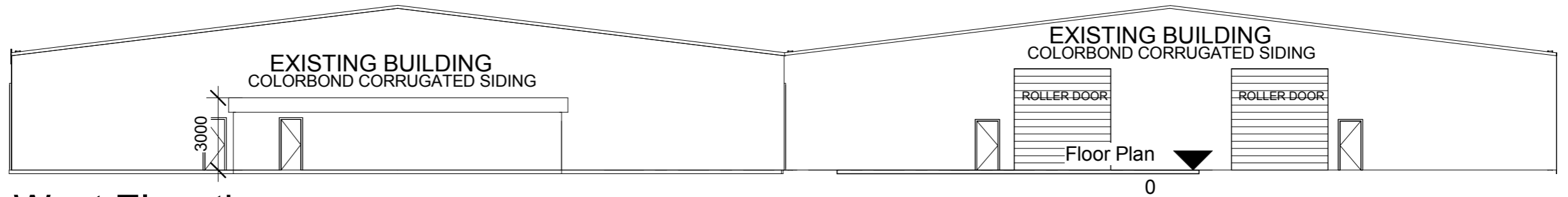


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S.A. FOR CARLTON NITSCHKE INVESTMENTS
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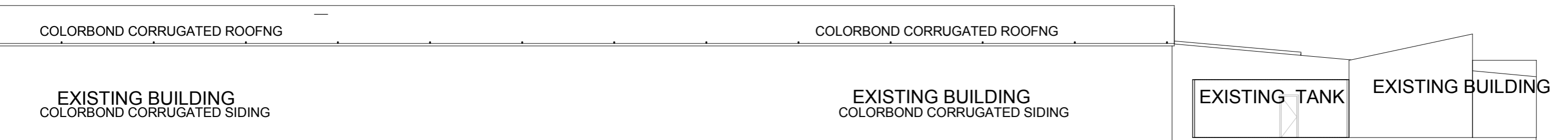
Proposed North and East Elevations

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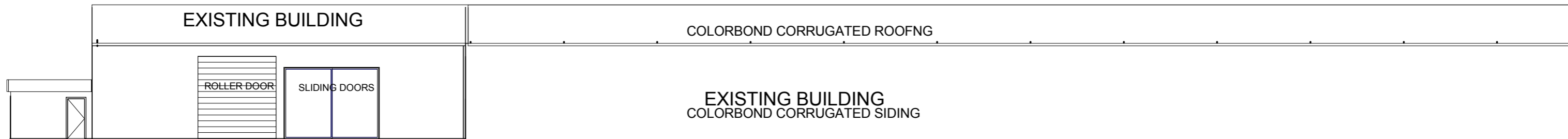
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1 Existing West Elevation
1 : 200



2 Existing South Elevation
East End
1 : 200



3 Existing South Elevation
West End
1 : 200

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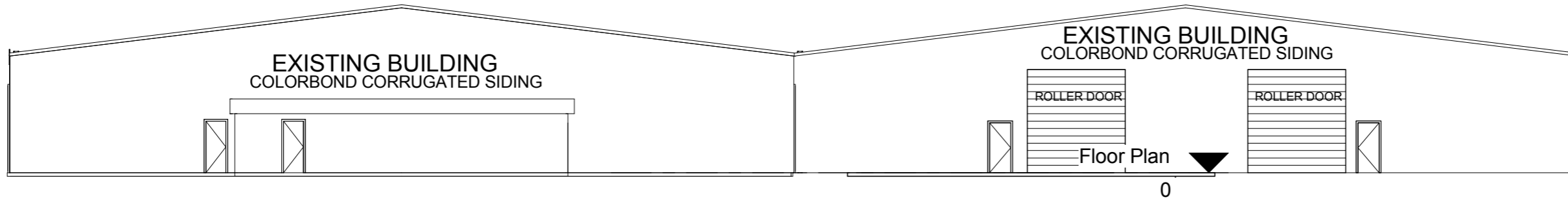
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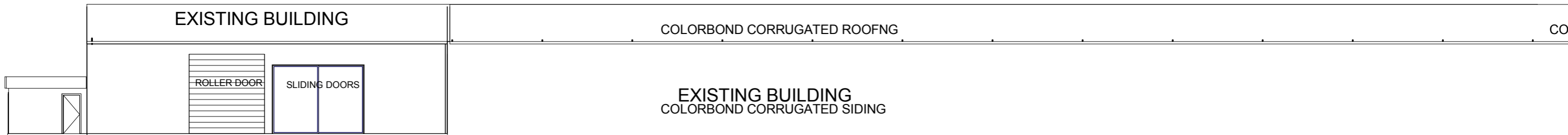
RETROSPECTIVE CHANGE OF USE AT A
WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
S.A. FOR CARLTON NITSCHKE INVESTMENTS
PTY.LTD.

Existing Building West and South
Elevations

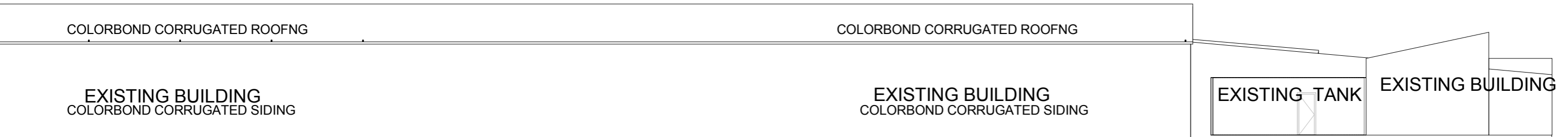
Project number	NIT 004	A 4
Date	9.4.20	
Drawn by	MRW	
Checked by	MRW	Scale 1 : 200



1 Proposed West Elevation
1 : 200



2 Proposed South Elevation
West End
1 : 200



3 Proposed South Elevation
East End
1 : 200

AMENDED 12/05/2020

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RETROSPECTIVE CHANGE OF USE AT A
WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE,
S.A. FOR CARLTON NITSCHKE INVESTMENTS
PTY.LTD.

Proposed West and South Elevations

Project number	NIT 004	A 9
Date	9.4.20	
Drawn by	MRW	
Checked by	MRW	Scale 1 : 200

MARSHALL DAY
Acoustics 

359 NAIRNE ROAD, WOODSIDE
ENVIRONMENTAL NOISE ASSESMENT

Rp 001 R01 20190861 | 21 April 2020

AMENDED 12/05/2020

Project: 359 NAIRNE ROAD, WOODSIDE

Prepared for: Carlton Nitschke Investments Pty Ltd
C/-
Adelaide Hills Development Services
PO Box 1508
Mt Barker SA 5251

Attention: Peter Meline

Report No.: Rp 001 R01 20190861

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Document Control

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1.0 INTRODUCTION

Carlton Nitschke Investments Pty Ltd are seeking Development Plan Consent for reconfiguration of existing facilities and the addition of additional light industry uses to an existing building at 359 Nairne Road, Woodside, South Australia (DA 19/210/473).

Marshall Day Acoustics Pty Ltd (MDA) has been engaged by Adelaide Hills Development Services, on behalf of Carlton Nitschke Investments Pty Ltd, to undertake an environmental noise assessment of the proposed site operations.

The following report details the proposed site location, operations, relevant environmental noise legislation and a noise assessment of proposed site operations.

A glossary of acoustic terminology used within this report is included in Appendix A.

2.0 SITE DESCRIPTION

2.1 Site location

The subject site is located at 359 Nairne Road, Woodside, South Australia.

The site is bounded by the following:

- Nairne road immediately west
- Existing commercial warehouse facility to the north
- Residential dwellings to the east and south

The nearest noise-affected premises to the site have been identified from site survey and a review of public available imagery.

The nearest noise-affect premises considered for this assessment are detailed in Table 1.

Table 1: Nearest identified noise-affected premises

Reference	Address	Approximate distance to site
R1	41 Wuttke Road	250 m east
R2	25 Wuttke Road	200 m east
R3	17 Wuttke Road	180 m south east
R4	41 Murdoch Hill Road	180 m south

The site location and surrounding environment is provided in Appendix B.

2.2 Site operations

The site is proposed to operate during normal daylight business hours, 8am to 6pm, 7 days a week.

The site consists of seven (7) tenancies, catering from general storage, to light industry metal fabrication as follows:

- Store 1 and Office - Casa Light and Power: existing store for lighting and sound equipment storage and office use
- Store 2 - Living by Design: storage of furniture by "Living by Design"
- Store 3 - pallet storage by Trevor Flowers: used for pallet storage
- Storage and packing of viticultural equipment – Aussie Wine Group: used for the storage and packing of grape harvesting equipment. The equipment is manufactured offsite, but then brought to this site for testing (bolts, belt tensions, all settings, then connected to an electric

powered power pack to check individual operation). The unit is packed and shipped with forklifts used to get the products onto the trucks.

- Storage of agricultural/farm equipment: used for storage of their farming and agricultural equipment, tools and machinery
- Light Industry (Agricultural Equipment) – Aussie Feeders: fabrication of livestock feeders and other types of similar equipment
- Tool store: used predominantly for the storage of tools and various other similar domestic-type repair items

A copy of the site layout is provided in Appendix C.

Noise generating activities proposed on the site include vehicle movements transporting items for storage, delivery of goods and metal fabrication within the light industry tenancy.

Site vehicle movements are expected to only occur during daylight hours and will involve multiple vehicles; up to thirteen (13) small vehicles per day and up to four (4) large vehicle movements per day. Harvesting vehicle movements are likely to only occur between February and April during harvest time and will involve large vehicles transporting harvesting equipment.

2.3 Ambient noise levels

Ambient noise levels were measured between 17 September and 20 September 2019, at a location representative of the background noise level at the nearest noise-affected premise.

The measurements indicate background noise levels during the proposed time of operation typically ranging 30-40 dB $L_{A90,15min}$.

Further details on the measured noise levels are provided in Appendix D.

2.4 Planning considerations

The site and surrounding environment are located within the Adelaide Hills Council.

With reference to the Adelaide Hills Council Development Plan, consolidated 8 August 2019, the site and surrounds are within the Watershed (Primary Production) Zone, specifically Policy Area 10 *Onkaparinga Valley*.

A copy of the relevant land zoning map is provided in Appendix E. The relevant Council principles of development control are provided in Appendix F.

3.0 NOISE ASSESSMENT CRITERIA

3.1 Overview

The Adelaide Hills Council Development Plan, Council Wide Principle of Development Control 7 requires [new 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 relevant policy is the *Environment Protection (Noise) Policy 2007* (EPP). The EPP provides a methodology and objective noise criteria, relevant for the assessment of new proposed or existing premises. This is a broad policy designed to secure the noise objectives of the *Environment Protection Act 1993*. The objective criteria are developed in accordance with World Health Organization guidelines aiming to balance social, economic and environmental considerations in the management of noise issues.

3.2 Noise criteria

The EPP separates the day into two different time periods; day (7am – 10pm) and night (10pm – 7am). The noise limits for each time period is determined, with consideration of the assigned land use category, principally promoted by the relevant Council Development Plan, for both the noise source and nearest existing noise-affected premises.

However, the Adelaide Hills Council Development Plan, Watershed (Primary Production) Zone Principle of Development Control 62(e) states:

Agricultural industries, [...] should not generate noise of greater than 40 decibels during the hours of 10 pm to 7am and 47 decibels between 7 am to 10 pm respectively as measured at the nearest neighbouring dwelling or boundary of a vacant allotment.

As proposed site operations occur only during normal day hours, site operations should be designed to meet the day noise level, 47 dB L_{Aeq} , at the nearest existing noise-affected premises or boundary of a vacant allotment.

4.0 NOISE ASSESMENT

An assessment under the EPP compares the predicted noise level of a noise source at the nearest noise affected premises to the relevant noise limit. The predicted noise level is the A-weighted equivalent noise level of the noise source over a 15-minute period ($L_{Aeq,15min}$), adjusted for any audible characteristics.

Details regarding the noise modelling considerations are included in Appendix G.

Noise level data used in this assessment is summarised in Appendix H and is based on measurements of operations as proposed at the site.

4.1 Assumptions

The following assumptions have been considered in the assessment of the noise associated with the facilities:

- Maximum of 13 light vehicles/entering and exiting on any given day
- Maximum of 4 large vehicles/entering and exiting on any given day
- Existing light manufacturing building, constructed from sheet metal with thermal insulation. Two (2) roller doors are located on the west facade and are open during the day

4.2 Predicted noise levels

The following 15-minute day period scenario which is assumed to be representative of operations that would produce highest expected noise levels at the surrounding environment has been modelled:

- Light Industry (Agricultural Equipment) tenancy
 - All plant equipment within building operating continuously for 15 minutes
- Vehicle movements:
 - Three (3) light vehicles arriving and departing the site
 - One (1) large vehicle arriving and departing the site
- Packing of viticultural equipment – Aussie Wine Group
 - Testing of equipment inside building
 - Loading of equipment to trucks using forklifts (external building) (5 minutes)

The predicted noise levels from the modelled scenario at the nearest identified noise-affected premises are provided in Table 2.

Table 2: Predicted noise levels, dB $L_{Aeq,15min}$

Receiver reference	Noise level
R1	43
R2	42
R3	42
R4	41

The predicted noise levels in Table 2 meet the relevant noise limit at the nearest existing noise-affected premises, without the need for additional acoustic treatment. The dominant noise source controlling the predicted environmental noise levels at all receiver locations are the vehicle movements.

For reference, the predicted noise levels excluding vehicle movements, i.e. just noise breakout from the light manufacturing tenancy and during testing of the Aussie Wine Group equipment is provided in Table 3. The predicted noise levels are well below the allowable level 47 dB L_{Aeq} .

Table 3: Predicted noise levels excluding vehicle movements, dB $L_{Aeq,15min}$

Receiver reference	Noise level
R1	32
R2	30
R3	27
R4	29

5.0 SUMMARY

It is proposed to reconfigure an existing storage, light manufacturing and office facility at 359 Nairne Road, Woodside.

The site is located in the Adelaide Hills Council, and planning requirements in the Development Plan require the proposal to comply with specific noise criteria.

Site measurements and a noise model of the site noise activities have been undertaken. The predicted site noise levels meet the relevant day time noise limit, defined in the Adelaide Hills Council Development Plan, Watershed (Primary Production) Zone Principle of Development Control 62(e) at the nearest existing noise-affected premises, without the need for specific acoustic treatment.

APPENDIX A GLOSSARY OF TERMINOLOGY

Ambient	The ambient noise level is the noise level measured in the absence of the intrusive noise or the noise requiring control. Ambient noise levels are frequently measured to determine the situation prior to the addition of a new noise source.
A-weighting	The process by which noise levels are corrected to account for the non-linear frequency response of the human ear.
dB	Decibel: The unit of sound level. Expressed as a logarithmic ratio of sound pressure P relative to a reference pressure of $P_r=20 \mu\text{Pa}$ i.e. $\text{dB} = 20 \times \log(P/P_r)$
Frequency	The number of pressure fluctuation cycles per second of a sound wave. Measured in units of Hertz (Hz).
Hertz (Hz)	Hertz is the unit of frequency. One hertz is one cycle per second. One thousand hertz is a kilohertz (kHz).
$L_{Aeq(t)}$	The equivalent continuous (time-averaged) A-weighted sound level. This is commonly referred to as the average noise level. The suffix "t" represents the time period to which the noise level relates, e.g. (8 h) would represent a period of 8 hours, (15 min) would represent a period of 15 minutes and (2200-0700) would represent a measurement time between 10 pm and 7 am.
L_{A90}	The noise level exceeded for 90% of the measurement period, measured in dBA. This is commonly referred to as the background noise level.
L_{wA}	A-weighted Sound Power Level A logarithmic ratio of the acoustic power output of a source relative to 10-12 watts and expressed in decibels. Sound power level is calculated from measured sound pressure levels and represents the level of total sound power radiated by a sound source.

APPENDIX B SITE LOCATION AND SURROUNDS



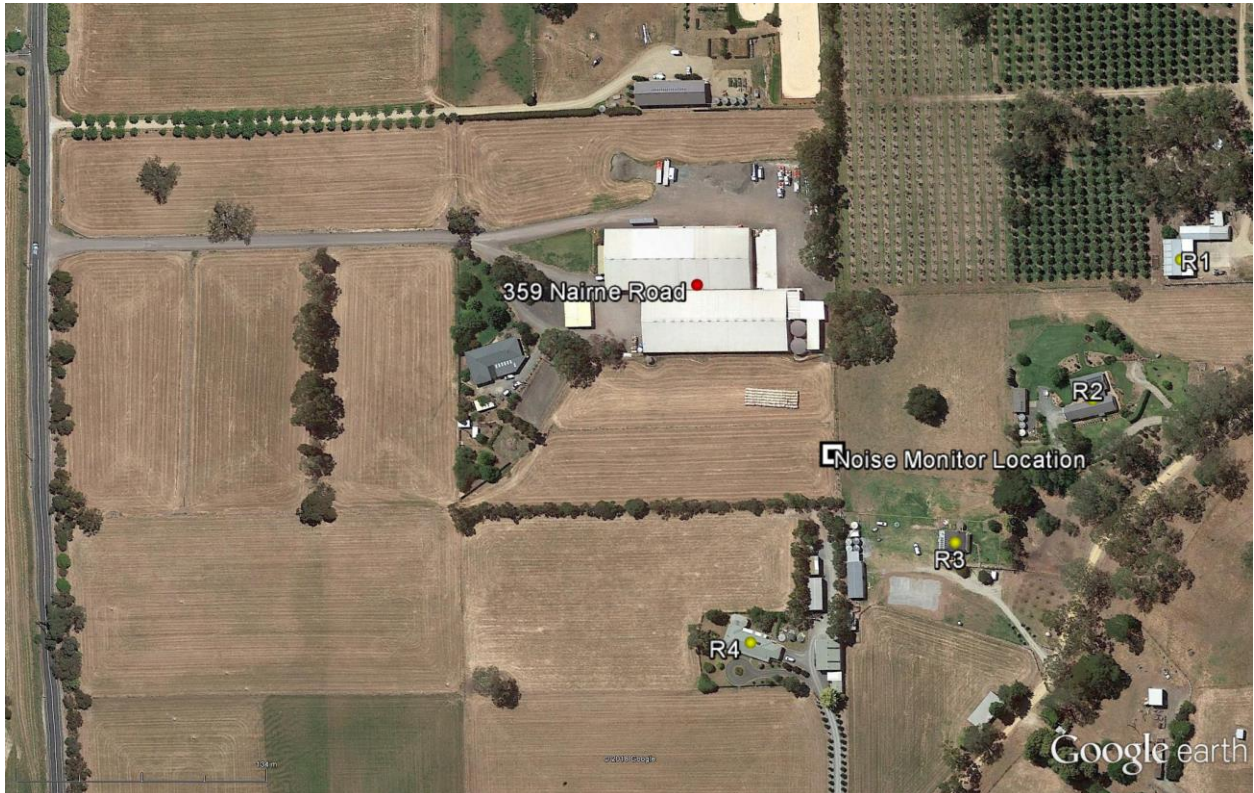
APPENDIX D AMBIENT NOISE LEVEL

Ambient noise levels were measured between 17 September and 20 September 2019, at a location representative of the background noise level at the nearest noise-affected premise to the site.

Measurements were obtained using a Class 1 01dB DUO environmental noise monitor (serial no: 10433). A calibration check conducted prior to and after the measurement survey using a 01dB Cal21 sound level calibrator (serial no: 34134142) and confirmed no significant drift (<0.5 dB) in the reference level.

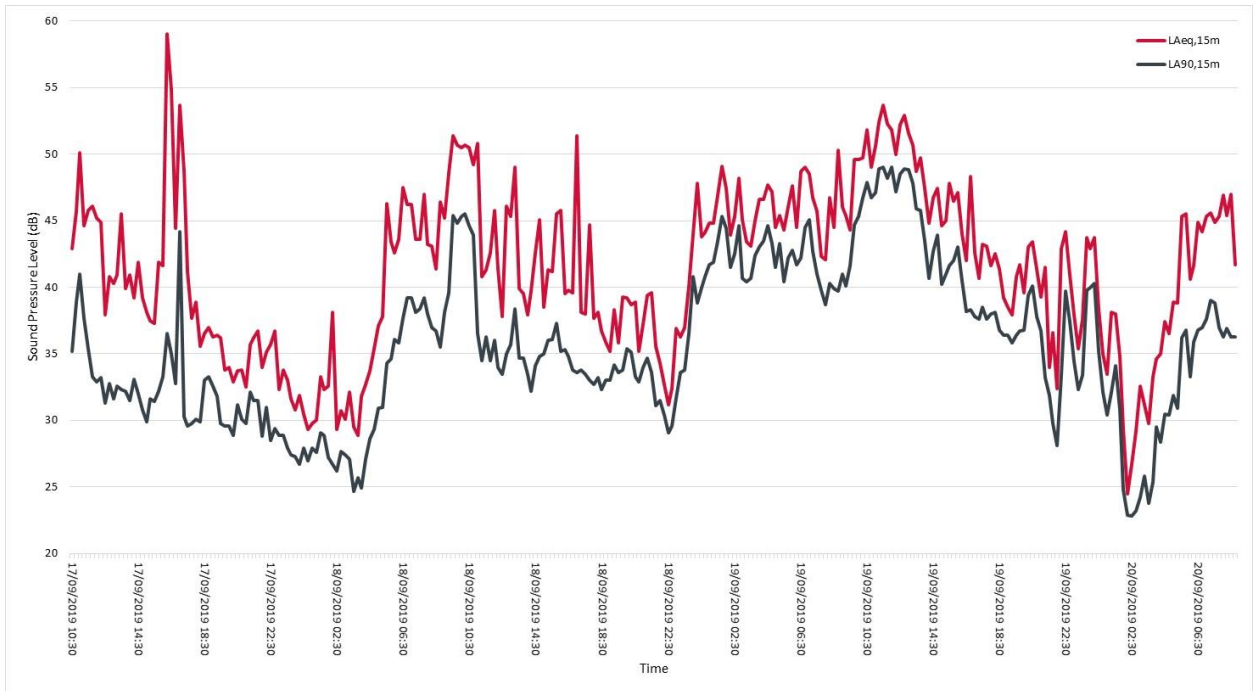
The measurement location is shown in Figure 1.

Figure 1: Noise monitor location



A summary of the measured noise levels are provided in Figure 2.

Figure 2: Measured ambient noise levels



APPENDIX E ZONING MAP



APPENDIX F ADELAIDE HILLS COUNCIL DEVELOPMENT PLAN

COUNCIL WIDE

INTERFACE BETWEEN LAND USES

PRINCIPLES OF DEVELOPMENT CONTROL

1 Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:

(b) noise

2 Development should be sited and designed to minimise negative impacts on existing and potential future land uses desired in the locality.

Noise Generating Activities

7 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.

8 Development with the potential to emit significant noise (e.g. industry) should incorporate noise attenuation measures that prevent noise from causing unreasonable interference with the amenity of noise sensitive premises

WATERSHED (PRIMARY PRODUCTION) ZONE

OBJECTIVES

- 1. The maintenance and enhancement of the natural resources of the south Mount Lofty Ranges.*
- 2. The enhancement of the Mount Lofty Ranges Watershed as a source of high quality water.*
- 3. The long-term sustainability of rural production in the south Mount Lofty Ranges.*
- 4. The preservation and restoration of remnant native vegetation in the south Mount Lofty Ranges.*
- 5. The enhancement of the amenity and landscape of the south Mount Lofty Ranges for the enjoyment of residents and visitors.*
- 6. The development of a sustainable tourism industry with accommodation, attractions and facilities which relate to and interpret the natural and cultural resources of the south Mount Lofty Ranges, and increase the opportunities for visitors to stay overnight.*

PRINCIPLES OF DEVELOPMENT CONTROL

62) Agricultural industries, mineral water extraction and processing plants and wineries should not:

- d) Generate significant additional traffic noise or other nuisance which would detract from residents' or other land holders' enjoyment of the locality;*
- e) Generate noise of greater than 40 decibels during the hours of 10 pm to 7 am and 47 decibels between 7 am to 10 pm respectively as measured at the nearest neighbouring dwelling or boundary of a vacant allotment; and*

APPENDIX G NOISE MODELLING METHOD

A 3-dimensional computer model was created in the environmental noise modelling program SoundPLAN v8.1 to predict noise levels from the proposed development to the nearest noise-affected premises in the vicinity of the subject site. The noise model has been used to calculate noise levels at the nearest noise-affected premises in accordance with ISO-9613-2:1996 *Acoustics – Attenuation of sound during propagation outdoors – Part 2: General method of calculation* (ISO 9613-2). The noise model enables the calculation of noise levels over a wide area, and accounts for key considerations including site arrangement, terrain and atmospheric conditions.

The ISO 9613-2 standard specifies an engineering method for calculating noise at a known distance from a variety of sources under meteorological conditions that are favourable to sound propagation. The standard defines favourable conditions as downwind propagation where the source blows from the source to the receiver within an angle of +/-45 degrees from a line connecting the source to the receiver, at wind speeds between approximately 1 m/s and 5 m/s, measured at a height of 3 m to 11 m above the ground. Equivalently, the method accounts for average propagation under a well-developed moderate ground based thermal inversion.

Accordingly, predictions based on ISO 9613-2 account for the instances when local atmospheric conditions at the site favour the propagation of sound to surrounding receptor locations. Under alternative atmospheric conditions, such as when the wind is blowing from a receiver location to the development site, the noise levels would be lower than calculated.

To calculate far-field noise levels according to the ISO 9613-2, the noise levels of each source are firstly characterised in the form of octave band frequency levels. A series of octave band attenuation factors are then calculated for a range of effects including:

- Geometric divergence
- Air absorption
- Reflecting obstacles
- Screening
- Ground reflections.

The octave band attenuation factors are then applied to the noise data to determine the corresponding octave band and total calculated noise level at relevant receiver locations.

Geometry data for the model has been sourced from public aerial photography, visual inspections of the area, and building heights defined based on standard assumed heights per floor level. The geometries in the model are simplified representations of the built environment that have been configured to a level of detail that is appropriate for noise calculation purposes.

The following inputs have been referenced in the noise model to predict noise levels from onsite activities.

- Receivers at 1.5 m (single storey) and 4.5 m (two storey) above ground level.
- Receiver locations positioned according to public aerial imagery (imagery sourced from Google Earth)
- Flat ground, to negate potential shielding provided by terrain (conservative)
- Emission data for each source at the site as detailed in Appendix H.
- Noise levels calculated to the receiver building facade. Reflections from the receiver buildings own facade are not included (i.e. free-field noise levels)

APPENDIX H NOISE LEVELS OF SITE OPERATIONS

Noise level data measured from on-site survey and previous noise surveys conducted by MDA have been used to assess noise levels associated with the site operation.

H1 Metal fabrication noise levels

Internal noise measurement of existing light metal fabrication operations within the site is detailed in Table 4.

Table 4: Internal reverberant level metal fabrication workshop, dB L_{eq}

Source	Octave band centre frequency (Hz)							
	63	125	250	500	1000	2000	4000	A
Measured internal level	63	68	69	68	66	66	65	73

H2 Aussie Wine Group noise levels

Noise levels associated with the Aussie Wine Group tenancy are based on measurements by MDA of similar type equipment. In the absence of being able to measure noise levels during the testing of equipment within the tenancy, an estimated but considered conservative noise level has been assumed.

The noise levels used for this assessment are detailed in Table 5.

Table 5: Aussie Wine Group, dB L_{eq}

Source	Octave band centre frequency (Hz)							
	63	125	250	500	1000	2000	4000	A
Forklift loading	96	94	92	90	89	82	95	98
Internal level during testing of equipment	85	85	80	80	75	75	75	83

H3 Vehicles noise levels

Vehicle noise levels have previously been measured by MDA. The calculated sound power level for vehicle types as proposed on the site and used in this assessment are detailed in Table 6.

Table 6: Vehicle sound power levels dB L_w

Source	Octave band centre frequency (Hz)							
	63	125	250	500	1000	2000	4000	A
Light Vehicles	93	91	89	89	89	86	79	93
Large Vehicles	109	111	106	101	100	98	93	106

Combined Statement in Support/Statement of Effect

Development Regulations 2008, Regulation 17(1) and (4)

DA 19/210/473

*Development Application seeking Development Plan Consent for a
reconfiguration of an existing storage and office facility and the addition
of agricultural light industry uses in an existing building*

May 2020

Statement of Effect pursuant to Regulation 17(1) and (4) of the *Development Regulations 2008*

Development Application seeking Development Plan Consent for a reconfiguration of an existing storage and office facility and the addition of agricultural light industry uses in an existing building

BACKGROUND

We act for Carlton Nitschke Investments Pty Ltd, John Nitschke Nominees Pty Ltd (ACN 007 758 947) and John and Lynette Nitschke, who control the land at 359 Nairne Road, Woodside, comprised in Certificate of Title Volume 5439 Folio 561 (**Land**).

Mr John Nitschke is the applicant for DA 19/210/473 which in its initial form, sought development plan consent for development described by the Council as "*change of use from warehouse (storage of seed) to stores, industry, office and truck parking, including addition to building - non-complying*" (**the Application**).

This Statement of Effect is prepared pursuant to section 39 (2)(d) of the *Development Act 1993 (Act)* and *Regulation 17(4) of the Development Regulations 2008 (Regulations)*. Regulation 17(5) provides that a Statement of Effect must include :

- (i) *a description of the nature of the development and the nature of its locality; and*
- (ii) *a statement as to the provisions of the Development Plan which are relevant to the assessment of the proposed development; and*
- (iii) *an assessment of the extent to which the proposed development complies with the provisions of the Development Plan; and*
- (iv) *an assessment of the expected social, economic and environmental effects of the development on its locality; and*
- (v) *any other information specified by the relevant authority when it resolves to proceed with an assessment of the application (being information which the relevant authority reasonably requires in the circumstances of the particular case).*

This combined Statement of Effect and Statement in Support replaces and supersedes the Combined Statement of Effect and Statement of Support dated June 2019 prepared by Tom Crompton of Botten Levinson and the Statement of Support prepared by Mr Peter Meline (Peter Meline & Associates) previously submitted with this application.

In preparing this Statement, we have reviewed the proposal against the relevant provisions of the Adelaide Hills Council Development Plan (consolidated 24 October 2017).

Before dealing with the matters required by regulation 17, we will set out variations to the Application that our clients now seek, pursuant to section 39(4) of the Act.

Varied application and amended plans

Subsequent to discussions with the Council's planning and compliance officers, my clients have decided to vary the Application. This Statement therefore also constitutes

a formal request to vary my clients' application and the plans pursuant to section 39 (4)(a) of the Act.

Accordingly, please find **enclosed** the following amended and new plans, which form part of the varied application, prepared by Michael Watson (Architect):-

1. "Existing Floor Plan" dated 9 April 2020;
2. "Existing Building North and East Elevations" dated 9 April 2020;
3. "Existing Site Plan" dated 9 April 2020;
4. "Existing Building West and South Elevations" dated 9 April 2020;
5. "Locality Plan" dated 9 April 2020;
6. "Proposed Floor Plan" dated 9 April 2020;
7. "Proposed North and East Elevations" dated 9 April 2020;
8. "Proposed Site Plan" dated 9 April 2020; and
9. "Proposed West and South Elevations" dated 9 April 2020.

The nature of the variations to the Application are described in detail below. Before dealing with them, I provide the following views as to the lawful existing use of the Land, which is relevant to the approach to the assessment of this application as varied herein.

Legal principles - interpreting an existing use

The principles for construing a lawful existing use were set out in *Royal Agricultural Society of NSW v Sydney City Council*¹ and have been applied by the South Australian Supreme Court and other Courts on a number of occasions.

The existing use principles establish that it would be unjust to deprive a landowner of the right to use land for an existing purpose. Accordingly, the Courts have established that whilst the interpretation of an existing use will vary on the facts of each case, the nature of the existing use should be liberally construed:-

...the general approach to be taken is one of construing the 'use' broadly. It is to be construed liberally such that confining the user to precise activity is not required. What is required is the determination of the appropriate genus which best describes the activities in question...In determining that genus, attention should be focused on the purpose for which the determination is being made. This is a town planning purpose. It therefore considers the use from the perspective of the impact of the use on the neighbourhood²...

It is clear from the cases that it is only necessary to identify the broad "genus" of the existing use, when construing the nature and scope of existing use rights. It is generally the wrong approach to conduct a detailed analysis of individual processes and activities on land when construing the existing use.

In some cases, the level of generality at which an existing use can be characterised will be affected by the specificity of a condition of approval or other specific restriction on a previous land use³. However, those cases will be relatively rare and generally speaking, the broad, liberal approach to the interpretation of an existing use will be appropriate.

Lawful existing use of the Land

I am instructed that the Council holds the following statutory approvals granted under

¹ *Royal Agricultural Society of NSW v Sydney City Council* (1987) 61 LGRA 305 per McHugh JA at [309-310].

² *Mitcham v Fusco* [2002] SASC 423, citing with approval *North Sydney Municipal Council v Boyts Radio and Electrical Pty Ltd* (1989) 67 LGRA 344, per Kirby P.

³ See for example, *Mount Barker District Council v Palma*[2002] SASC 423 at [31].

planning legislation for the Land:

- (i) DA 18/13 "alterations and additions";
- (ii) DA 563/4 - 361/83 - "seed storage shed extension" granted 28 November 1983;
- (iii) DA 563/4 - 314/86 - "car port";
- (iv) DA 563/4-119/83 - "office/storeroom" granted 26 April 1983;
- (v) DA 563/4 - 101/86 - "Hay shed";
- (vi) DA 4/252 - "storage shed extension" dated 6 September 1980;
- (vii) DA 4/169 - "seed storage shed" (ref S:W: 12/7) dated 20 November 1979;
- (viii) DA 4/137 - "car shed";
- (ix) DA 4/145 - "dwelling".

It is tolerably clear from at least the existing statutory approvals and the associated approved plans provided to us, that the main building on the Land enjoys lawfully existing use rights in the nature of a "store" and an "office".

The Land more broadly also appears to enjoy lawful existing use rights for residential uses (the dwelling) and agricultural or farming type uses, which I understand were conducted historically on the land since before planning controls were promulgated.

The Council has described the nature of the lawful existing use rights for the main building as a "warehouse" albeit there is no evidence to support that suggestion. The historic approved plans show a use in the nature of a store and small office encllo with associated toilet facilities.

While there are references occasionally in some of the approvals to "hay shed" or "seed storage shed", it is difficult to see why the approvals should be read down as limiting the storage of certain goods or for a certain type of business. In my view, consistent with the approach of the Courts, the lawful use of the main building should be **broadly construed** as a "store" and "office".

In addition to the above, the parking of trucks and other heavy vehicles on the land is part of the general farming use of the land. My client parks heavy vehicles and equipment from time to time on the land. The vehicles are used for, amongst other things, hay carting, farm staff amenities, site administration, ploughing, planting, harvesting, stock transport and similar farm-related activities. It follows that the heavy vehicle parking at the land is ancillary and subordinate to the broad farming and storage uses of the land and the main building. The parking of trucks and other heavy vehicles is therefore within the existing use rights for farming purposes.

THE LAND AND THE LOCALITY

The land is some 8.1 hectares in area and is of a regular shape. It has a single frontage to Nairne Road. As mentioned, It contains a large existing building of some 5,000 m² in total floor area (which has historically been approved for and used as a store and office), a single detached dwelling (which is presently tenanted) and associated outbuildings and structures, including aboveground water tanks, hardstand manoeuvring areas, car parking and landscaping.

Large portions of the land are vacant albeit I am instructed that some of those have previously been used for low intensity agricultural activities from time to time.

The broader locality includes the Inverbrackie Detention Centre (to the west across Nairne Road), scattered dwellings and horticultural and farming uses generally to the north, east and south. The closest dwellings to the land are located along Wuttke Road and Murdoch Hill Road, generally to the south and east of the site.

DESCRIPTION AND NATURE OF THE PROPOSED DEVELOPMENT

Bearing in mind the nature of the lawful existing use rights, the proposed development (as varied) is for the reconfiguration of the store and office use and the addition of a new light industry (fabrication of agricultural equipment) of an existing building.

Need for the proposed development

My client seeks development plan consent for the proposed development so that a productive use can be made of its substantial existing storage and office building, which would otherwise be in part vacant and unused.

My clients operate a farming and mining business at Hahndorf. They wish to continue using portion of the building as an overflow agricultural storage facility for their own farming equipment (see Schedule attached), given that the main building offers a safe and secure area for this storage to continue.

However, as the balance of the building is not presently required for their own storage, they wish to lease those portions to other local businesses. In particular, our clients saw an opportunity to add value to the local primary production industry by accommodating local agricultural businesses, Aussie Feeders (agricultural light industry), Malcolm Villers (storage of viticultural equipment) and Mr Trevor Flowers (pallet storage for a nursery), into the building.

The remainder of the areas of the building are now proposed to be used simply for low-key storage (and a small continuing office use) for other local businesses on a short-term basis, commensurate with the existing use rights for the building as a "store" and "office".

My client proposes to accommodate all of the small agricultural and other businesses in the building pursuant to informal, ongoing short term (typically 12 month) leases. If my client requires portions of the building for its own agricultural/farm storage purposes, then it would terminate the leases with others and again occupy those portions of the building as needed. There is no land division proposed or required as part of the proposed leases or the proposed development generally.

By reference to the **attached** "current uses" plan, I will describe the use of the main building in further detail below.

"Store 1" and "Office" - Casa Light and Power

The area labelled "Store 1" and "Office" will be used for the continuation of the lawful and existing store and office uses of this portion of the building, albeit for lighting and sound equipment storage by Casa Light and Power.

Casa Light and Power is a small local business which provides lighting and audio services to the music and entertainment industry.

Casa Light and Power's storage use will involve attendance by no more than one employee of Casa at any one time and the very occasional use of a single, one tonne van. Their use of the building will continue the storage and office uses of the building and for no other purposes.

No more than a maximum of four (4) vehicle movements will occur per day in association with this store component, albeit for the vast majority of the time there will be no vehicle movements because the light and sound equipment will only be accessed occasionally, when required for use off-site by Casa.

The area labelled "office" on the plans is lawful and existing and was approved on or

about 26 April 1983 by DA 563/4-119/83. The office area will be used by Casa Light and Power for their ancillary administrative and office-type activities during ordinary business hours. It does not need to be assessed again as part of this application given it appears to be lawful. No substantial waste will typically be generated by this component, other than occasional paper waste.

"Store 2" - Living by Design

The area labelled "Store 2" will be for the continuation of a store use, albeit for the storage of furniture by "Living by Design".⁴

Similarly, the storage use of this area of the building will involve low numbers of vehicle movements and no more than a maximum of five (5) deliveries in any one week by the use of a semi-trailer, during ordinary business hours.

The semi-trailer will attend at the site to load or unload the furniture as and when required for use or deposit to various other sites. There will be no permanent parking of the semi-trailers on land in association with this store use. There will be occasional collections and deliveries only.

This storage component will involve no employees - only the driver of the delivery vehicle. No appreciable waste will be generated by this storage use.

"Store 3" - pallet storage by Trevor Flowers

The area labelled "Store 3" will be used for pallet storage by a local person, Mr Tony Flowers, who I am instructed operates a plant nursery off-site.

The storage of pallets in this small area of the building (some 216 m² in total floor area) will not generate meaningful additional traffic and will only be accessed on a very infrequent basis such that it will be almost impossible to detect this storage component in the context of the existing and proposed use as a whole. No appreciable waste will typically be generated by this storage use.

"Storage of viticultural equipment " - Malcolm Villers

The area marked "Storage and Manufacture of Viticulture Equipment" will be used for the storage of grape harvesting equipment by a local viticultural operator, Mr Malcolm Villers.

I outline the nature of this component of the use below:-

1) Storage component

The grape harvesting equipment and machinery will only be accessed during 8.00 am - 6.00 pm and only at harvest (generally February to April) and vintage times. There will be minimal vehicle movements associated with this storage area for most of the year. When being collected or deposited, the grape harvesting equipment will be collected by a large vehicle and one or two employees will usually attend when collecting or depositing the harvesting equipment. There will be no servicing, repairs or maintenance and no fabrication or manufacturing activities associated with this component. There will be no appreciable waste typically generated by this storage use.

Occasionally, viticultural equipment is packaged and sent off site. The volume of

⁴ <https://livingbydesign.net.au/>
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equipment sent off site is minimal and varies throughout the year. The process of packing the equipment is straightforward. The equipment is placed on a pallet, wrapped in plastic and cardboard placed around it as the outer layer. Minimal noise is generated from the packing of the equipment itself.

"Storage of agricultural farm equipment" - Nitschke family farm

The area marked "Storage of Agricultural Farm Equipment" will now be used by my clients for the storage of their farming and agricultural equipment, tools and machinery in portion of the building totalling some 1,224 m².

My clients' family has operated a farming enterprise at 185 Balhannah Road, Hahndorf since the 1860s. Over that time, the farm has grown into a substantial enterprise.

Mr and Mrs Nitschke and their family still operate the farming business and its associated businesses which now include drilling and clover seed production, hospitality services and other commercial operations.

Given the expansion of the Hahndorf farm over time, the Nitschke family now require the use of the main building on the Land to safely and securely store some of the farming equipment as overflow from that stored at the Hahndorf farm.

Accordingly, **enclosed** is a Farming Machinery and Equipment Storage Schedule, which catalogues the typical range of farming and agricultural equipment that my clients now propose to store in the main building in this area.

Importantly, there will be not be any permanent truck parking in association with the farming equipment storage use. The operational needs of the Nitschke family farms do necessitate the parking of various trucks from time to time at the land. No trucks are proposed to be permanently parked on the land. The purpose of the heavy vehicles is for the conveyance of farm machinery, fertilizer, baled hay etc from farm to farm. Importantly, the parking of trucks and other heavy vehicles on the land is part of the general farming use of the land.

This storage use component will not involve any employees working permanently on site. No appreciable waste will typically be generated by this farm storage use. Similarly to the other storage uses, the depot use will only require the attendance of a single person at the land with a heavy vehicle as and when required, to either collect or deposit the farming and agricultural machinery stored there.

Similarly, this storage use will be a very low-key one. My client estimates that a maximum of two truck movements per day (one in, one out) and during daylight hours. However, in the main, no movement whatsoever will be associated with this depot use, given that most of the equipment to be stored there is overflow from the farm and is not required regularly.

"Light Industry (Agricultural Equipment)" - Aussie Feeders

The area marked "Light Industry (Agricultural Equipment)" will be used by "Aussie Feeders"⁵, a poultry feeder fabrication company, for the fabrication of livestock (predominantly poultry, sheep and cattle) feeders and other types of similar equipment such as chicken nesting trailers, hay cradles, etc.

The business to be conducted in the main building by Aussie Feeders will occupy portion of the building (some 1152 m²). It will involve no more than seven (7) employees at any

⁵ <https://www.aussiefeeders.com>

one time at the Land. Those employees will be involved in the fabrication of animal feeders and similar agricultural equipment (hay cradles, nesting trailers, etc) entirely within the existing building.

The fabrication activities will involve processes that not require mechanical machinery or equipment and will be conducted in a manner that does not generate significant noise. At most, the manufacturing processes will largely involve welding and other hand construction of the metal components associated with the various agricultural equipment. The fabrication processes will predominantly occur during ordinary business hours and certainly not during any night time period for the purposes of the *Environment Protection (Noise) Policy*.

The materials, transport of the materials and fabricated poultry feeders will not be of a scale that detrimentally affects the amenity of the locality by any noise, vibration, fumes or otherwise and will not cause any dangerous or congested traffic conditions on any nearby road.

The proposed poultry feeder fabrication activities will involve up to six (6) domestic sized vehicle movements per day (staff vehicles) and perhaps two (2) larger truck movements per month (when the poultry feeders, fabricated on site, are being transported for use elsewhere). The vehicles associated with this new use will use the longstanding existing car parking area and driveways.

This light industry component will generate low waste. I am instructed that in addition to the usual Council kerbside collection service, approximately one large steel waste bin may be collected in association with the proposed use per month, albeit it may be less frequent than this.

In this way, the proposed agricultural equipment fabrication component of the main building will be defined as a "light industry" as that term is defined in the *Development Regulations 2008*.

"Tool storage" - Mr Paul Tucker

The small enclosed area labelled "tool storage" on the Proposed Floor Plan will be used predominantly for the storage of tools and various other similar domestic-type repair items used by a local person, namely Mr Paul Tucker.

I am instructed that Mr Tucker performs very occasional maintenance to a domestic sized vehicle in this area and performs various other low-key repairing or servicing activities as a hobby. The land is a convenient location for him to occasionally attend to low-key hobby-type servicing to a car he owns. The various activities are not undertaken in the course of trade or commerce and are not an "industry" as defined.

The use of the tool store area will be very infrequent. Given that the use of that area is predominantly storage of a domestic type and scale, it is properly described as being incidental to the broader storage facility and need not be seen as a separate and independent land use in its own right. It will be used by a single person who will have negligible vehicle movements or other impacts on the amenity of the locality.

THE DEVELOPMENT PLAN

The land is located in the Watershed (Primary Production) Zone and the Onkaparinga Valley Policy Area 10 according to the Council's relevant Development Plan (consolidated on 24 October 2017).

The following provisions of the Zone are of particular relevance to the assessment of this

application.

Watershed Primary Production Zone

Objectives 1, 2, 3, 4, 5, 6

Principles of Development Control 12, 13, 14, 15, 16, 17, 31, 35, 42-44, 48.

Industrial Development

Objectives 1, 2, 5

Principles of Development Control 3, 6, 7, 8, 9, 13, 14

Interface Between Land Uses

Objectives 1, 2, 3

Principles of Development Control 1, 2, 7, 8, 11-12, 13, 15, 16

Orderly and Sustainable Development

Objectives 1, 2, 3, 4, 6, 7, 8, 9, 10, 11-12

Principles of Development Control 1, 2, 3, 7, 9, 12, 15-17

Transportation and Access

Objectives 1, 2, 4, 5

Principles of Development Control 1, 2, 8, 12, 13, 14, 16, 25, 26, 29, 30, 32, 34-36,

Waste

Objectives 1. 2

Principles of Development Control 1, 2, 3, 5, 6.

DEVELOPMENT PLAN ASSESSMENT

Proper approach to assessment of non-complying development

The courts have established that, although a non-complying development application is subject to different procedure, its non-complying nature does **not** make it subject to a different approach to the assessment of its merits. Such assessment should be undertaken in the same manner as that of an “*on-merit*” development application.

In its decision in the case of *City of Mitcham v Heathhill Nominees Pty Ltd*⁶, the Full Court of the South Australian Supreme Court stated, in the leading judgement of Justice Bleby:

*the resolution of the question [whether the proposed development is properly classified as “non-complying” development] does not affect whether provisional Development Plan Consent should be granted or withheld.*⁷

The Full Court further clarified, in its decision in *Klein Research Institute Ltd v District Council of Mount Barker & Ors*,⁸ in the leading judgement of Justice Williams, as follows:

⁶ [2000] SASc 46.

⁷ *Ibid*, at [32].

⁸ [2000] EDLR 482.

"Whilst the proposed development stands to be assessed procedurally as 'non complying' development (but with restrictions imposed by s35(3) and (4)), the development in other respects stands to be assessed upon its merits as a matter of planning judgment."⁹

I now apply the most relevant provisions of the Plan (outlined above) to the varied development now proposed in this Application.

Planning merits

In any planning assessment, the principle components determinative of whether consent should be granted are:

- (i) Is the land use generically appropriate?
- (ii) Have functional or operational issues such as traffic, noise, odour, been satisfactorily attended to; and
- (iii) have aesthetic issues been appropriately resolved?

The answer to the above issues in this case, is "yes" and the result is that the proposal is deserving of the grant of development plan consent. I address these issues in further detail below.

(i) Proposed use is suitable in the Zone

When considering the impacts of the proposal against the provisions of the Watershed (Primary Production) Zone, it is important to consider the factual and other circumstances in which the development is to be implemented. This was emphasised by the Supreme Court in *Courtney Hill v SA Planning Commission*:

...the Development Plan is not applied in a "theoretical vacuum". The assessment of a proposed development against the provisions of the Development Plan must be undertaken having regard to the factual and historical context in which the proposed development will be implemented, and having regard to relevant surrounding circumstances.¹⁰

Importantly, the storage component of the proposed use of the existing building must, in my submission, be considered in the context that the building has lawful existing use rights as a store and office (as defined).

In my submission, having regard to the legal principles articulated above, the question of what goods are stored in any particular building, or which business is operating the store or office uses of the building is substantially irrelevant to the question of whether or not the broad genus of the lawful existing use of those portions of the building has changed. Indeed, the broad genus of those parts of the building are proposed to remain as a "store" and "office".

Having regard to the legal authorities including *Royal Agricultural Society of NSW v Sydney City Council*¹¹, it is unhelpful to enquire into semantic questions of the purposes of the storage or the individual activities or transactions that occur as part of it. Those issues are irrelevant when identifying the broad genus of an existing use.

⁹ Ibid, at [12].

¹⁰ *Courtney Hill Pty Ltd v SAPC* (1990) 59 SASR 259.

¹¹ *Royal Agricultural Society of NSW v Sydney City Council* (1987) 61 LGRA 305 per McHugh JA at [309-310].

In any event, the acceptability or otherwise of the reconfiguration of an lawful existing use (here, the store and office uses) must be considered **in the context of the existing approved use** (and all of the traffic movements and amenity impacts that would have taken place in association with that lawful existing use).

Clearly, the existing storage and office use of the land is highly relevant to the planning assessment of this application, because it is relevant to the factual and historical context in which it will be implemented. In *Holds v City of Port Adelaide Enfield and Anor*¹² His Honour Justice Kourakis held:

In assessing an application for new development against the Development Plan, the nature and scope of an existing approval is a relevant consideration. The pre-existing approval is necessarily a relevant consideration because the effect of a proposed development on the locality in which it is to be undertaken cannot sensibly be addressed without considering the existing approval, and the nature of the development which might be constructed pursuant to that approval, even if the application for a development, or the application for a variation of the existing approval is refused.

From a land use perspective, in my submission **the only changes of use** that needs to be assessed afresh as part of this Application are the introduction of the new agricultural "light industry" uses by Aussie Feeders and Malcolm Villers and the acceptability of any additional amenity impacts associated with the reconfiguration of the existing store and office uses.

The new agricultural light industry uses are to be directly associated with and will support and enhance primary production and agriculture. Those components will be compatible with the long-term sustainability of rural production in the Adelaide Hills Council area generally, as it will support an existing business operating within the agricultural industry.

Clearly, the manufacture of the animal feeders, hay trailers and associated agricultural equipment and the production of the Harvest Technology at the land will:

- (i) be associated with the processing of primary products;
- (ii) is a support and service industry to primary producers;
- (iii) is appropriately located at the land given that the land already contains a large floor plate building suitable for carrying on such a use.

The new agricultural light industry uses will enhance the operations of primary producers in the area by providing important services to those agricultural businesses. The uses will not produce any adverse impacts on local residents as it will produce minimal or no appreciable noise or other impacts on amenity.

Further, the proposed continuation and new uses of the existing building will clearly not prejudice any primary production activities. Indeed, a large portion of the building will continue to be used for agricultural storage activities. Those areas that are to be used by other local businesses are simply being used as such because my client (a farming family) does not require those areas itself has not experienced demand for additional agricultural storage areas from other local businesses. This of itself demonstrates that primary production activities are not being prejudiced by the proposed use and that land required for such is not being

¹² [2011] SASC 226, per Kourakis J (as he then was) at 41.
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removed by the proposed development.¹³

The balance land itself is not (other than existing car parking and driveway areas) has not been used for productive primary production purposes for many years and this will not be affected by the approval of the proposed development.

In this sense, the only proposed **new** use of the building (agricultural light industry) will have a direct connection to primary production and agriculture and is acceptable having regard to the principles of the Watershed (Primary Production) Zone Objectives 1 and 3 and PDCs 13 - 14 , 16 - 17 and 42-44.

(ii) Amenity impacts

Similar to the land use (and bearing in mind the approach in *Holds* above), the long-standing existing storage and office uses of the existing main building is a highly relevant consideration when assessing whether or not the amenity impacts of the proposed development are acceptable.

In this case, the use of heavy vehicles at the land would always have been associated with the existing hay and seed storage of the existing building. It is also likely that some farming and agricultural equipment would have been stored in the building from time to time, as is the case with any farm storage building.

The numbers and frequencies of vehicle movements (including heavy vehicles) would not be unreasonably increased from the typical and expected numbers of agricultural and other heavy vehicle movements that would have been associated with the existing storage operations on the land.

As mentioned, the new agricultural light industry use of the existing building will not generate any appreciable odour, noise, fumes or other detrimental impacts on the amenity of the locality for the reasons given above. It will not operate in the night-time period pursuant to the *Environment Protection (Noise) Policy*. On my instructions, it has operated for some time already, without apparent complaint from local residents. That new use is properly considered as a light industry use (as defined).

The proposed development will occur entirely within an existing building. Vehicles attending at the land to collect or deliver goods to be stored at the existing storage building will use existing driveways and car parking areas and will not generate significant additional traffic movements that would have any noticeable impact on the amenity of the locality or persons residing in it.

Similarly, there will be no servicing, repairs or maintenance undertaken in association with the storage activities by my client or any of its tenants at the Land. It follows that there will be no risk of soil or water contamination by the proposed users of the building (and no associated effluent runoff etc). No bunding or other similar measures are required in association with the proposed uses, which are simply storage and manufacture of small agricultural equipment.

In terms of noise generated by the development, we confirm the predicted site noise levels comply with the relevant noise limits as set out in the Council's Development Plan. Marshall Day has undertaken an acoustic assessment of the proposed development and determined that the predicted noise levels are

¹³ See Zone PDCs 16-17.

appropriate and there is no need for specific acoustic treatment of any form.¹⁴

(iii) No aesthetic or visual impacts of concern

There will be no aesthetic or visual impacts of concern arising from the proposed development. The existing and new uses will all occur in an existing building and there are no new external building works proposed as part of this application.

As referred to above, the parking of trucks and other heavy vehicles on the land is part of the general farming use of the land and can lawfully occur at the land currently as a result of existing use rights.

Put simply, the proposed development and all of the component uses of the existing building are on any view minor and low-key. Further, they support the long-standing continuation of primary production and agricultural uses in the Zone generally.

(iv) Environmental matters adequately dealt with

As mentioned, it is important to recognise the proposal for what it is, largely continuation of storage and office uses. Those uses inherently do not generate large volumes of waste or contaminants. There will be no servicing, repairs or maintenance of any of the farming or viticultural equipment stored at the land. It will be storage only.

The only waste generation worthy of mention will be that associated with the Aussie Feeders use of the building. The waste generated by that component will be low-key and collections will be infrequent. The steel waste storage receptacle can be located inside the building and moved outside when required occasionally for collection.

Even the agricultural light industry use of the existing building will not involve storage or use of spray painting or other chemical pollutants that may otherwise cause risk to land or water in the locality.

In my submission, the proposed use of the building will not give rise to any environmental issue of concern. It will satisfy the relevant provisions of the Plan relating to waste, including Council Wide Waste Objectives 1 and 2 and PDCs 1, 2, 3, 5 and 6.

(v) Conclusion - proposal worthy of consent

The proposed use largely continues an existing store and office use. The proposed new agricultural light industry use is appropriate for the land and the existing building for reasons given above.

The proposed development satisfactorily attends to issues of amenity on owners and occupiers of adjacent land and other land in the locality. It will not create any other environmental or planning impact of concern. It is worthy of the grant of development plan consent and we commend the varied application to the Council and the State Planning Commission in due course.

¹⁴ Acoustic report prepared by Marshall Day Acoustics titled "359 Nairne Road, Woodside Environmental Noise Assessment" dated 21 April 2020 forms part of the development application documents.

ASSESSMENT OF EXPECTED SOCIAL, ECONOMIC & ENVIRONMENTAL EFFECTS

As mentioned, the rear portion of the land has remained vacant and unused for a substantial time. My clients have decided to pursue the development application in order to utilise the rear portion of the land to its full potential. My clients also feel that the proposal will create a useful service for the expected future population growth in the northern Adelaide area and create employment opportunities which will benefit the local and broader community.

Social

The proposed development will have a positive social effect on the local and broader community. As mentioned, the proposal will service both the agricultural/primary production industry locally and the use of the existing building for storage will assist local businesses (including my client's own business) who require a secure facility for that purpose, where those facilities are either lacking or are cost oppressive in the area.

Economic

The proposed development will support the operations and economic viability of multiple local businesses by providing a secure, sheltered storage area for stock in trade of my client's business and the other businesses that are now proposed to be accommodated in the existing building.

Further, the proposed development will support the continuation of jobs for Aussie Feeders and Malcolm Villers (for the manufacture of agricultural equipment and technology in support of ongoing viable primary production) and the other small businesses that will rely on the facility as a low key storage facility for their stock in trade.

Clearly, the proposed development will also support the ongoing viability of my clients' successful farming enterprise, by providing a convenient storage facility for its agricultural equipment and machinery that cannot be stored elsewhere.

In this way, the proposed development will clearly stimulate the local economy and in particular, will support the efficient and economic continuation of both my client's farming operations and other small local businesses by providing a more cost effective storage alternative. It will clearly have a positive economic impact.

Environmental

The proposed development is largely for the continuation and reconfiguration of a lawful existing storage use of an existing building, together with a new light industry use (which by definition does not detrimentally affect the amenity of the locality or the amenity within the vicinity of the locality).

It is on any view a relatively low-key use. The storage components themselves are innocuous and do not produce any environmental impact of concern.

Any environmental impacts from the proposed development can be appropriately managed. We repeat that there is no servicing or repair activities to be carried out to the machinery and equipment being stored at the land.

As mentioned above, there will be no conflict between the proposed development and adjacent land uses. The closest off-site residences (i.e., other than that owned by my clients) are over 100 metres away from the proposed development.

The proposal is clearly capable of being implemented and managed so that it will not have an adverse impact on the environment.

Having outlined the social, economic and environmental impacts of the proposal, I turn now to provide a brief summary of the approach to assessment, before addressing the Council's current Development Plan.

CONCLUSION

The designation of a kind of development as non-complying affects the procedures governing the processing of an application, but is not determinative of whether development plan consent should be granted or refused.¹⁵

There is no presumption against the granting of consent to an application simply because it is non-complying. In this case, a significant proportion of the proposal includes reconfigurations of existing lawful uses of an existing building.

The proposal has been assessed against the relevant provisions of the Development Plan as being consistent with those provisions and is worthy of the grant of development plan consent.

Accordingly, the Council should, pursuant to regulation 17(3)(b), resolve to proceed with an assessment of the application forthwith.

The application has profound planning merit, supports the continuation of agriculture and primary production activities in the zone and throughout the Adelaide Hills. It is worth of the grant of development plan consent and of concurrence by the State Commission Assessment Panel (SCAP).

My clients are happy to provide whatever further information is reasonably required by the Council to assess the application. Otherwise, I look forward to the Council's prompt assessment and approval of the application.

Yours faithfully

Pip Metljak
Senior Associate
BOTTEN LEVINSON

Email: pmm@bllawyers.com.au

¹⁵ *Klein Research Institute Ltd v District Council of Mount Barker & Ors* [2000] EDLR 482.
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FARMING MACHINERY AND EQUIPMENT STORAGE SCHEDULE

FARM EQUIPMENT STORAGE AT 359 NAIRNE ROAD, WOODSIDE

1. 5 foot Slasher
2. 8 FT Lincage Grader Blade
3. Takeuchi - TB145 Excavator
4. Takeuchi - TL23 Skid Steer loader
5. Bucket and Ripper attachments (to suit above)
6. Hydraulic Post Driver
7. Great Plains Disc Spreader
8. John Deere Tractor with loader 504SE
9. New Holland 8340 Tractor with loader
10. 3 PT Linkage stick rake
11. Spare parts for "Steigher Tiger" tractor
12. Tractor tyres and hydraulic tyre changers
13. Ride on vibrating roller
14. Tandem trailer with stock crate
15. Pipes and tubing for cattle yard posts
16. Solar panels for bore pumps
17. Tandem Fuel Trainer
18. 3.5 tonne fork lift
19. Fruehauf tandem trailer
20. JBC Backhoe Loader
21. Case W4 Articulated Loader
22. Ditch Witch Trencher
23. Post Hole Diggers
24. Honda Quad Bike
25. Fertilizer spreader
26. Rock Bucket
27. Suction Machine for cleaning wool sheds
28. Spare Farm truck engine
29. Ride on Floor Sweeper

South Australian Development Act 1993
REPRESENTATION ON APPLICATION - Category 3 Notification
non complying

ADELAIDE HILLS COUNCIL
RECEIVED
09 JUN 2020

SCANNED
09 JUN 2020

Development Number: 19/210/473

My Name: Ronald Baker

Postal Address: 99 Wurtke Rd, Woodside

Contact No:

Email:

(by providing an email address you agree to receive any related future correspondence electronically)

This representation is in relation to the application by: **John Nitschke**

Nature of Development: **Change of use from store to include industry (manufacturing) including building alterations & additions & car-parking (non-complying)**

Proposed to be located at: **359 Nairne Road Woodside SA 5244**

My representation: **supports** the proposed development OR ~~opposes the proposed development~~
(cross out whichever does not apply)

My interests are: **owner of local property** OR ~~occupier of local property~~
~~a representative of a company~~ OR ~~Other~~
~~organisation affected by the proposal~~ OR ~~a private citizen~~
(cross out whichever does not apply)

The address of the property affected is:

41 & 49 Wurtke Rd, Woodside Postcode:

The specific aspects of the application to which I make representation are:

.....
.....
.....

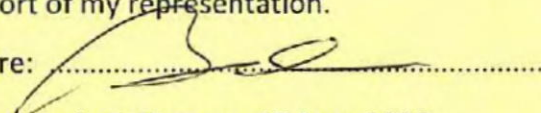
My objections (if any) could be overcome by:

no out door flood lights at night
no manufacturing at the east end of the property
(cross out whichever does not apply)

I **do wish** to be heard in support of my representation by appearing personally
or by being represented by the following person.....

I **do not wish** to be heard in support of my representation.

Date:

Signature: 

The closing time and date for Representations is 5.00pm on 15 June 2020

"Please note that in accordance with Section 38(8) of the *Development Act 1993*, a copy of this representation is forwarded to the Applicant for their information and response. Further a copy of your representation (including your name and address) will become public and can be viewed on the web."

South Australian Development Act 1993
REPRESENTATION ON APPLICATION - Category 3 Notification
non complying

Development Number: **19/210/473**

^{OR}
My Name:..... Shane + Bronwyn Skinner.....

Postal Address: PO Box 232 Woodside SA 5244.....

Contact No:.....

Email:
(by providing an email address you agree to receive any related future correspondence electronically)

This representation is in relation to the application by: **John Nitschke**

Nature of Development: **Change of use from store to include industry (manufacturing) including building alterations & additions & car-parking (non-complying)**

Proposed to be located at: **359 Nairne Road Woodside SA 5244**

My representation: . **supports** the proposed development OR **opposes** the proposed development
(**cross out whichever does not apply**)

My interests are: . owner of local property OR occupier of local property
 . a representative of a company OR Other
 . organisation affected by the proposal OR a private citizen
(**cross out whichever does not apply**)

The address of the property affected is:

..... 25 Wattle Rd Woodside..... Postcode:.....

The specific aspects of the application to which I make representation are:

..... See Attached.....
.....
.....

My objections (if any) could be overcome by:

..... See Attached.....
.....

(**cross out whichever does not apply**)
I **do wish** to be heard in support of my representation by appearing personally
or by being represented by the following person.....
~~I **do not wish** to be heard in support of my representation.~~

Date: 15/6/20.....

Signature: [Signature].....

The closing time and date for Representations is 5.00pm on 15 June 2020

"Please note that in accordance with Section 38(8) of the *Development Act 1993*, a copy of this representation is forwarded to the Applicant for their information and response. Further a copy of your representation (including your name and address) will become public and can be viewed on the web."

Development Number: 19/210/473

Our Name: Shane & Bronwyn Skinner

Postal Address: PO Box 232 Woodside SA 5244

Contact Number:

Email:

This representation is in relation to the application by: John Nitschke

The address of the property is:

25 Wuttke Road, Woodside SA 5244

The specific aspects of the application to which I make representation are:

When we selected this property, moved to this area and built our home we had made a lifestyle choice based on the current surrounding properties and what they entailed. We expected a farming lifestyle and associated noise of farm machinery and vehicles coming and going. We were surprised a couple of years back after the sale of the property in question when trucks started coming through the day and most of the night, keeping us awake and disturbing the peaceful environment that we were used to and had been enjoying. We understand they were ferrying used bitumen from the freeway as it was being resurfaced.

Thankfully this stopped after a number of weeks as it was starting to become quite annoying. We aren't sound experts but the noise that now comes from the sheds next door seems to carry very well to the point we can make out conversations when standing outside our house, nevermind having vehicles and machinery coming and going all the time, which we feel detracts from the peaceful farming surrounding we were looking for when we built our house.

We feel this new Change of Use to Industry will have an impact on our property as who wants to live next to a manufacturing facility that is looking to run 7 days a week, it is at a point now at its current usage that it is annoying so extending the usage seems unfair to the properties that already surround the proposed manufacturing facility if this goes ahead.

The other thing that is playing on our mind is privacy and security. When we purchased our property this was a very important consideration and this certainly will put an end to what we have enjoyed over the years (it has already to a degree). We enjoy the fact that we are tucked away and not many people know we are there, mainly for security reasons. With an increase of people coming and going, and a carpark that is going to look directly in our front windows we aren't at all impressed. Again, when we purchased, it was the rear of a shed that was used for storage only, and whilst it was ugly we hardly ever saw anyone.

We like to think we are open minded and thoughtful neighbours, however this new application is very concerning especially when it comes two weeks before any objections need to be made regarding the proposal and without any earlier consultation.

My objections could be overcome:

We feel, don't make the Change of Use to Industry, if it stays as it currently stands it is as busy as it should get and hopefully won't get any noisier and have less people around (especially people we don't know).

One of our main concerns is that the tenants aren't John's businesses so who is going to police things and if the property is sold down the track how do we know the new owner won't start operating outside the bounds of the agreement/council directions. We don't want to be in situation where we are in a constant battle with a neighbour.

We don't have any objections to storing of farm equipment in the sheds, its more the number of vehicles coming and going, people that we don't know at the rear of the building which looks into our property raising security concerns and the noise associated with manufacturing 7 days a week.

We run a manufacturing business ourselves in a light manufacturing area in Norwood so understand the challenges associated with doing this.

15 June 2020

Adelaide Hills Council
26 Onkaparinga Valley Road
WOODSIDE SA 5244

Attention: Marie Molinaro, Statutory Planner, Strategy and Development

Dear Ms Molinaro

**Re: CATEGORY 3 REPRESENTATION OPPOSING
Development Application 19/210/473 at
359 Nairne Road, Woodside, SA 5244**

MasterPlan has been engaged by James Price and Dee-Anne Hunt the owners and occupiers of land that immediately abuts the northern boundary of the subject land at 353 Nairn Road, Woodside. Our clients enjoy the use of their land for 'Horse Keeping' and the land includes a building used for stable and associated storage directly associated with the existing use of the land. Our clients intent was to develop their land as a rural lifestyle property, including a future residence and have invested substantially in the land associated with that long term intent.

Our client is opposed to the proposed development, the subject of the application currently before Council and the works associated with that application, some of which do not appear to be fully detailed in the current documents before Council in that it diminishes the rural amenity and character of the locality which originally attracted them to purchase their land.

When they originally purchased the land the Land Seeds operations represented a low intensity, low impact, agricultural industry land use with minimal activity compared to the current state of activity associated with the unauthorised development of the land which has increased in intensity and use since 2016.

In forming Our views expressed herein on behalf of our clients we have:

- Inspected the subject site and locality from our client's land and the adjacent public roads;
- Reviewed the application documents made available for public notification comprising:
 - Plans Prepared by Michael Watson Architect, dated 9 April 2020;
 - Combined Statement in Support / Statement of Effect prepared by Botten Levinson dated May 2020; and
 - Environmental Noise Assessment prepared by Marshall Day Acoustics dated 12 May 2020.





- Researched and reviewed NearMap Aerial Photography for the subject land dating between October 2010 and May 2020;
- Made inquiries with Council regarding the previous approvals and applications on the subject land; and
- Reviewed the relevant provisions of the Adelaide Hills Council Development Plan.

The previous approvals on the land as advised by Council and consistent with those expressed in the application documents appear to date between 1979 and 1986.

The extent of the authorised existing use expressed in the Statement of Effect is however questioned.

The application documents state that *"the proposed development (as varied) is for the reconfiguration of the store and office use and the addition of a new light industry (fabrication of agricultural equipment) of (sic) an existing building."* (Page 4 'Combined Statement in Support / Statement of Effect').

The 'Combined Statement in Support / Statement of Effect' continues to provide a Description and Nature of the Proposed Development, in discussing the uses that will occupy the existing buildings on the subject land.

We note that the application is a retrospective application and that the building is currently occupied without the necessary authorisations.

On a review of the proposal plans prepared by Michael Watson Architect and our own observations on site there appear to be additional works and activities that should form part of the application currently being considered by the relevant authority.

In particular we note the following:

- The Locality Plan and Existing Site Plan illustrate an existing hardstand area and access road on the northern side of the existing sheds and to the east of the northern shed.
- Aerial photography identifies that this hard stand area did not exist in 2010 and only began to emerge in April 2016 (Refer to **attached** NearMap Aerial Photography).
- The land to the north of the sheds was used for primary production purposes as evidenced in the Aerial Photography dated October 2010 and December 2015.
- Noting that no approvals have been issued on the land since 1986, we respectfully conclude that the hard stand area represents the introduction of an additional act or activity associated with the proposed use, resulting in the reduction of land used for primary production activity which should be included as part of the application currently before Council.



- The aforementioned hardstand and access road have resulted from the filling of land, which as evidenced in the **photos** below illustrating the extent of fill and additional batter slopes. We note that there are no details that have been made available to the public as part of the application notification regarding the extent of civil works, change in site levels or details storm water management from this new hard stand area.



Photograph 3: 24th April 2016 – Pre Landfill



Photograph 2: 5th June 2020 – Post Landfill



Photograph 3: 5th June 2020 Extent of change to natural landform



- We are advised that the fill, discussed above, potentially comprises of recycled bitumen. Bitumen is excluded from the definition of “*waste fill*” as defined in the *Environment Protection Regulations 2009*. No details have been provided in the application to certify that the fill used has been certified as “*waste fill*” for depositing on the subject land. In the event that the filling of the land does comprise material, being “*bitumen*”, which has not been certified, then the application may also comprise of a change in use to include the “*landfill*” which may also have procedural implications regarding the determination of the relevant authority and any relevant statutory referrals.
- No existing floor plan has been provided with the application documents and accordingly the full extent of any building works, including new openings to the northern elevation and internal dividing walls should be identified for a detailed and informed assessment of the application.
- The application plans identify a “*Proposed Addition (Store)*” to the east of the northern shed on what aerial photography shows an existing concrete slab. No Details of the proposed addition are discussed in the ‘Combined Statement in Support / Statement of Effect’, in terms of terms of the materials, finishes, purpose or extent (area) of additional floor space.
- The plans variously show, three separate areas of new car parking, not evident before the construction of the new hard stand accommodating 14 spaces, 14 spaces and 20 spaces respectively. The ‘Combined Statement in Support / Statement of Effect’ refers to “*Vehicles attending the land to collect or deliver goods to be stored at the existing storage building will use existing driveways and car parking areas and will not generate significant additional traffic movements.*” (Page 11) No such driveways or car parking areas existed on the subject land prior to the current occupation of the buildings as evident on the Chronological NearMap Aerial Photography (**attached**).
- Two shipping containers are clearly visible (refer to **attached** Aerial Photography dated May 2020) and located on the land adjacent the northern elevation of the existing shed and were observed on the land on Friday 5 June. These buildings / structures are not identified on either the proposal plans or described within the ‘Combined Statement in Support / Statement of Effect’. We note in the matter of *Rampling v City of Holdfast Bay* [2010] SAERDC 44, it was held that a “*Container was a building or structure as those terms are defined to include “temporary or permanent” buildings and structures*” and accordingly should be included as part of the application.

Noting the above, we submit that the application details are so fundamentally deficient and do not reflect the full and true extent of the unauthorised works that have occurred, and activities that continue to occur on the site which should be included within the application to be considered by the relevant authority.



Turning now to the assessment of the merits of the application we note that the subject land is located within the Watershed (Primary Production) Zone.

We do not accept the applicant's proposition that the current use of the building by multiple tenants is consistent with the authorised existing use of the land.

The proposal seeks more than a 'reconfiguration' of the existing use rights, such that there are planning impacts that arise from intensification and expansion of the existing use of the land.

The original approvals have on numerous occasions referred directly to the buildings on the land as "*seed storage shed*" DA 4/169 dated 20/11/1979, and "*seed storage shed extension*" DA 563/4 dated 28/11/1983. The nature of the storage on site was limited to a single activity directly associated with the storage of agricultural product associated with primary production and focussed the activities internal to the site with the comings and goings orientated through the western elevations of the sheds.

The current unauthorised operations have resulted in the establishment of multiple tenancies within the existing buildings and a reorientation of the activities and associated impacts to the northern, southern and eastern elevations through the creation of new openings in the existing sheds and creation of significant and extensive hard stand area associated with vehicle manoeuvring and external storage.

While it is recognised that creation of multiple tenancies alone does not amount to an intensification of use and accordingly a change in use, it is the nature of the activities resulting from the creation of additional tenancies which in this instance is considered to result in a change of use (via intensification of use), specifically:

- there is an increase in vehicle movements, too and from the site and more specifically between the northern shed and the boundary of our clients property directly adjacent the stables and associated gardens;
- the reorientation of the activities and creation of extension hard stand area to accommodate additional vehicle movements and external storage expands the activities associated with the previous use beyond the boundaries of the shed, resulting in the loss of primary productive land increasing the impact of the activity closer to the boundaries of the adjacent properties;
- the additional floor space and proposed "*Additional Store*" results in an expansion of any previous use of the land; and
- the proposal creates substantial additional on-site car parking.

Accordingly we are of the opinion that the impacts arising from the reconfiguration of the existing "*Seed Store*" to accommodate short term storage facilities is an intensification of use and therefore a change of use as well as the introduction of the additional industrial uses to the land (not being Agricultural Industries).



Our clients have significant concerns with the growth of the activities beyond the storage of primary produce in the existing buildings relating to:

- the expansion of activities beyond those directly related to primary production;
- the increased number and nature of vehicle movements (including significant numbers of articulated trucks) to and from the site as a direct result of the multiple short-term tenancies and proximity to their property which changes the nature of vehicle access from the Nairn -Woodside Road, which we note has not been supported by any assessment from a qualified traffic engineer as to the suitability and safety of access;
- the visual impact on the character of the locality as a direct result of the creation of the large hard stand area (land fill) and associated loss of primary productive land¹ (notwithstanding, the statement on Page. 11 of the Combine Statement in Support / Statement of Effect which asserts *"The balance of the land itself (other than existing car parking and driveway areas) has not been used for productive primary purposes for many years and this will not be affected by the approval of the proposed development"*);
- the uncontrolled disposal of stormwater from the hard stand (land fill);
- the lack of landscaping associated with the proposal; and
- the potential impacts arising from leachates from the waste used as land fill in the creation of the hard stand area.

Having reviewed the relevant provision of the Development Plan, and notwithstanding the reuse of the existing buildings on the subject land we note that the proposed development is not consistent with the attainment of the objectives for the Watershed (Primary Production) Zone nor does it satisfy the relevant general provisions of the Development Plan pertaining to Interface between Land Uses or Industrial Development, specifically:

- the proposed development does not enhance the amenity or landscape of the Mount Lofty Ranges for residents and at odds with Zone Objective 5;
- the proposed Industrial Uses are:
 - not Small Scale, noting the floor space of the operations significantly exceeds the maximum floor area of 250 sq/m for agricultural industries;
 - not Agricultural Industries;
 - not associated with processing of primary products, and do not process primary produce from within the Mount Lofty Region;

¹ Aerial Photography evidence of continued Primary Production



- not restricted to one industry on an allotment (Industrial Development General PDC 11(d));
 - more appropriately located within an industrial area;
 - and accordingly, are at odds with Zone PDC's 13 and 48 and General Industrial Development PDC 11 and 13;
- the proposed change in use (Intensification of use) to short term Storage Activities are not envisaged activities in the Zone and as described in the application documents do not directly relate to 'Agricultural Industries' and in the main do not relate to local primary produce noting specifically, the stated tenants, 'Living by Design' and 'Cassa Light and Power' and accordingly does not preserve the rural character through the intensification of land uses, construction of extensive hard stand area and lack of landscaping failing to satisfy Zone Principles of Development Control 14 and 15;
 - the land fill associated with the establishment of new access road and hardstand area to the north and east of the existing buildings does not follow the contours of the land so as to reduce the visual impact; does not preserve the natural land form with fill in excess of 2.0 metres in height; and has not been demonstrated to reduce erosion from water runoff at odds with Zone PDC 9;
 - the creation of the new access road and hard stand area to the north and east of the existing sheds results in the direct loss of land suitable for primary production purposes and accordingly does not satisfy Zone PDC 17;
 - the placement of Shipping Containers for additional storage to the north of the existing sheds are highly visible from our clients property and detract from the desired natural character of the zone by increasing the size and footprint of the built form on site and encroaching closer to our clients property contrary to Zone PDC 2; and
 - the encroachment of activities associated with the use of the property closer to our clients property does not attempt to locate or design the development in a manner that "*minimises*" the impact and conflict between the land uses and accordingly does not attain Objective 1 "*Interface between Land uses*" with resultant, activity, noise, visual encroachment, and storm water runoff affecting our clients enjoyment of their land.

It is noted that no assessment of noise impact has been undertaken associated with the activities on the subject land and our client's property. Our clients spend significant time on the land tending to the agistment of their horses and attending to the maintenance of the gardens and landscaping on a daily basis, and may for the purposes of assessing the impact of noise be a sensitive land use.

It is our client's observations that the activities on the subject land involve considerable weekend and afterhours activity resulting in a disturbance to character and amenity of the rural environment. Interface between Land uses General PDC 7 expressly refers to development that emits noise should include noise



attenuation measures that achieve the relevant Environment Protection (Noise) Policy criteria when assessed at the nearest existing noise sensitive premises.

It is noted that the Acoustic Assessment accompanying the application references Zone PDC 62(e) relating directly to Agricultural industries. By definition, the proposed industrial land uses are not "*Agricultural Industries*" and neither are the storage activities associated with the short-term storage tenancies. There are no nominated hours of operation associated with the proposed development.

While PDC 62(e) may have some relevance general PDC 7 and the application of Interface between Land uses General PDC 7 should be considered and accordingly the assessment relevant Environment Protection (Noise) Policy criteria. The acoustic report does not make such an assessment.

In summary, we conclude that:

- the intensification of use on the property, including the change of use to industry is not consistent with the relevant provisions of the development plan for the Watershed (Primary Production) Zone;
- the application documents do not identify the full extent and nature of the works that require approval;
- the retrospective development seeking approval results in the loss of primary production land;
- the works associated with the extensive hardstand area and access roads directly associated with the intensification of use on the land, results in a significant visual intrusion upon the rural character of the locality; and
- the impacts arising from the intensification of the use have not been located or designed to minimise the impact on adjacent land.

Council should also, as part of their assessment, seek:

- confirmation that the fill on the land to create the extensive hard stand is not 'Waste' as defined; and
- updated plans that accurately and consistently reflect the full extent of building works and activities requiring approval.



Can you please advise our client of the date and time that the matter will be considered by the Council Assessment Panel so that they or their representative can be in attendance to make verbal submissions in support of their representation.

Yours sincerely

Greg Vincent
MasterPlan SA Pty Ltd

enc: Chronology of NearMap Aerial Photography.

cc: James Price and Dee-Anne Hunt.



Source : NEARMAP

Date : October 1st, 2010



Source : NEARMAP

Date : December 16th, 2015



Source : NEARMAP

Date : April 24th, 2016



Source : NEARMAP

Date : October 6th, 2016



Source : NEARMAP

Date : March 18th, 2017



Source : NEARMAP

Date : October 15th, 2017



Source : NEARMAP

Date : March 21st, 2018



Source : NEARMAP

Date : September 24th, 2018



Source : NEARMAP

Date : April 23rd, 2019



Source : NEARMAP

Date : September 30th, 2019



Source : NEARMAP

Date : December 31st, 2019



Source : NEARMAP

Date : May 15th, 2020

Our ref: PMM/219134

3 July 2020

Ms Marie Molinaro
Adelaide Hills Council
28 Onkaparinga Valley Road
WOODSIDE SA 5244

By email: mmolinaro@ahc.sa.gov.au

Dear Marie

**Response to representations - Carlton Nitschke Investments
DA 19/210/473
Property address: 359 Nairne Road, Woodside**

This firm acts for Carlton Nitschke Investments Pty Ltd (ACN 131 917 916), John Nitschke Nominees Pty Ltd (CAN 007 758 947) and John and Lynette Nitschke, in relation to the above development application for a change of use from a store to a store and light industry (manufacturing) including building alterations and additions at 359 Nairne Road, Woodside (**Land**).

This response to the representations received is made on our client's behalf.

Issues raised by the representations

Three representations were received during the category 3 public notification period. Two are opposed to the development and one is in favour of the development (although it raises some minor concerns). The representations raise a variety of issues. This response deals with those issues in turn.

Before responding to each of the issues raised it is useful to set out the specific nature of the development the subject of this application. As identified in the Combined Statement in Support/Statement of Effect, the Land enjoys considerable existing use rights. The Land can lawfully (without further approval) be used for: residential use (the dwelling); a store and an office (the existing sheds); and for general farming use. Our client also has existing use rights (which the Council have acknowledged) to park trucks and other heavy vehicles on the Land.

Given that the Land can continue to be lawfully used for the above uses the current development application before the Council is confined only to:

1. the addition of a light industry use; and

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2. minor building alterations and additions.

Pursuant to the provisions of the *Development Act 1993 (Act)* and the *Development Regulations 2008 (Regulations)*, a representation "*must be limited to what should be the decision of the relevant authority as to development plan consent*".¹ The effect of this provision is that a representor must limit their representation to the subject of the development application and to what the representor considers the relevant authority's decision should be. It is inappropriate for representations to raise issues beyond the scope of the development the subject of the development application.

With this in mind we respond to each of the issues raised in the representations received.

Appropriateness of proposed use

The representations raise the issue that the proposed development is inappropriately located. The proposed development, being the addition of a light industry use and minor building alterations and additions, is an appropriate form of development at the Land.

The Land is located within the Watershed (Primary Production) Zone. The proposed development meets the Zone's Principles of Development Control (PDCs). Specifically, the building addition is consistent with:

- PDC 1, in that it is unobtrusive and set well back from public roads;²
- PDC 4, in that it is not located within 25 metres of a watercourse;
- PDC 7, in that the addition is located on the side of the building which minimises the obtrusiveness of the completed building;
- PDC 11, in that the established buildings and the proposed addition are screened by trees and shrubs;
- PDC 14, in that the proposed addition does not detract from the natural and rural landscape character of the region given the proposed addition to the building will be located adjacent the established shed and the proposed addition constitutes only a minor increase in floor area;
- PDC 16, 17, 42 and 44 in that the proposed development does not prejudice primary production on the basis that the majority of the Land continues to be used for primary production purposes.

The proposed light industry use of the Land also meets the relevant Zone PDC. The relevant PDC, PDC 13, states that industries should not be established in the Zone unless the industry is associated with the processing of local primary products; the industry is a support or service industry to primary producers; and it is inappropriate to locate the industry in an industrial area. The proposed additional use of the land is a form of light industry. Specifically, the light industry use is the manufacturing of agricultural equipment. The equipment is manufactured by Aussie Feeders. Aussie Feeders produce cattle, sheep and chicken feeders. Quite clearly, this use is

¹ *Development Act 1993*, s 38(6).

² The building addition is set back approximately 220 metres and 350 metres from the closest public roads.

associated with the processing of local primary products³ and is a support to primary producers. It is appropriate for such an industry (which services, supports and is associated with primary production) to be located within the Watershed (Primary Production) Zone.

Further, the proposed development does not have any impact on native vegetation and is therefore consistent with Zone PDCs 29, 30, 31, 32, 35, 36.

Additionally, the proposed development does not propose the removal of any vegetation, it is located within or immediately adjacent existing building footprints and is screened by trees and shrubs. For this reason the proposal is also consistent with PDCs 37, 38 and 39.

Principle of Development Control 48 relates to agricultural industries. The provision states that agricultural industries should (not must) include one of the following activities normally associated with the processing of primary produce: washing, grading, processing, packing or storage. The proposed light industry use does not include these activities. However, the production of sheep, chicken and cattle feeding equipment is inextricably linked to primary production. For this reason it is appropriate for this use to occur at the Land and within this Zone.

The Land is located with the Onkaparinga Valley Policy. This Policy Area has very little specific policy regarding the types of development encouraged within this area. There are only two Principles of Development Control, neither of which apply to the Land. This is significant given that other Policy Areas within the Zone contain detailed and specific provisions regarding what form of development, including what forms of industrial development, are encouraged or discouraged within the area. The Onkaparinga Valley Policy area does not discourage any specific industrial use in this area. The intentional omission of such provisions within the Onkaparinga Valley Policy must not be overlooked.

No adverse amenity impacts

The proposed development does not adversely impact on the amenity of the area. The additional use proposed for the Land (light industry use) is proposed to occur within the previously approved sheds. The use proposed is not general industry but rather, light industry, on the basis of its scale and the fact it does not detrimentally affect the amenity of the locality by reason of the establishment or the bulk of any building or the emission of any noise, vibration and does not directly or indirectly cause dangerous or congested traffic conditions.⁴

The addition to the approved building on the land is a minor addition only. The proposed addition is approximately 330 square metres in area and the approved building on the land is approximately 5000 square metres in area, meaning the addition proposed represents an increase to the footprint of the building of just over 6%. It is difficult to see how, given the nearest neighbouring residence is over 150 metres from

³ A "primary production" business includes businesses undertaking animal cultivation, which, in turn, includes "maintaining animals for the purpose of selling them or their bodily produce" (*Australian Taxation Office - Primary Production Activities* <https://www.ato.gov.au/business/primary-producers/primary-production-activities/>)

⁴ *Development Regulations 2008*, Schedule 1.

the proposed addition and is screened by mature, considerably sized trees, there is any impact on the proposed amenity of the locality. The Proposed North and East Elevations submitted as part of the application documents indicate that the proposed addition will have a colourbond corrugated siding finish with sliding steel-framed colourbond clad doors. The proposed finishes/materials are consistent with the existing sheds.

The neighbouring land to the north is also screened by landscaping, albeit, not as established as the landscaping to the east. However, the land to the north is not used for residential purposes.

The development the subject of this application does not propose any after hour truck movements. All operations at the land occur within normal business hours, including the proposed light industry use. A previous tenant at the Land, "Flat out Freight" undertook truck movements out of business hours. This may have caused some concerns to nearby residents. Flat out Freight's lease has been terminated and the business no longer operates at the Land. There is no intention to undertake any truck/vehicle movements out of business hours.

One of the representations refers to floodlights on the Land. Temporary floodlights have previously been used at the Land, however, this was for an isolated purpose for a short period of time only. No floodlights are to be permanently located on the Land. There is no intention to use floodlights at the Land.

In relation to shipping containers at the Land, one of the tenants of the Land "Living by Design" occasionally receive deliveries by way of shipping containers. The shipping containers are placed next to the business' tenancy, unloaded and then taken away from the land. This is simply an operational activity. Shipping containers are not used for storage on the Land and there is no intention to permanently place shipping containers on the Land.

Any amenity impacts from the current lawful use of the land (being the use of the land as a store, office, residence and truck and heavy vehicle movements) are irrelevant to the current development application being considered.

No adverse noise impacts

The representations received suggest the proposed development may cause adverse noise impacts.

The Development Plan requires development comply with the noise requirements set by the *Environment Protection (Noise) Policy* (the Noise Policy). The operations at the land will be undertaken in compliance with the Noise Policy.

Additionally, the acoustic report prepared by Marshall Day confirmed that the site noise activities meet the relevant day time noise limit of the Development Plan without the need for specific acoustic treatment.

Excavation and fill

The representation received from Mr Greg Vincent of Master Plan, on behalf of Mr James Price and Ms Dee-Anne Hunt, raises the issue of fill on the Land.

It is important to note that excavation and fill exceeding 9 cubic metres will constitute an act of development in a number of zones within South Australia, including the Hills Face Zone and Watercourse Zones and Flood zones.⁵

However, the Land the subject of this application is located within the Watershed (Primary Production) Zone. Excavation and fill occurring within this Zone does not, of itself, constitute an act of development and does not require development approval. For this reason, excavation and fill can occur anytime at the land without requiring approval. Given that any excavation and fill that may have occurred at the land in the past is not required to be assessed pursuant to the Act (and does not form part of this application) it is not appropriate to raise this issue in a representation.

The hardstand manoeuvring area located north of the buildings on the land has historically and will continue to be, used for car parking. The land enjoys existing use rights for the parking of vehicles at the Land. Car parking does not form part of this development application.

Site contamination

Mr Vincent also raises the issue of potential contaminants being present on the land. This is inappropriate.

There is no evidence the fill on the land comprises recycled bitumen or indeed any other contaminant. Our client instructs us that the fill does not comprise recycled bitumen nor any other contaminants. Further, the fill on the land does not form part of this application therefore, as above, it is not appropriate to raise this issue in a representation. In any event, we note that if any part of the land were found to be contaminated this would be an issue for the Environment Protection Authority (EPA) and would be properly dealt with by the EPA pursuant to the *Environment Protection Act 1993*.

It is not appropriate for the Council to have regard to the suggestions that the land is contaminated in any way.

Incorrect assumptions

The representations also make reference to a number of other matters that are incorrect. While not relevant to the assessment of the development application we seek to correct these incorrect assumptions.

Firstly, the representations raise the issue of truck movements at the Land. As referred to above, truck and heavy vehicle movements form part of the land's existing use rights. This position has been confirmed and accepted by the Council. We confirm, as set out above, there is no intention for truck movements to occur out of business hours.

The land enjoys general farming existing use rights. There is no desire to abandon or otherwise cease using the land for primary productive/general farming use. We note, the previously submitted Statement in Support/Statement of Effect suggested farming does not occur at the Land. This is incorrect. Farming does occur at the Land.

⁵ *Development Regulations 2008* Schedule 2, clause 1.

Mr Vincent has stated there is an "intensification" of the existing use of the land. This is incorrect. There is no "intensification". The land is currently lawfully permitted to operate as a store (together with other uses that enjoy existing use rights). Where there is no current lawful use, our client is seeking development plan consent. That is, our client seeks development plan consent to use the land for the purposes of light industry together with the current lawful use of the land as a store. No intensification is proposed to occur and the legal principles regarding intensification have no application in this instance.

Separately, we note the Combined Statement in Support/Statement of Effect referred to stated that the proposed development was to occur only in the existing building. This should have read the proposed change of use is to occur solely within the existing building. The proposed development includes the proposed eastern addition to the shed.

Conclusion

As referred to above, the Land has existing use rights to lawfully operate as a store and office (the two large sheds) as a residence and trucks and heavy vehicles can be parked on the Land. These lawful uses of the land can continue to occur at the Land without any further development approvals being granted. Any concerns with these ongoing and lawful uses are unrelated to the current development application.

As set out above and in the application documentation previously submitted, the proposed development is an appropriate form of development at the Land. It is deserving of approval. Our client requests an opportunity to appear at the CAP meeting when this application is considered to answer any questions from the members and respond to the representations. Please advise of the date and time of the relevant meeting.

Please contact me if you have any questions about this matter.

Yours faithfully



Pip Metljak
BOTTEN LEVINSON
Email: pmm@bllawyers.com.au

PURPOSE: EASEMENT	AREA NAME: WOODSIDE	APPROVED:	
MAP REF: 6628-46-H 6628-46-J 6628-47-E 6628-47-M	COUNCIL: ADELAIDE HILLS COUNCIL	/ /	
LAST PLAN:	DEVELOPMENT NO:	DEPOSITED/FILED:	SHEET 1 OF 3
		/ /	VOI

AGENT DETAILS: OLDEN & vov SENDEN PTY LTD 3/42 MT BARKER RD STIRLING Ph/Fax (08) 83709699 11 CHAPEL ST STRATHALBYN Ph 8536 3224 Mob 0417 878 671 Email olvs@bigpond.net.au	SURVEYORS CERTIFICATION:
AGENT CODE: 0LVS	
REFERENCE: 4713FP V2	

SUBJECT TITLE DETAILS:

PREFIX	VOLUME	FOLIO	OTHER	PARCEL	NUMBER	PLAN	NUMBER	HUNDRED / IA / DIVISION	TOWN	REFERENCE NUMBER
CT	6192	513		ALLOTMENT(S)	102	D	114843	ONKAPARINGA		
CT	5439	561		ALLOTMENT(S)	16	F	156551	ONKAPARINGA		

OTHER TITLES AFFECTED:

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
EXISTING	102	SHORT	EASEMENT(S)	A	FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE		RTC 12742604
PROPOSED	102	SHORT	EASEMENT(S)	B	FOR DRAINAGE PURPOSES	16	

ANNOTATIONS:

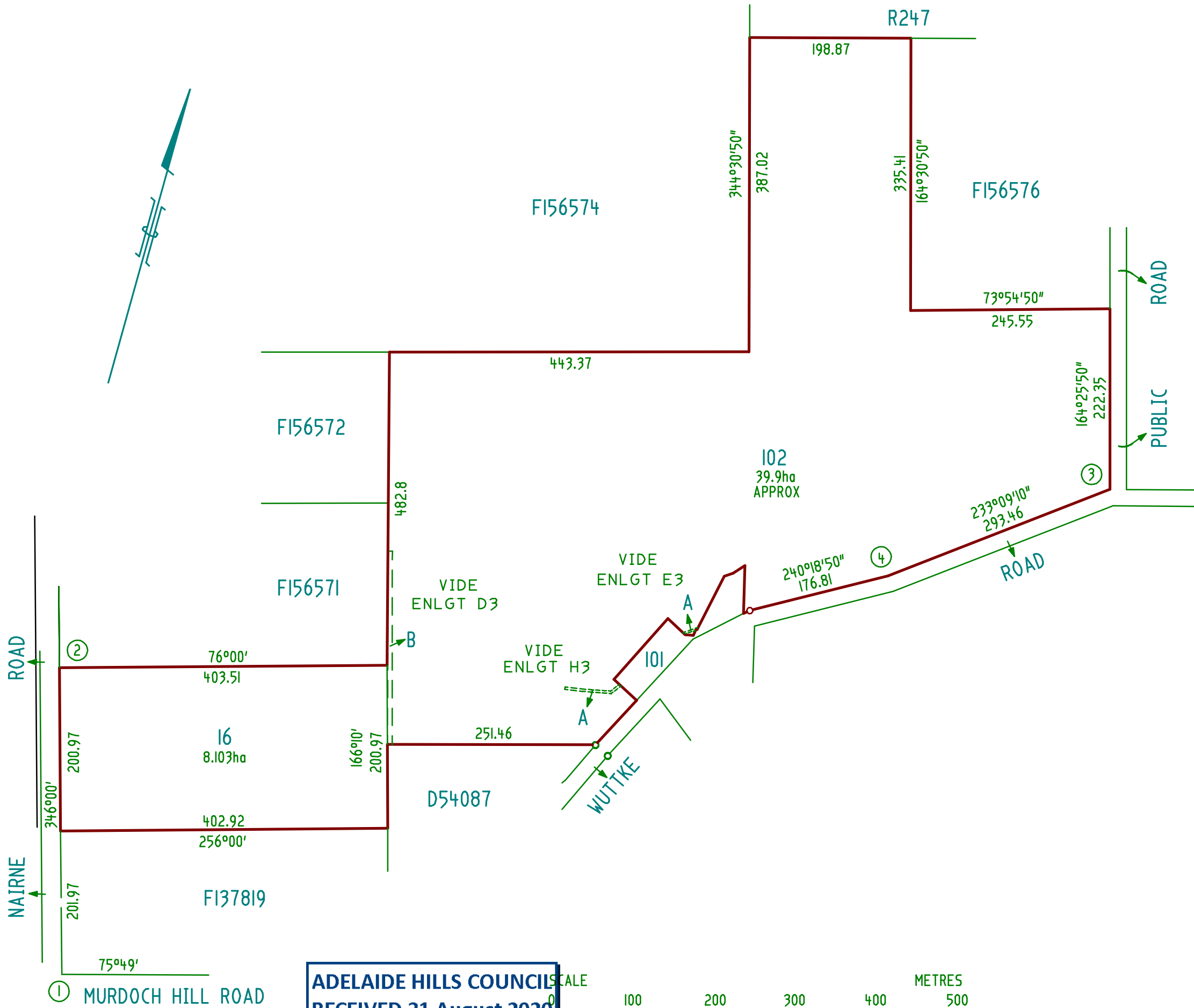
**ADELAIDE HILLS COUNCIL
RECEIVED 31 August 2020**

BEARING DATUM: (3) - (4) 233°09'10"
 DERIVATION: ADOPTED D114843

BEARING DATUM: (1) - (2) 346°00'
 DERIVATION: SCALED MAP 6628/48/H

TOTAL AREA:

THE TWO DATUM BEARINGS HAVE BEEN DETERMINED INDEPENDENTLY OF ONE ANOTHER AND MAY NOT REFLECT THE TRUE RELATIONSHIP



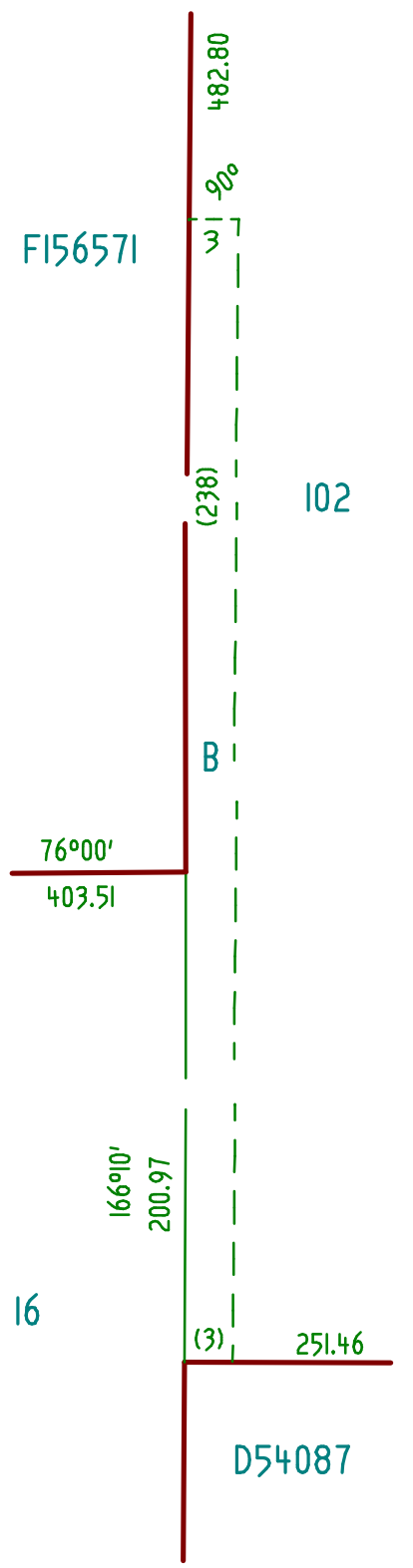
ADLAIDE HILLS COUNCIL
 RECEIVED 31 August 2020



OLDEN & van SENDEN PTY LTD
 ACN 008 133 159
 3/42 MT BARKER RD STIRLING S.A. 5152
 Ph/Fax (08) 83709699
 Mobile 0417878671
 Email olvs@bigpond.net.au

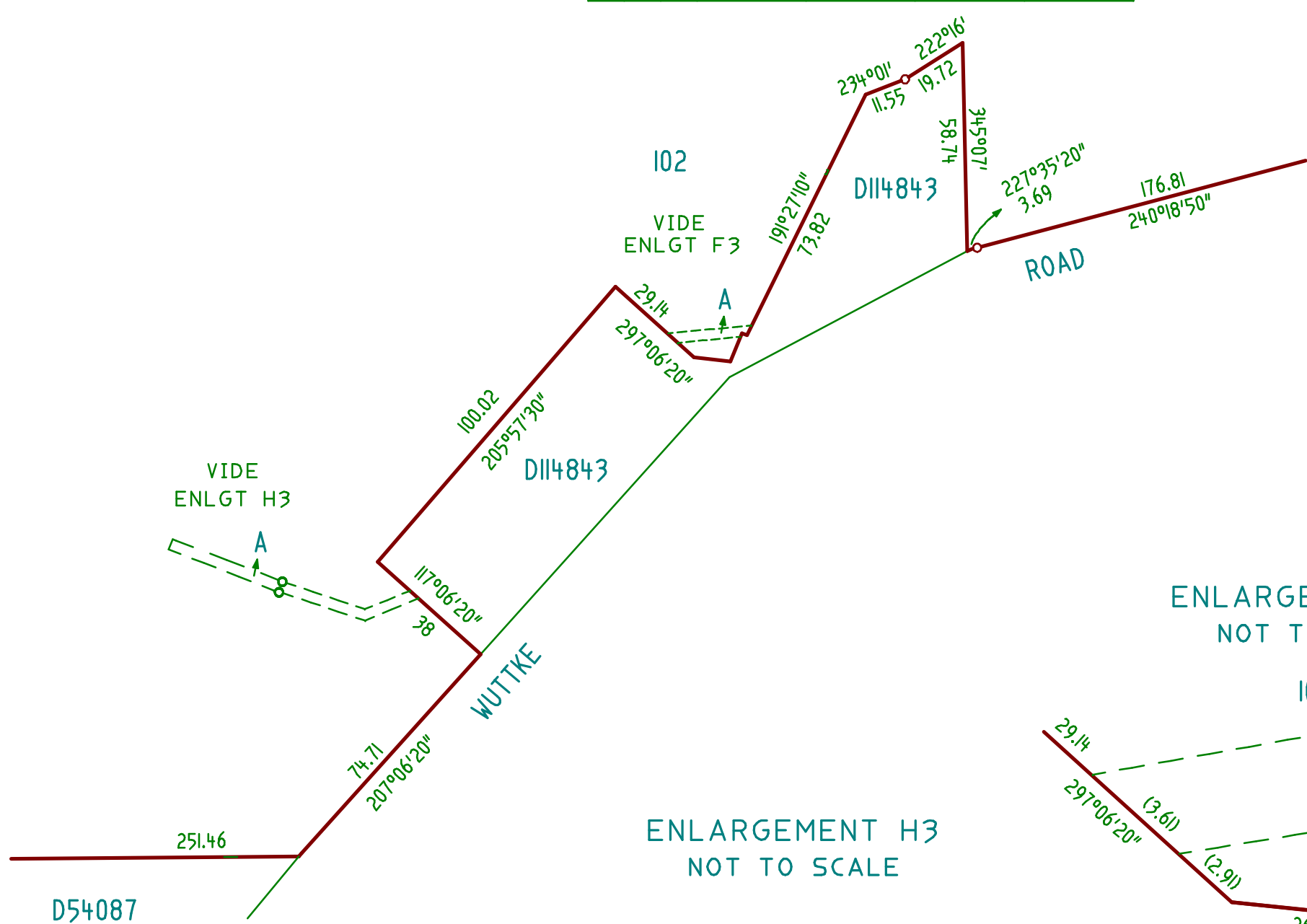
11 CHAPEL ST. STRATHALBYN SA 5255
 Mobile 0417878671
 REF: 4713FP V2

ENLARGEMENT D3
NOT TO SCALE



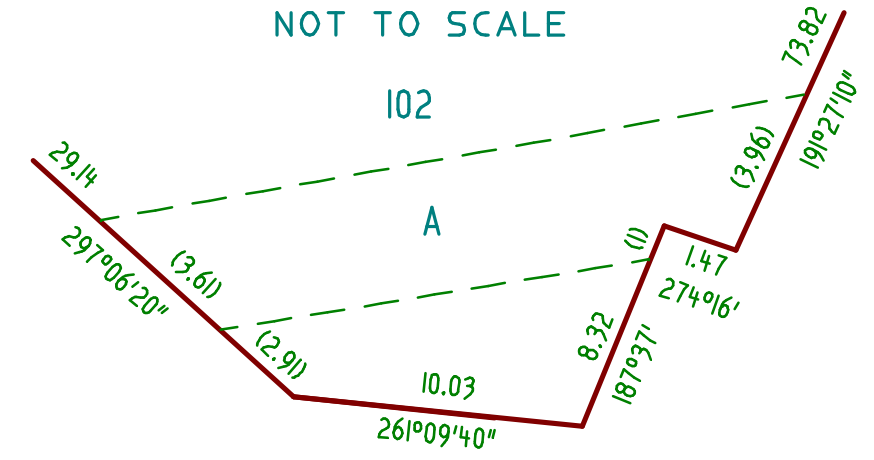
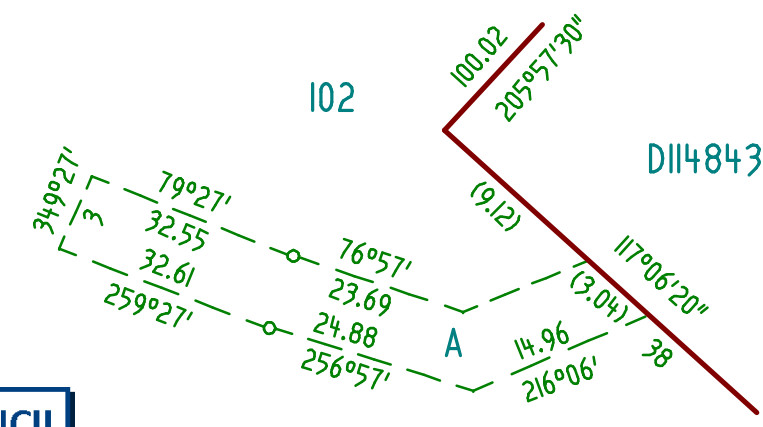
SHEET 3 OF 3

VOI



ENLARGEMENT H3
NOT TO SCALE

ENLARGEMENT F3
NOT TO SCALE



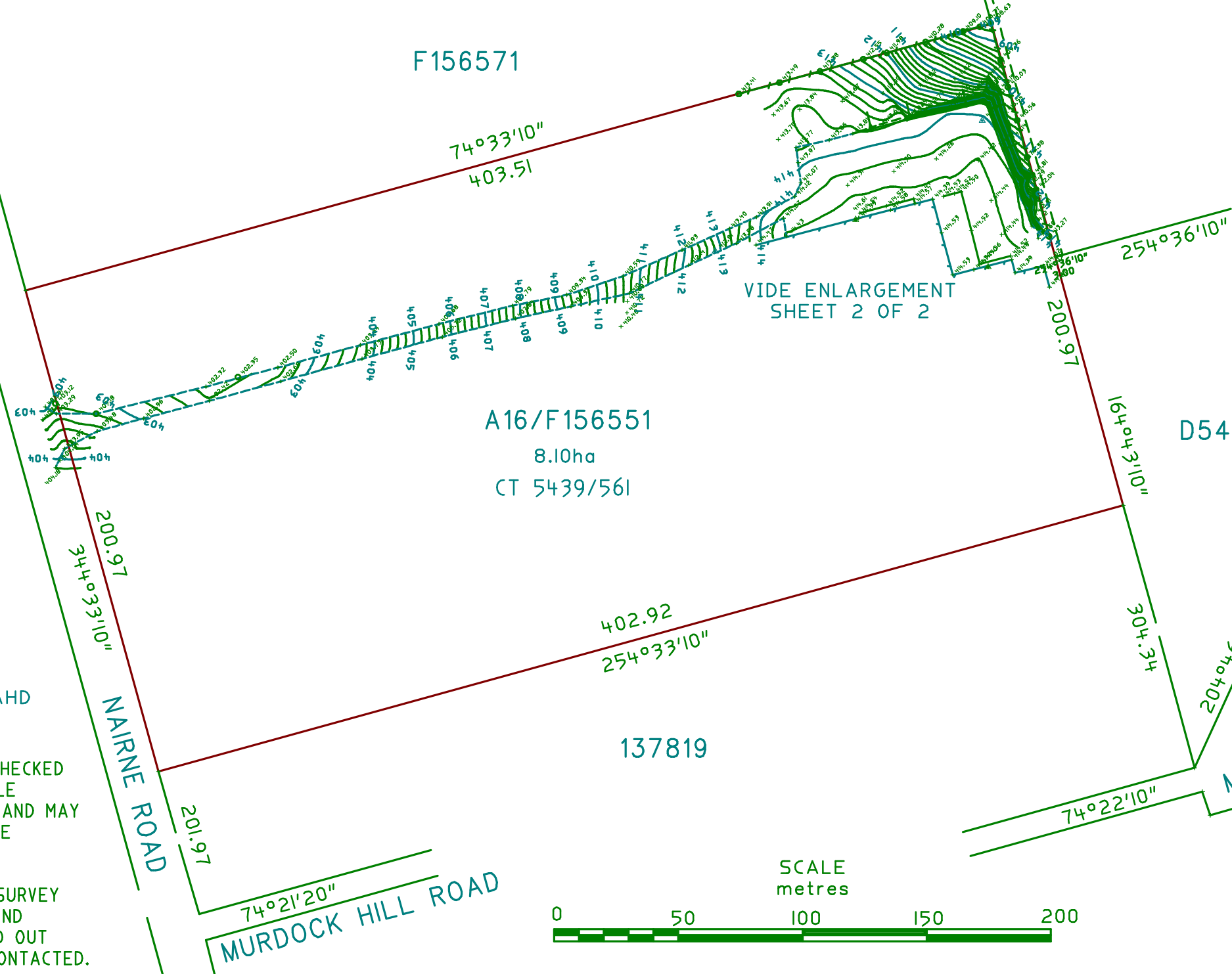
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 Mobile 0417878671
 REF: 4713FP V2

PLAN OF SURVEY
PORTION OF ALLOTMENT 16
IN F156551
HUNDRED OF ONKAPARINGA
in the area named
WOODSIDE

**ADELAIDE HILLS COUNCIL
RECEIVED 2 December 2020**



HEIGHT DATUM - APPROXIMATE AHD
CONTOUR INTERVAL - 0.2m

BOUNDARIES HAVE NOT BEEN MARKED OR CHECKED
IN THE COURSE OF THIS SURVEY. THE TITLE
BOUNDARIES SHOWN ARE INDICATIVE ONLY AND MAY
CHANGE IF A BOUNDARY SURVEY WAS TO BE
CARRIED OUT AT SOME FUTURE DATE.

NO ATTEMPT WAS MADE AT THE TIME OF SURVEY
TO LOCATE ANY UNDERGROUND SERVICES AND
BEFORE ANY EXCAVATION WORK IS CARRIED OUT
THE RELEVANT AUTHORITIES SHOULD BE CONTACTED.



SURVEYING & PLANNING CONSULTANTS
3/42 MT BARKER ROAD 11 CHAPEL STREET
STIRLING, S.A. 5152 STRATHALBYN
PH (08) 83709699 SA 5255
FAX (08) 83709699 M 0417878671
EMAIL olvs@bigpond.net.au

FILE 4713Det V1

DATE OF SURVEY 22/10/2020

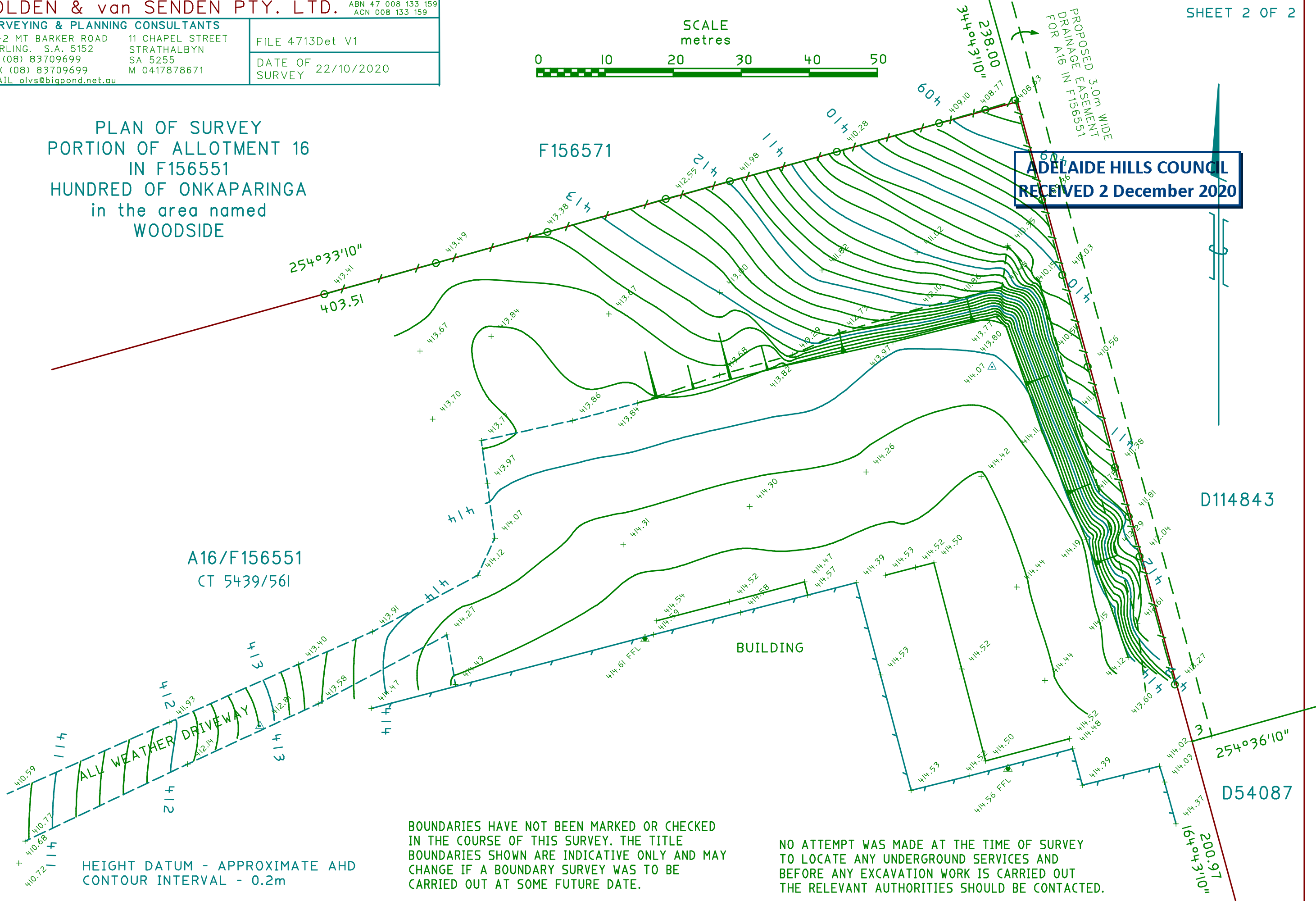
SCALE
metres



PLAN OF SURVEY
PORTION OF ALLOTMENT 16
IN F156551
HUNDRED OF ONKAPARINGA
in the area named
WOODSIDE

F156571

ADELAIDE HILLS COUNCIL
RECEIVED 2 December 2020



A16/F156551
CT 5439/561

BUILDING

HEIGHT DATUM - APPROXIMATE AHD
CONTOUR INTERVAL - 0.2m

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D114843

D54087