

## COUNCIL ASSESSMENT PANEL MEETING

14 April 2021

### AGENDA – 8.3

<b>Applicant:</b> John Nitschke	<b>Landowner:</b> John Nitschke Nominees Pty Ltd & J V Nitschke & L A Nitschke
<b>Agent:</b> Adelaide Hills Development Service and Botten Levinson Lawyers	<b>Originating Officer:</b> Melanie Scott
<b>Development Application:</b>	19/210/473
<b>Application Description:</b> 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)	
<b>Subject Land:</b> Lot:16 Sec: P5240 FP:156551 CT:5439/561	<b>General Location:</b> 359 Nairne Road Woodside  <b>Attachment – Locality Plan</b>
<b>Development Plan Consolidated :</b> 24 October 2017 <b>Map</b> AdHi/3	<b>Zone/Policy Area:</b> Watershed (Primary Production) Zone - Onkaparinga Valley Policy Area
<b>Form of Development:</b> Non-complying	<b>Site Area:</b> 8.08 hectares
<b>Public Notice Category:</b> Category 3 Non Complying Notice published in The Advertiser on 29 May 2020	<b>Representations Received:</b> 3  <b>Representations to be Heard:</b> 2 (previously heard)

#### 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 application was deferred by CAP on 10 March 2021 to seek the following further information:

- (1) The nature and extent of alteration of existing use rights;
- (2) Details of all vehicle movement manoeuvring, and number of anticipated vehicle movements in association with the storage and light industry uses;
- (3) Details of unloading areas, location and dimensions of external storage of shipping containers and waste storage; and
- (4) The provision of accurate floor and elevation plans detailing all new and existing openings to the building, including access to and within Store 3 and the south-eastern corner in general.

Following the provision of further information and 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. DISCUSSION OF RESPONSE TO REQUEST FOR FURTHER INFORMATION

### 1. The nature and extent of alteration of existing use rights

In the attachments for this report is a copy of a statutory declaration submitted by the owner in March 2020 regarding existing use rights, which largely concurs with the Council's known history of the site as reported in the original CAP report. Further, in the new CAP attachments is an email from Council staff agreeing that up to four trucks can be parked on the land as a result of the submission made in the statutory declaration.

The addition of tenancies, the associated building openings on the northern elevation and adjacent hardstand are the subject of this application and in the opinion of Council staff do not form part of existing use rights. The number of vehicles accessing the site prior to the current application, historically and into the future are likely to be in dispute. Vehicle access to the northern portion of the site was a dry weather activity only until the hardstand was installed sometime in 2017. Access to the northern portion of the existing buildings through openings on the northern elevation was not possible until the new openings were installed. This application seeks an intensification of the use of the building for store activities with a hardstand area and new openings.

This application seeks to add some limitations to the storage activities on the land where there are currently none. By adding hours of operation there will be some mitigation of the potential nuisance elements introduced to the site by the creation of the new tenancies.

### 2. Details of all vehicle movement manoeuvring, and number of anticipated vehicle movements in association with the storage and light industry uses

The applicant has provided a traffic report from Phil Weaver and Associates with a limited survey of vehicle access to the site. In summary the major storage tenant generally has 5 semi-trailer deliveries per week and the balance of the site is serviced by small to medium size rigid body trucks, but mostly cars and vans. Phil Weaver has generated the following theoretical forecast traffic:

Applying the above rates to the subject development would result in the following theoretical forecast traffic generations, namely:-

- Total weekday traffic generation of the order of 104 vehicle movements (5122 m<sup>2</sup> at 4.0 trips per 100 m<sup>2</sup>) associated with this land use, including
- A morning peak hour vehicle trip generation of 26 vehicle movements (5122 m<sup>2</sup> @ 0.5 per 100 m<sup>2</sup>), and

However given the nature and locality of the subject site actual trip generation is anticipated to be lower than the above forecasts.

For example, a survey of traffic entering and exiting the subject site between 8.00am and 9.00am on Thursday 18<sup>th</sup> March 2021 identified lower levels of traffic movements associated with the current use of the subject site, namely 12 trips in an hour, in the form of:

- 8 site entry movements (including one truck movement), and
- 4 site exit movements (including one truck movement).

Such volumes are effectively all existing, relatively minor, and not anticipated to have adverse capacity impacts on the adjoining road network.

Council sought some additional clarification from the applicant regarding vehicle movements as the forecast numbers above could be interpreted as an intensification of use. In response the applicant provided some logic around the traffic forecast and the actual volume on site and an addendum to the previously provided acoustic report. The actual volume on site was based on a small one off survey period which if representative of the average would indicate

the forecast volumes of traffic were indeed above this site's expectations. Given there is a limited purpose in counting vehicle movements and types for development, the provision of an additional acoustic comment was sought. This indicated even if forecast traffic levels for the site were achieved, predicted noise levels at adjacent sensitive noise receptors would be within the relevant daytime noise limit defined in the Adelaide Hills Council Development Plan.

The report outlines the dimensioned manoeuvring areas. There has also been the reinstatement of 14 carparks back into the site plan, adjacent the light industry tenancy which brings the on-site parking very close to the Development Plan expectations, noting both the applicant and Council do not expect the activities on site will require an excessive number of staff and associated parking.

**3. Details of unloading areas, location and dimensions of external storage of shipping containers and waste storage**

The amended plans provided address these items. Of note there is one waste skip bin located adjacent the storage area and one in the light industry tenancy, and as they are adjacent manoeuvring areas they are accepted as suitable for waste vehicle movements. A condition is recommended in relation to marking the location for the skip bins and shipping containers on the hardstand (refer Recommended Condition 12)

**4. The provision of accurate floor and elevation plans detailing all new and existing openings to the building, including access to and within Store 3 and the south-eastern corner in general**

Amended plans have been provided with access correctly labelled. Internally it is not clear how the separate tenancies are managed. The applicant provided the following response to questions regarding the internal access in relation to Store 3:

*"The nature of the tenancies and how they are managed and operated are the subject of the agreements my client has with each tenant. I'm instructed that the tenancies are managed in an informal manner and that each tenant is satisfied with how the space operates. It is correct in that a tenancy is accessed by passing through another tenancy. This has not been an issue to date. If a tenant is unsatisfied with any matter relating to the management or nature of the space that would be a matter the tenant could raise with my client (being the land owner).*

*There is no intention to install physical barriers in this space. However, it is worth noting that any future internal building work would not require planning consent in any event. If my client were to alter the internal nature of store 3, he would be permitted to do so without requiring the Council's consent. Schedule 4 of the Planning, Development and Infrastructure (General) Regulations 2017 sets out various exclusions from the definition of development. Clause 4(4) states:*

*4 (4) Other than in respect of a local heritage place, the repair, maintenance or internal alteration of a building—*

- 1. that does not involve demolition of any part of the building (other than the removal of fixtures, fittings or non load-bearing partitions); and*
- 2. that will not adversely affect the structural soundness of the building or the health or safety of any person occupying or using it; and*
- 3. that is not inconsistent with any other provision of this Schedule.*

*Pursuant to this clause my client is permitted to alter the internal parts of the building so long as such alteration does not involve any demolition and will not adversely affect the structural soundness of the building or the health and safety of any person occupying or using it. Of course, any structural changes to the internal layout may require building consent and would, of course, be required to meet all necessary building fire safety requirements. As stated above, there is no immediate intention to alter the internal layout of this portion of the building.”*

Should the tenancy layout be approved and a change to this be required, then a variation would need to be sought and assessed as an alteration to a previous development authorisation. Recommended Condition 6 reinforces this.

A copy of the submission is included as **Attachment – Applicant’s Response to CAP request for further information**

As previously discussed an acoustic assessment was provided with the application. It is noted this report indicates no sensitive receptors to the north of the subject building. Hours of operation are recorded as 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.

### **3. 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 but the hardstand was installed sometime between June 2016 and January 2017. Additionally, 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 additional to the use of the land for storage and agriculture. Also during this time Council has agreed the parking of four trucks on site has existing use rights as part of the farming operations on the site.

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 support through Council policy. 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 potential ongoing site management issues. The proposal for approximately 1/5<sup>th</sup> of the building to be used for an industry which supports agricultural activity is considered acceptable.

The existing use rights have been further explored in consultation with the applicant in response to CAP's request. The applicant and Council do diverge in their interpretation of the existing use rights and this application has offered the opportunity to implement some controls on the activities in relation to operating hours, tenancies, temporary storage and access.

Amended site plans have been provided for CAP consideration which further locational details and manoeuvring. With regard to traffic movements an expert report was provided confirming the access is suitable, the local road network has capacity and, appropriate turnaround areas can be achieved on-site. Further the expert report provides a limited survey which suggested vehicle movements to and from the site will be less than forecasting predicts, noting this opinion is formed on a limited survey of actual movements.

Waste receptacle locations and vehicle manoeuvring areas have been located on the amended plans and line marking for waste receptacles and temporary storage areas has been recommended as a condition.

Council are therefore recommending that the use of the remainder of the building for storage of a mix of agricultural and general 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.

#### 4. 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 19 March 2020(2) and amended 19 March 2021
- Amended North and East elevation plan drawing A 8 prepared by Michael Watson Architect project number NIT004 dated 19 March 2020(2) and amended 19 March 2021
- Amended West and South elevation plan drawing A9 prepared by Michael Watson Architect project number NIT004 dated 19 March 2020(2) and amended 19 March 2021
- Plans marked up by Phil Weaver and Associates, Figure 2 Articulated Vehicle Existing Forward Site Entry and Exit movements, Figure 3 Articulated Vehicle Future on- site Turnaround

##### (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 48hours 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**

**(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.

**(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.

**(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 2021 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.

**(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 sought for any changes to the approved configuration or number of tenancies.

**(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.

**(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.

- (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.
- (11) **Gravel car parking Designed In Accordance With Australian Standard AS 2890.1:2004.**
- i. 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.
  - ii. Car parking delineation shall occur with 3 months of Development Approval being granted.
- (12) **Line Marking – skip bins and shipping containers**  
The areas proposed for skip bins and shipping containers on site should be line marked to ensure access and egress to the building at all times. Delineation shall occur with 3 months of Development Approval being granted.

#### 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**

Previous Report and Attachments  
Applicant Information  
Traffic Consultant Submission  
Amended Plans  
Statement from a tenant  
Statutory Declaration regarding existing use  
Staff Email re existing use

Respectfully submitted

Concurrence

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**Melanie Scott**  
Senior Statutory Planner

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**Deryn Atkinson**  
Assessment Manager



Our ref: PMM/219134

19 March 2021

Ms Melanie Scott  
Adelaide Hills Council  
PO Box 44  
WOODSIDE SA 5244

**ADELAIDE HILLS COUNCIL  
RECEIVED 19 March 2021**

**By email: [mScott@ahc.sa.gov.au](mailto:mScott@ahc.sa.gov.au)**

Dear Ms Scott

**359 Nairne Road, Woodside – DA 19/210**

On Wednesday 10 March 2021 the Council's Assessment Panel (CAP) considered the development application lodged by my client Mr John Nitschke in relation to the land owned by him and his wife, Lyn, at 359 Nairne Road, Woodside (Land).

At the meeting the CAP resolved to defer the application in order to seek further information. Specifically, the CAP seeks the following information:

1. the nature and extent of alteration of existing use rights;
2. details of all vehicle movement manoeuvring, and number of anticipated vehicle movements in association with the storage and light industry uses;
3. details of unloading areas, location and dimensions of external storage of shipping containers and waste storage; and
4. the provision of accurate floor and elevation plans detailing all new and existing openings to the building, including access to and within store 3 and the south eastern corner in general.

The purpose of this letter is to formally respond to the CAP's request for further information. I address each issue in turn below.

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## 1. Existing use rights

The Council Assessment Panel has requested we provide further information as to the nature and extent that the proposed development seeks to alter the land's existing use rights.

I confirm there is no intention to vary or alter the existing use rights in any way. The development application purely seeks to add to these existing use rights by seeking approval for additional uses.

On page 3 of the Combined Statement in Support/Statement of Effect we listed the known statutory approvals for the land and dealt with the existing use of the main building.

For ease of reference the known statutory approvals for the land are:

1. DA 18/13 "alterations and additions";
2. DA 563/4 - 361/83 - "seed storage shed extension" granted 28 November 1983;
3. DA 563/4 - 314/86 - "car port";
4. DA 563/4-119/83 - "office/storeroom" granted 26 April 1983;
5. DA 563/4 - 101/86 - "Hay shed";
6. DA 4/252 - "storage shed extension" dated 6 September 1980;
7. DA 4/169 - "seed storage shed" (ref S:W: 12/7) dated 20 November 1979;
8. DA 4/137 - "car shed"; and
9. DA 4/145 - "dwelling".

It is tolerably clear from the statutory approvals and approved plans that:-

- (A) the approvals for storage are granted in very broad terms.
- (B) there are no conditions or other limitations on the intensity of the storage uses, or the types or sizes of vehicles used in association with it;
- (C) the approved storage building is very substantial in size and scale (well over 4,000 m<sup>2</sup> in total floor area), which necessitates large vehicles for transporting and manoeuvring items and goods stored there;
- (D) heavy vehicle parking and movements are part-and-parcel of any storage facility of such a scale; and
- (E) authorisation for the storage use necessarily implies the ancillary parking and movement of some heavy vehicles (and other vehicles) at the Land.

Further to the lawful uses authorised by the approvals referred to above, the Land more broadly enjoys existing use rights.

Existing use rights are rights that survived the implementation of planning controls over the years. Planning controls did not come into force in any substantial fashion in South Australia until the *Planning and Development Act 1966*. Uses which were lawfully in existence prior to the introduction of planning controls and have not been discontinued or abandoned enjoy existing use rights.

To the best of my clients' knowledge the Land has, since before planning controls were promulgated, been used for residential purposes (the dwelling) and agricultural and farming uses. The Land continues to be used for farming, agriculture and for residential purposes and, therefore, these uses form part of the lawful existing use rights of the land.

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 clients park 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 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 (and the Council has accepted this).

As you are aware, the development application seeks building alterations and additions, the reconfiguration of the existing storage and office facility, the addition of an agricultural light industry use within the existing building, 3 x 144,000 water tanks and landscaping.

As stated above, the proposed development does not seek to alter or vary the existing use rights. It is our clients' intention to continue to use the Land for farming and agricultural purposes, for the parking of heavy vehicles and equipment (from time to time) and for residential purposes. The development application does not seek alter or vary these existing use rights the application merely seeks approval for works/uses in addition to the continuation of the existing use rights.

## 2. **Traffic management**

The Council Assessment Panel has requested details of all vehicle movement manoeuvring, and number of anticipated vehicle movements in association with the storage and light industry uses.

In response to this request we have engaged Phil Weaver, a consultant traffic engineer, to prepare a traffic and parking assessment. A copy of his report is **enclosed**.

Importantly, Mr Weaver's report confirms that the proposed development:

1. provides appropriate on-site car parking;
2. facilitates appropriate on-site manoeuvrability for passenger and commercial vehicles up to and including 19-metre-long semi-trailers; and
3. does not result in adverse traffic impacts.

Mr Weaver has also included vehicle swept paths in the diagrams enclosed with his report.

The report also provides details regarding anticipated vehicle movements.

## 3. **Loading and external storage areas**

The CAP has requested details of unloading areas, location and dimensions of external storage of shipping containers and waste storage.

I confirm that shipping containers are used by one of the tenants at the Land, specifically, Living by Design. The stock stored at the Land by this tenant is delivered to the Land in shipping containers. The containers are unloaded then removed from the Land.

Clearly, the building on the Land is substantial in size and scale which necessitates large vehicles for transporting and manoeuvring items and goods stored there. The fact that a shipping container is used as a way of delivering stock to the Land is uncontroversial and part-and-parcel of any storage facility of this scale.

The shipping containers are only temporarily at the Land. The development application does not seek approval for the permanent storage of any shipping containers at the Land.

The shipping containers are unloaded on the northern side of the building and placed parallel to the northern side of the building. The stock is then unloaded and the shipping container is removed. Depending on stock levels at the Land the shipping containers are ordinarily located on the Land for a few days at a time. Tim Bowring, the manager of "Living by Design" advises that no one container stays on the site for more than 72 hours.

The video footage, taken by a Council employee, and showed at the recent CAP meeting showed 9 shipping containers were located on the Land at one time as well as a vast amount of boxes on the hardstand area.

The presence of 9 shipping containers on the Land was very unusual. Unfortunately, neither myself nor my clients, Mr and Mrs John and Lyn Nitschke (being the owners of the Land), were made aware that this footage was obtained or was to be shown at the CAP meeting. Had my clients been made aware of the content of the video footage they would have been in a position to contact the tenant of the land and request an explanation as to the circumstances surrounding the increased number of containers on the Land. My clients (or I) could then have provided this explanation to the Panel members. I confirm that following the meeting my clients contacted this particular tenant.

My clients were advised that Living By Design stock is shipped to Adelaide. The COVID-19 global pandemic has heavily impacted global supply chains and the shipping industry. It has resulted in unprecedented delays for containers at ports around Australia. It appears that a large number of containers had been held at the port in Adelaide (as a result of various delays associated with the disruption to international shipping as a result of the pandemic) these were then taken to the Land in quick succession. The tenant has advised my clients that this has not happened before and is unlikely to occur again. In any event, the shipping containers were unloaded and removed from the Land.

Following the communication between my clients and Living By Design, my clients received a letter from a director of Living By Design who confirmed that all stock that was temporarily located outside of the building has been moved inside and Living By Design. A copy of that letter is **enclosed** for your reference.

The enclosed plan identified as "*Proposed Floor Plan – A7 dated 19 March 2021*" indicates the location of the proposed loading areas. There are 3 such areas and they are conveniently located. The plan also identifies the location where shipping containers are proposed to be temporarily located while they are unloaded. The areas on the plans marked "skip" are the locations for waste storage. We trust this is sufficient information for the Panel members.

#### 4. Updated floor and elevation plans

The Council Assessment Panel has requested we provide accurate floor and elevation plans detailing all new and existing openings to the building, including access to and within store 3 and the south eastern corner in general.

I confirm we enclose updated plans identified as:

1. Proposed Floor Plan – A7 dated 19 March 2021;
2. Proposed North and East Elevations – A8 dated 19 March 2021; and
3. Proposed West and South Elevations A9 dated 19 March 2021.

The enclosed plans accurately reflect all new and existing openings to the building, including access to and within store 3 and the south eastern corner.

Yours faithfully



**Pip Metljak**

**BOTTEN LEVINSON**

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Enclosures:

1. Traffic and Parking Assessment Report – Phil Weaver, Consultant Traffic Engineer, Phil Weaver and Associates
2. Letter from Tim Bowring, Director, Living By Design
3. Updated plans:
  - a. Proposed Floor Plan – A7 dated 19 March 2021;
  - b. Proposed North and East Elevations – A8 dated 19 March 2021; and
  - c. Proposed West and South Elevations A9 dated 19 March 2021.

Our ref: PMM/219134

29 March 2021

Ms Melanie Scott  
Adelaide Hills Council  
PO Box 44  
WOODSIDE SA 5244

**By email: [mScott@ahc.sa.gov.au](mailto:mScott@ahc.sa.gov.au)**

Dear Ms Scott

**359 Nairne Road, Woodside – DA 19/210**

I refer to the development application lodged by my client Mr John Nitschke in relation to the land owned by him and his wife, Lyn, at 359 Nairne Road, Woodside (**Land**).

**1. Traffic movements and related noise generation**

I previously provided you with a copy of the Traffic and Parking Assessment Report prepared by Phil Weaver, Consultant Traffic Engineer, of Phil Weaver and Associates.

Mr Weaver applied prepared a report regarding traffic management at the Land. The report referred to traffic movements using traffic generation rates from the NSW *Guide to Traffic Generating Developments*. Applying this guide resulted in a theoretical forecast traffic generation of a total of 104 vehicle movements per day at the site. This total includes morning peak hour which, employing the NSW guide, would result in a theoretical forecast of 26 vehicle movements. Given the forecast is 104 vehicles per day including 26 movements during morning peak hour it is clear that traffic generated during morning peak hour is not representative of the traffic movements for subsequent hours in the day. This, of course, is understandable and likely to be the case at a variety of workplaces on the basis that employees often arrive at the site during morning peak hour but remain at the site for the rest of the day (generating no further traffic movements).

In Mr Weaver's opinion, given the nature and locality of the site, in his view, the actual trip generation at the Land would be lower than the forecasts resulting from the NSW guide.

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Mr Weaver undertook a survey of traffic entering and exiting the Land between 8.00am and 9.00am on Thursday 18 March 2021. During the one hour survey Mr Weaver identified 12 vehicle movements (8 entry movements (including 1 truck) and 4 exit movements (including 1 truck)). This peak hour survey was less than half the theoretical peak hour forecast result using the NSW guide referred to above and again suggests that the actual trip generation at the Land would be lower than the theoretical forecasts. Given this was a peak hour survey (and employing the same logic as the NSW guide) it is fair to say that it would be incorrect to suggest that there would be 12 vehicle movements every hour of the day.

In relation to acoustic impacts from the traffic movements, Marshall Day Acoustics previously prepared a report taking into account various assumptions. The assumptions relating to traffic generation/movement were:

- a maximum of 13 light vehicles entering and exiting on any given day; and
- a maximum of 4 large vehicles entering and exiting on any given day.

This equates to 34 vehicles movements per day (counting entry and exits as separate movements). On the basis of these assumptions Marshall Day determined that the predicted noise site levels met the relevant day time noise limit without the need for specific acoustic treatment.

In order to ascertain whether any noise issues would arise where the traffic movements were higher than that initially assumed by Marshall Day we requested Marshall Day undertake further considerations.

I now **enclose** correspondence from Marshall Day (dated 29 March 2021) confirming that even if there were:

- 11 light vehicles entering and departing the Land (22 separate movements); and
- 1 truck arriving and departing the Land (2 separate movements); and
- a range of non-vehicle related noise being generated (further described in the enclosed correspondence)

within a 15 minute period the predicted noise levels would still meet the relevant day time noise limit.

It is unlikely that there would be 24 traffic movements within a 15 minute period (equating to 96 vehicle movements in a one hour period) however, the correspondence from Marshall Day confirms if this were to occur the day time noise limit would be met.

Yours faithfully



**Pip Metljak**  
**BOTTEN LEVINSON**  
Mob: 0409 812 163  
Email: pmm@bllawyers.com.au

# 1 Proposed Floor Plan

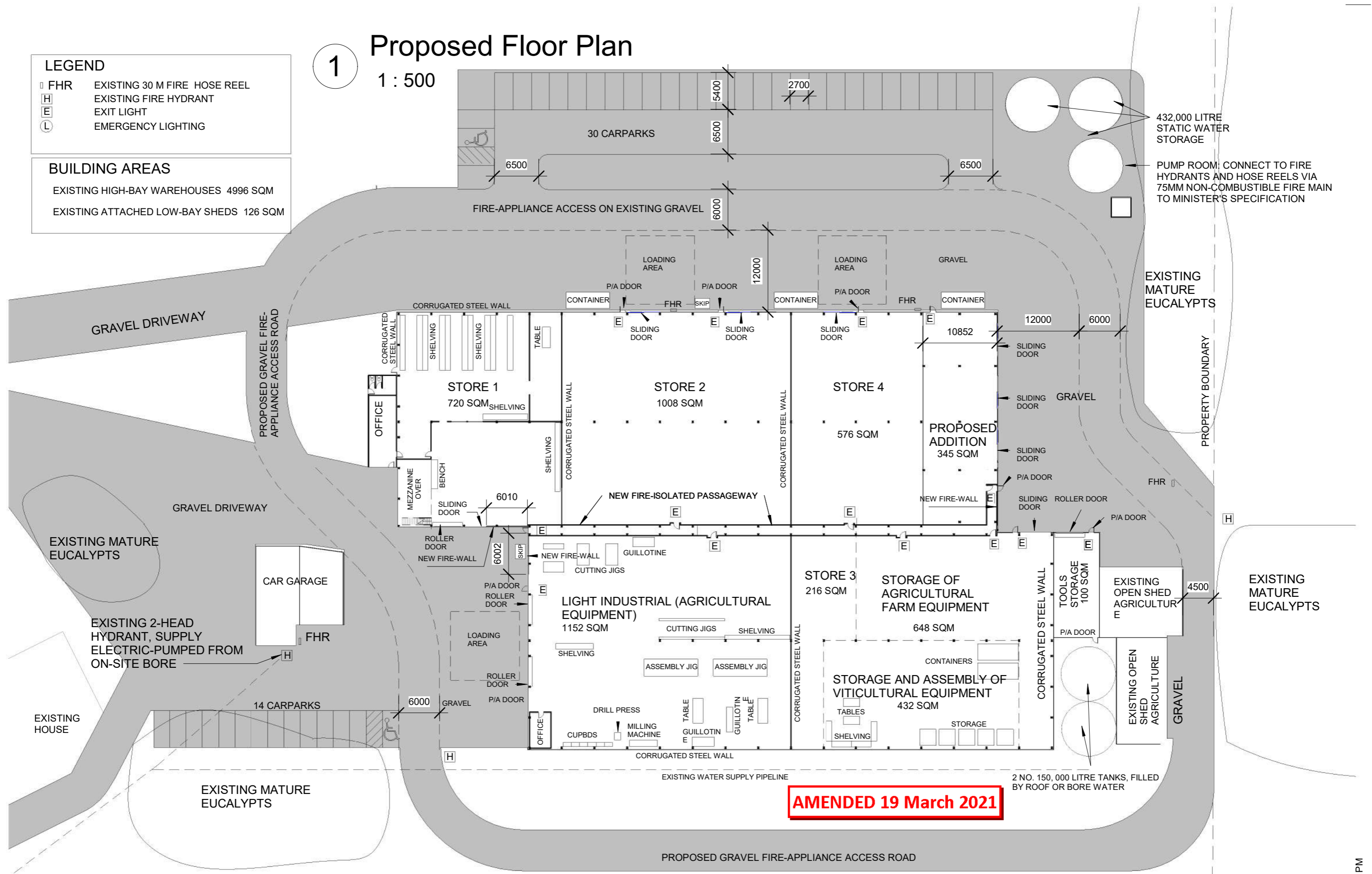
1 : 500

**LEGEND**

- FHR EXISTING 30 M FIRE HOSE REEL
- ⊞ EXISTING FIRE HYDRANT
- ⊞ EXIT LIGHT
- ⊞ EMERGENCY LIGHTING

**BUILDING AREAS**

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



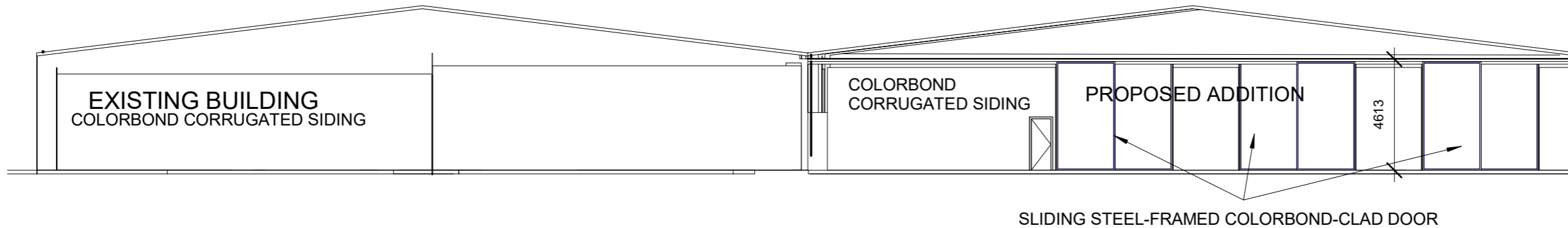
**Michael Watson Architect**  
 Mob 0432 990 960  
 216 Mount Bold Road, Bradbury, S.A. 5153  
 michaelwatsonarch@bigpond.com

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

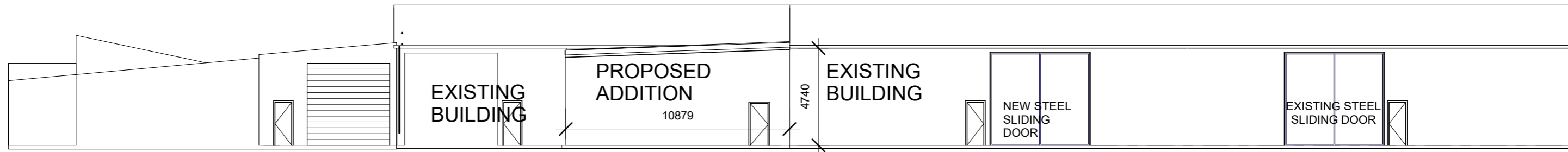
Proposed Floor Plan		<b>A 7</b>
Project number	NIT 004	
Date	19.3.20 (2)	
Drawn by	MRW	Scale 1 : 500

19/03/2021 4:17:00 PM



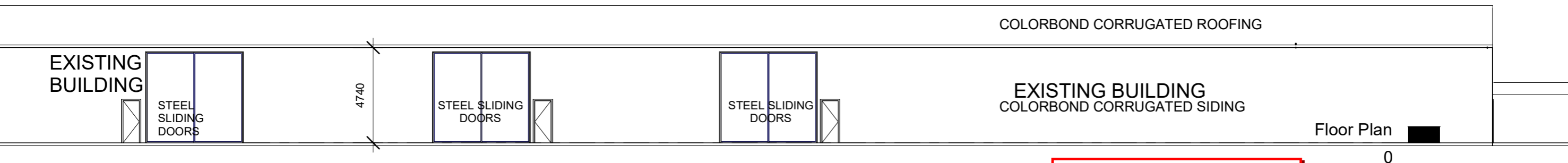


1 East Elevation  
1 : 200



2 Proposed North Elevation  
East End  
1 : 200

3 Proposed North Elevation  
West End  
1 : 200



**AMENDED 19 March 2021**

**Michael Watson Architect**  
 Mob 0432 990 960  
 216 Mount Bold Road, Bradbury, S.A. 5153  
 michaelwatsonarch@bigpond.com

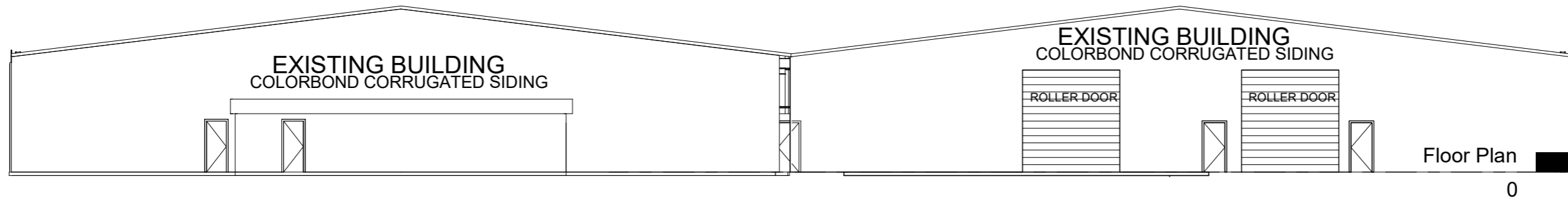


RETROSPECTIVE APPLICATION FOR ALTERATIONS TO A  
 WAREHOUSE AT 359 NAIRNE ROAD, WOODSIDE, S.A. FOR  
 CARLTON NITSCHKE INVESTMENTS PTY.LTD.

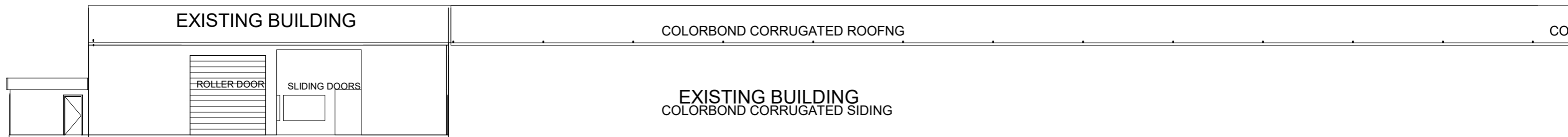
Proposed North and East Elevations

Project number	NIT 004	A 8
Date	19.3.20 (2)	
Drawn by	MRW	Scale 1 : 200

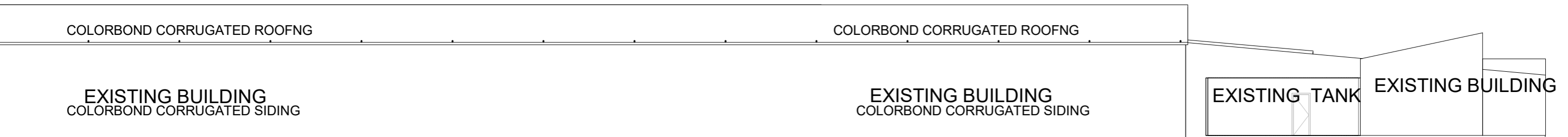
19/03/2021 4:16:25 PM



1 Proposed West Elevation  
1 : 200



2 Proposed South Elevation  
West End  
1 : 200



3 Proposed South Elevation  
East End  
1 : 200  
**AMENDED 19 March 2021**

**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 West and South Elevations		
Project number	NIT 004	A 9
Date	19.3.20 (2)	
Drawn by	MRW	Scale 1 : 200

19/03/2021 4:13:57 PM

**Consultant Traffic Engineers**

ABN 67 093 665 680

204 Young Street  
Unley SA 5061**P: 08 8271 5999****E: mail@philweaver.com.au**

File: 21-043

**ADELAIDE HILLS COUNCIL  
RECEIVED 19 March 2021**

19 March 2021

Mr Peter Meline  
Adelaide Hills Development Services  
PO Box 1508  
MOUNT BARKER SA 5251

Dear Peter,

**PROPOSED CHANGE OF LAND USE – 359 NAIRNE ROAD, WOODSIDE (DA 19/210/473) – TRAFFIC AND PARKING ASSESSMENT**

I refer to our recent discussions with respect to a Development Application involving the proposed change of use of the existing buildings on the above site. I understand that this Development Application is required by council in order to formalise a partial change of use of a number of the buildings from 'store' to 'industry (manufacturing)'. This application also includes minor building alterations and additions together with formalisation of on-site car parking.

I understand that the subject development was considered by the Adelaide Hills Council Assessment Panel (CAP) at its meeting on Wednesday 10<sup>th</sup> March 2021 and that consideration of this matter was deferred subsequent to the provision of the following further information:

- (1) The nature and extent of alteration of existing use rights;
- (2) Details of all vehicle movement manoeuvring, and number of anticipated vehicle movements in association with the storage and light industry uses;
- (3) Details of unloading areas, location and dimensions of external storage of shipping containers and waste storage; and
- (4) The provision of accurate floor and elevation plans detailing all new and existing openings to the building, including access to and within Store 3 and the south-eastern corner in general.

As requested, we have accordingly undertaken the following review of the traffic and parking related aspects of the subject development.

**EXISTING SITUATION****Road network and Locality**

The subject site is located on the eastern side of Nairne Road, Woodside, between Drummond Road to the north and Murdoch Hill Road to the south.

The subject land is located within a *Watershed (Primary Production) Zone* as identified on *Zone Map AdHi/3* of the Adelaide Hills Council Development Plan (as consolidated 8<sup>th</sup> August 2019).

The subject land is rectangular in shape with a frontage of 201m to Nairne Road and a depth of approximately 403m.

Vehicular site access is provided via an approximately 7m wide gravel driveway which widens to approximately 19m in line with the site boundary in order to accommodate access by large vehicles including 19m long semi-trailers.

Nairne Road is a two-way sealed roadway under the care and control of the Department for Infrastructure and Transport (DIT), with a posted speed limit of 80km/h. Adjacent to the subject site, double barrier lines separate the approximately 3.2m wide northbound and southbound traffic lanes on this roadway.

Nairne Road carries an Annual Average Daily Traffic (AADT) volume of approximately 3,800 vehicles per day (vpd), including a commercial vehicle content of approximately 12%.

In the five-year period from 2015 to 2019 (inclusive), there have been no recorded road crashes on Nairne Road within 200m of the subject site.

Aerial imagery of the subject site and adjoining locality is provided in *Figure 1* below.



*Figure 1: Subject site and surrounding locality*

### **Current Land Uses**

The existing development on the subject land is identified on an Existing Site Plan prepared by Michael Watson Architect dated 13/03/21.

The existing development on the site includes, inter alia, the following land uses:-

- A residential dwelling and associated outbuildings, and
- 2 primary warehouse buildings consisting of:-
  - The northernmost building with an overall area of approximately 2304 m<sup>2</sup> which is identified on the plans as comprising:-
    - Store 1 with a storage area of 720 m<sup>2</sup>, together with an adjoining office area on the western side of this building,
    - Store 2 with an area of 1008 m<sup>2</sup>, and
    - Store 4 with an area of 576 m<sup>2</sup>.
  - A similar sized commercial building to the immediate south with an overall area of approximately 2448 m<sup>2</sup> including:-
    - A 'light industrial (agricultural equipment)' area of 1152 m<sup>2</sup> forming the western portion of this building, and
    - Store 3 with a total area of 1296 m<sup>2</sup>, including a 432 m<sup>2</sup> 'storage and assembly of viticultural equipment' area within the south-eastern corner of the building and a 648 m<sup>2</sup> 'storage of agricultural farm equipment' area within the north-eastern corner of this building.

Additional buildings located at the eastern end of the site include:-

- An enclosed building with an area of 100 m<sup>2</sup>,
- Two adjoining open sheds accommodating agricultural machinery with a combined area of approximately 210 m<sup>2</sup>.

In addition to the above development it is identified that there is a potential for a future addition at the eastern end of the northernmost of the two warehouse buildings. The concrete slab associated with this potential addition has previously been constructed and has an area of approximately 345 m<sup>2</sup>.

I note that the above buildings are currently operated by a range of tenants as described below:-

- **Casa Light and Power** which is a small local business providing lighting and audio services to the music and entertainment industry. This tenant occupies the western end of the northernmost building (Store 1) and the adjoining office space on the western side of this building,
- **Living By Design** which is a retailer of household furniture and homewares and currently operates a warehouse and assembly facility on the subject site. This tenant occupies an area of approximately 1584 m<sup>2</sup> within the northernmost building, i.e., Store 2 and Store 4,
- **Aussie Feeders** which is a light industry fabricating agricultural equipment for use as livestock feeders predominantly for poultry sheep and cattle and related products. This tenant occupies the western end of the southern building within an area of 1152 m<sup>2</sup>,

- Use of 'Store 3' primarily by the owner, and also Mr **Malcolm Villiers** and Mr **Tony Flowers**. Mr Malcolm Villiers requires access primarily during the grape harvest season (generally February to April) with minimal traffic generated outside of these periods. Mr Tony Flowers operates a plant nursery off-site and uses an area of approximately 216 m<sup>2</sup> of floor space for storage of pallets. Consequently this particular tenant generates only low levels of traffic with access required on a very infrequent basis, and
- A small enclosed area at the eastern end of the southernmost of the two larger buildings which is understood to be used for the storage of tools and minor repairs and servicing of domestic type repair items, and also for use as a hobby area for the current tenant (Mr **Paul Tucker**).

The existing commercial tenants generate only low levels of traffic movements, with the greatest number of deliveries generated by any single tenant being Living By Design, which I am advised generates a maximum of five (5) deliveries in any one week by 19m long semi-trailer. This equates to an average of one such movement per day. These deliveries occur during ordinary business hours. The containers are unloaded on the northern side of the building and will be temporarily located parallel with the northern boundary of the building.

There are typically infrequent medium sized truck movements (no more than 4 per day) associated with Casa Light and Power with these vehicles loading adjacent to this tenancy. However, this tenant has been particularly impacted by Covid-19 restrictions and is not currently operating at capacity.

The remaining tenants generate very infrequent traffic movements by commercial vehicles all of which are understood to be small to medium size rigid body trucks but mostly by cars and vans.

All traffic accessing the subject site occurs via the existing access point and associated driveway off Nairne Road with all vehicles entering and exiting the site in a forward direction.

While there are no formal car parking spaces currently provided on-site there are opportunities to accommodate the small number of vehicles associated with the current use of the site within the areas adjoining the various buildings.

In addition to the above commercial tenants there is a single residential dwelling and associated outbuildings on the site. Vehicular access associated directly with this dwelling occurs to the west of the commercial buildings.

## **PROPOSED DEVELOPMENT**

The subject development is identified on a series of plans prepared by Michael Watson Architect including:-

- a **Proposed Site Plan** (Project Number: NIT 004 Drawing A6 dated 23<sup>rd</sup> February 2021), and
- a **Proposed Floor Plan** (Project Number: NIT 004 Drawing A7 dated 23<sup>rd</sup> February 2021).

The above plans identify that there will be only minimal changes made to the current development on the subject site. These changes would provide for:-

- The potential construction of a proposed addition to the northernmost of the existing warehouse buildings. This construction would accommodate a further 345 m<sup>2</sup> of space within this building,
- The provision of a gravel fire appliance access road that would meet the requirements of the Ministers Code for Undertaking Development in Bushfire Protection Areas with inside corner radii of at least 9.5m, and

- Two formal car parking areas to accommodate 44 car parking spaces on-site, in the form of:
  - A 30-space car parking area on the northern side of existing warehouse buildings, including 1 accessible space and an associated shared area, and
  - A 14-space car parking area on the south-western side of existing warehouse buildings, including 1 accessible space and an associated shared area.

There will be no changes to the current vehicle access arrangements to and from the subject site and no changes to the existing residential dwelling.

The on-site car parking spaces will 5.4m in length and between 2.4m and 2.7m in width, with adjoining aisle widths of at least 6.5m.

The design of the on-site car parking areas would therefore conform to the dimensional requirements of the relevant off-street car parking standards (*AS/NZS 2890.1:2004* and *AS/NZS 2890.6:2009*).

The proposed development will continue to accommodate vehicles up to and including 19m long semi-trailers, particularly for use by the tenancy occupied by Living By Design.

## **PARKING ASSESSMENT**

*Table AdHi/4 – Off Street Vehicle Parking Requirements* within the Adelaide Hills Council Development Plan (as consolidated 8 August 2019) would require the provision of on-site car parking for an Industry, store or warehouse use at the following rates namely:-

Component	Car Parking Requirement Rate
Office Component	3.3 spaces per 100 square metres
Non-Office Component	2 spaces per 100 square metres up to 200 square metres
	1.33 spaces per 100 square metres between 200 and 2000 square metres
	0.67 spaces per 100 square metres over 2000 square metres

Application of the above rates to the aggregated area of the various buildings on the site would require the provision of 49 car parking spaces based upon the understanding that the subject development currently provides 5122 m<sup>2</sup> of warehouse and storage areas.

However, the above car parking rates are considered excessive in the context of the subject development noting the low staffing levels of each tenancy and the infrequent need for visitors or customers to attend the site together with the particular use of the majority of the tenancies simply as storage areas.

By way of comparison the '*Guide to Traffic Generating Developments*' report prepared by the former Roads and Traffic Authority (RTA) of New South Wales identified car parking rates for factories and warehouses equivalent to 1.0 spaces per 300 m<sup>2</sup> gfa, i.e., generating a theoretical requirement for approximately 17 on-site car parking spaces.

A review on site on 18<sup>th</sup> March 2021 identified that there were only 12 cars parked on site during the morning period at approximately 8.30am which I understand is typical of the current level of parking demand. At the time of inspection there were two small to medium sized rigid trucks loading on-site, one adjacent to Living By Design and one adjacent to Aussie Feeders.

On the above basis I consider that the provision of 44 formalised car parking spaces would be more than appropriate for the subject development, noting that there will continue to remain ample opportunity to accommodate overflow car parking on-site if required.

## **TRAFFIC ASSESSMENT**

### **Vehicular Trip Generation**

Traffic generation rates associated with the subject development are clearly lower than similar developments within metropolitan localities. However, for the purpose of this assessment consideration has been given to traffic generation rates within the '*Guide to Traffic Generating Developments*' report produced by the (former) Roads and Traffic Authority of NSW.

The above standard identifies a morning peak hour vehicle trip generation rate of 0.5 trips per 100 m<sup>2</sup> gross floor area for a warehouse development and a weekday traffic generation rate of 4.0 trips per 100 m<sup>2</sup> gross floor area.

Applying the above rates to the subject development would result in the following theoretical forecast traffic generations, namely:-

- Total weekday traffic generation of the order of 104 vehicle movements (5122 m<sup>2</sup> at 4.0 trips per 100 m<sup>2</sup>) associated with this land use, including
- A morning peak hour vehicle trip generation of 26 vehicle movements (5122 m<sup>2</sup> @ 0.5 per 100 m<sup>2</sup>), and

However given the nature and locality of the subject site actual trip generation is anticipated to be lower than the above forecasts.

For example, a survey of traffic entering and exiting the subject site between 8.00am and 9.00am on Thursday 18<sup>th</sup> March 2021 identified lower levels of traffic movements associated with the current use of the subject site, namely 12 trips in an hour, in the form of:

- 8 site entry movements (including one truck movement), and
- 4 site exit movements (including one truck movement).

Such volumes are effectively all existing, relatively minor, and not anticipated to have adverse capacity impacts on the adjoining road network.

### **Access Assessment**

Advice provided from the applicant has indicated that the largest vehicles which will require access to and from the subject development will continue to be 19m long semitrailers. It is understood that similarly sized vehicles are currently accessing the subject development via the existing access point on Nairne Road. *Figure 2* attached as an appendix to this letter identifies such vehicles turning left and right into and out of the existing site access point in forwards directions. There will be no change to the existing site access arrangements as part of the proposed development.

*Figures 3 and 4*, also attached as an appendix to this report, identify relevant swept paths under altered conditions as a result of the proposed development, namely:



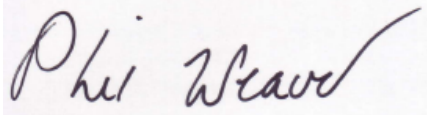
- *Figure 3:* Articulated Vehicle on-site three-point turnaround movements, and
- *Figure 4:* 8.8m long Medium Rigid Vehicle (MRV) site circulation around the proposed gravel fire-appliance road.

## **SUMMARY AND CONCLUSIONS**

In summary, I consider that the subject development will:

- Provide an appropriate quantity of on-site car parking associated with the subject land uses that clearly generate only very low levels of on-site parking demand. This reflects the remote location of the subject land, the low levels of staff associated with the various tenancies accommodated on-site and a minimal requirement for either visitor or customer car parking demand to occur,
- Facilitate appropriate on-site manoeuvrability for passenger and commercial vehicles up to and including 19m long semi-trailers,
- Not result in adverse traffic impacts on the adjacent road network in terms of vehicular trip generation, noting that surveys of traffic currently entering and exiting the subject site have identified only low levels of traffic movements even during morning and peak hour periods on the subject road network, and
- Provide a design standard for the on-site car parking and vehicle manoeuvring areas which is appropriate and meets the requirements of the relevant Australian Standards for off-street parking areas.

Yours sincerely,

A handwritten signature in black ink that reads "Phil Weaver". The signature is written in a cursive style with a long, sweeping tail on the letter "W".

Phil Weaver  
Phil Weaver and Associates Pty Ltd

*Enc. Figures 2 to 4*

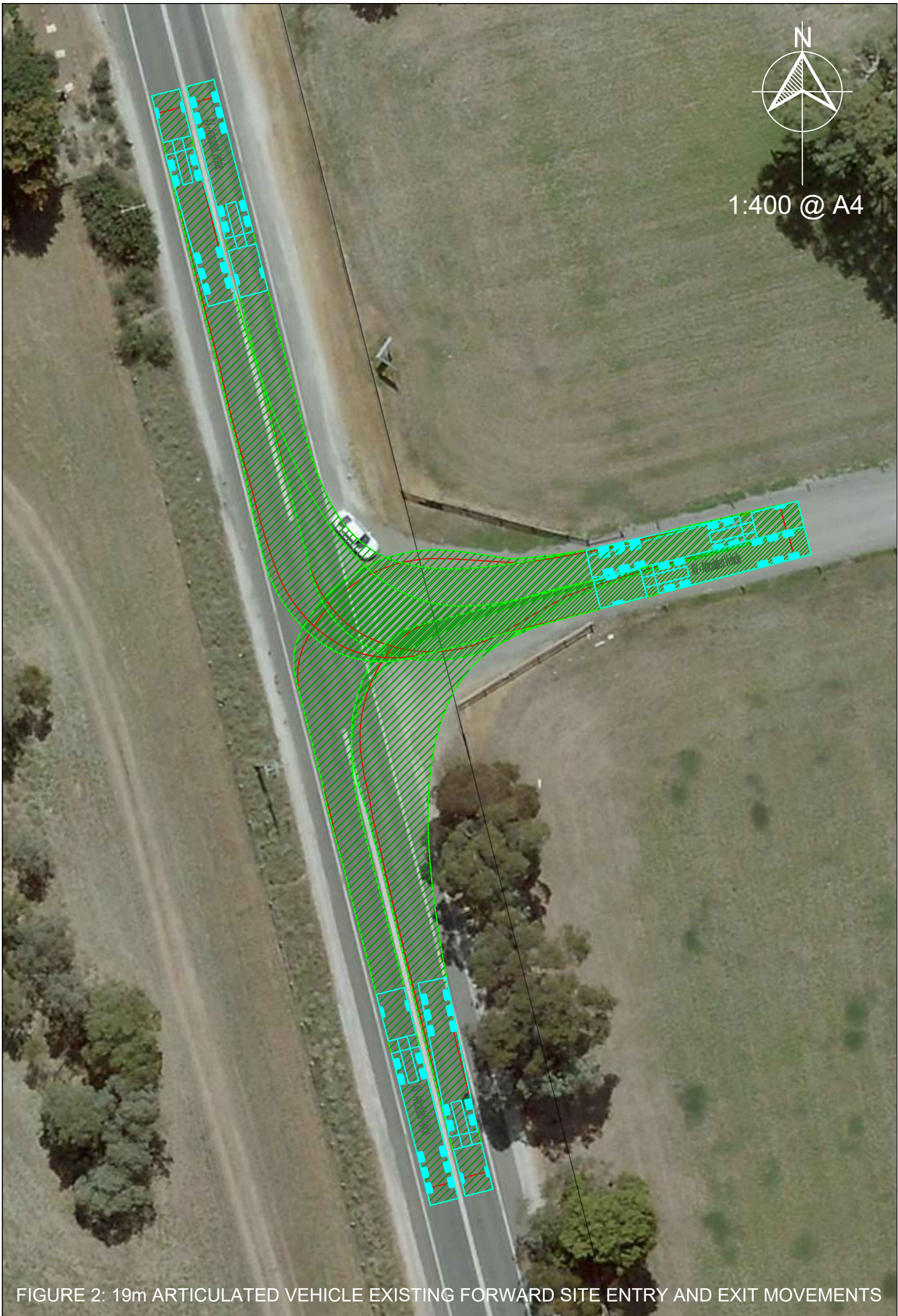
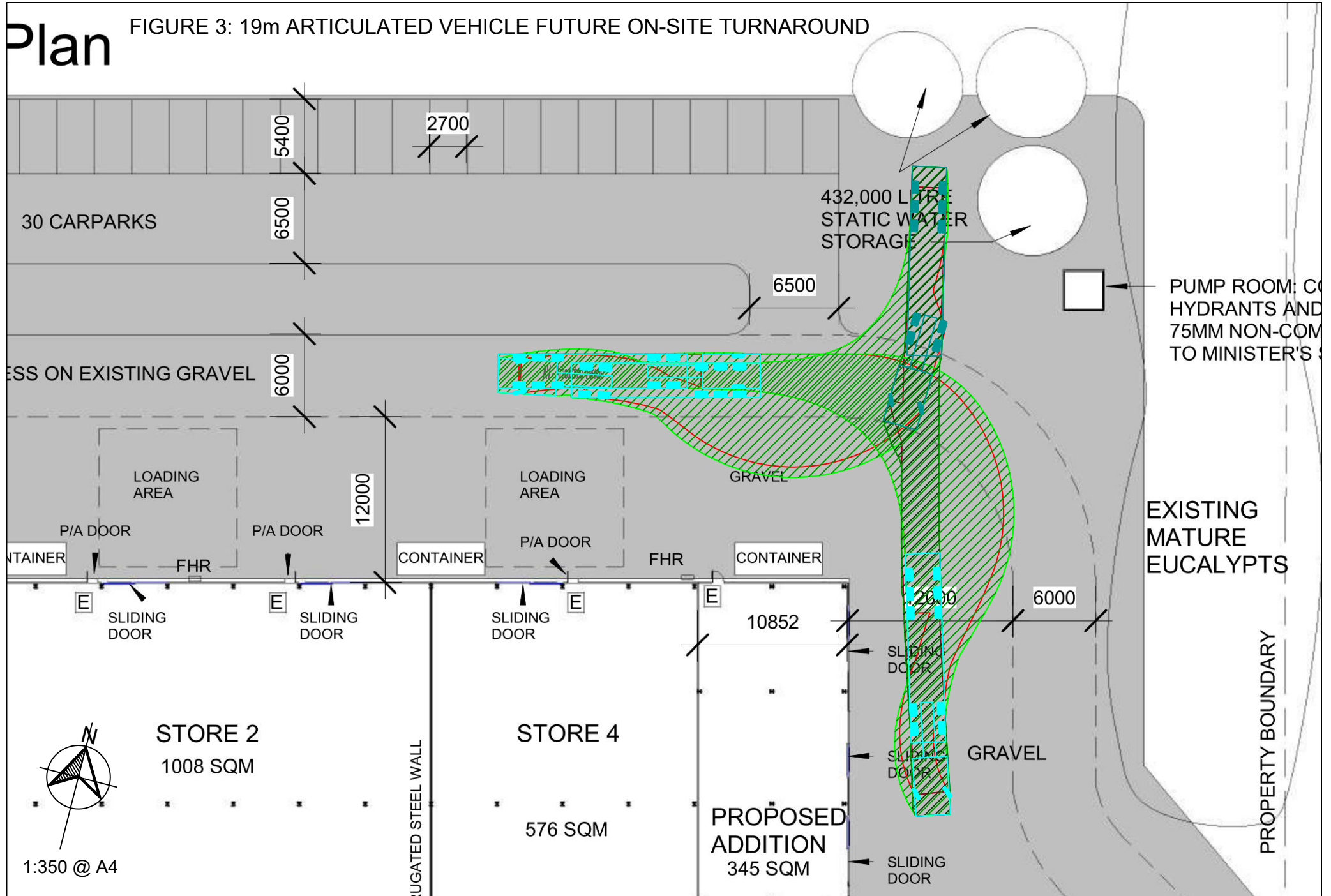


FIGURE 2: 19m ARTICULATED VEHICLE EXISTING FORWARD SITE ENTRY AND EXIT MOVEMENTS

# Plan

FIGURE 3: 19m ARTICULATED VEHICLE FUTURE ON-SITE TURNAROUND



**FIGURE 4: MRV FIRE APPLIANCE ACCESS AROUND THE GRAVEL ACCESS ROAD**

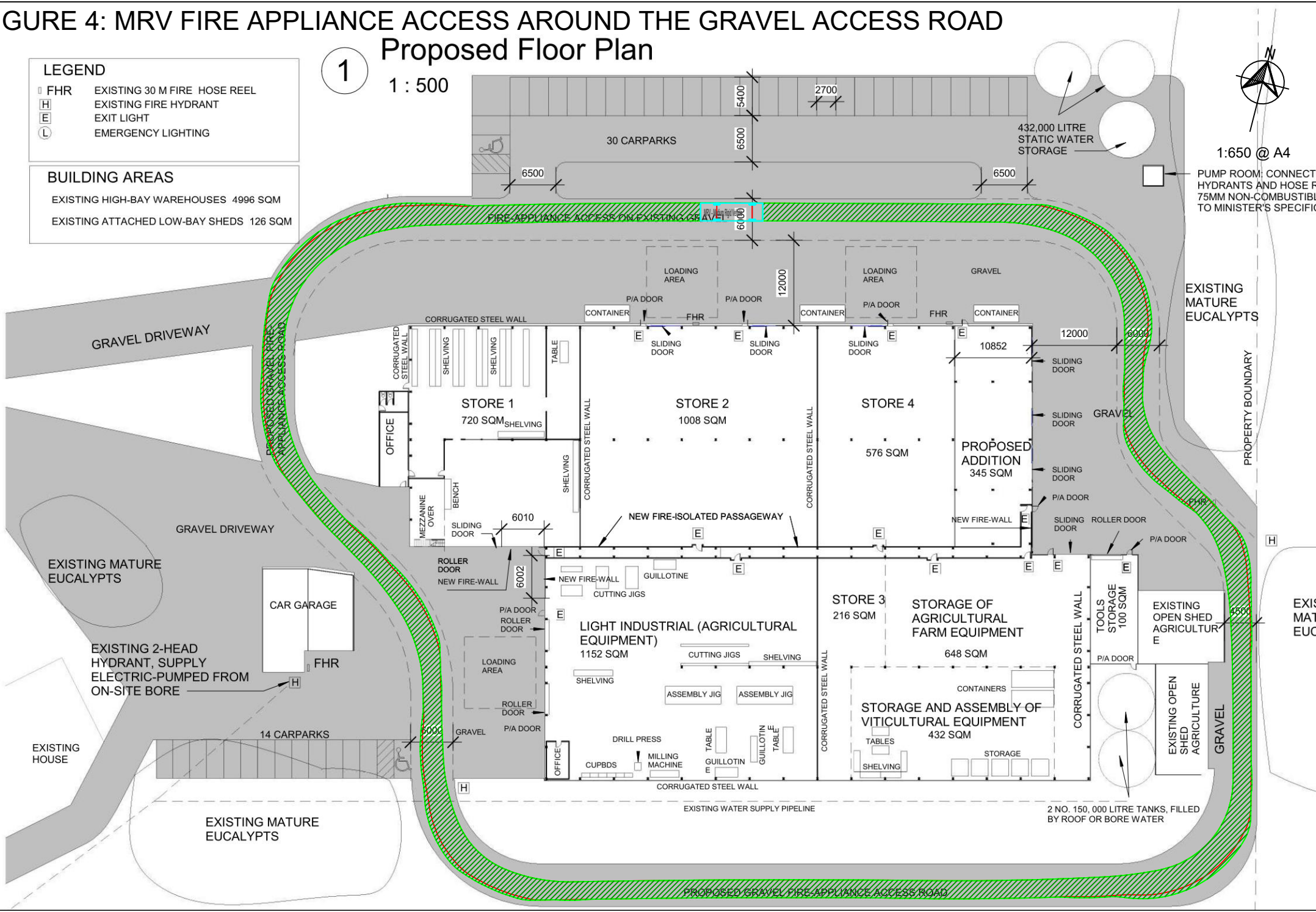
**1**  
1 : 500

**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



1:650 @ A4

PUMP ROOM: CONNECT HYDRANTS AND HOSE ROLLS TO MINISTER'S SPECIFICATIONS

EXISTING MATURE EUCALYPTS

PROPERTY BOUNDARY

EXISTING MATURE EUCALYPTS

2 NO. 150,000 LITRE TANKS, FILLED BY ROOF OR BORE WATER

PROPOSED GRAVEL FIRE APPLIANCE ACCESS ROAD

29 March 2021

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

**Attention: Mr Peter Meline**

Dear Peter

### **DA 19/210/473: REVIEW OF ACOUSTIC ASSESSMENT - CHANGE IN TRAFFIC**

Marshall Day Acoustics Pty Ltd (MDA) prepared an acoustic assessment for the proposed change of land use at 359 Nairne Road, Woodside, South Australia (DA 19/210/473). The assessment and findings are detailed in the report, *Rp 001 R01 20190861 359 Nairne Road, Woodside - Environmental Noise Assessment*, dated 21 April 2020.

Since the time of submission of the acoustic assessment, an updated traffic report has been prepared (Phil Weaver & Associates, *21-043*, dated 19 March 2021). The traffic report has identified that there would be a greater number of daily site vehicle movements than considered in the acoustic assessment.

This letter details revised assessment of noise levels at the nearest identified noise-affected premises considered in the acoustic assessment based on the greater number of site vehicle movements.

#### **Revised noise levels**

The traffic report forecast a morning peak hour vehicle trip generation of 26 vehicle movements, however given the nature and locality of the subject site, the traffic report notes that actual trip generation is anticipated to be lower than the forecast. A site survey by the traffic engineer identified a peak 12 trips in an hour, comprising:

- 8 site entry movements (including one truck movement); and
- 4 site exit movements (including one truck movement).

Noise levels based on the above site vehicle movement numbers have been predicted at the nearest identified noise-affected premises considered in the acoustic assessment. The following 15-minute scenario which is assumed to be representative of operations that would produce highest expected noise levels at the surrounding environment has been modelled, i.e. assumes all peak hour site vehicle movements occur in a single 15-minute assessment period in addition to the following operations:

- Light Industry (Agricultural Equipment) tenancy
  - All plant equipment within building operating continuously for 15 minutes
- Vehicle movements:
  - Eleven (11) light vehicles arriving and departing the site
  - One (1) large vehicle (truck) 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 above modelled scenario compared with the predicted noise levels in the previous acoustic assessment are provided in Table 1.

**Table 1: Predicted noise levels, dB L<sub>Aeq,15min</sub>**

Receiver reference	Modelled scenario (revised)	Previous acoustic assessment <sup>1</sup>
R1	44	43
R2	43	42
R3	43	42
R4	42	41

Note: (1) Table 2 of Rp 001 R01 20190861 359 Nairne Road, Woodside - Environmental Noise Assessment

The revised predicted noise levels in Table 1 have marginally increased (1 dB), however still meet the relevant day time noise limit (47 dB L<sub>Aeq</sub>), 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.

We trust this information is satisfactory. If you have any further questions, please do not hesitate to contact us.

Yours faithfully

**MARSHALL DAY ACOUSTICS PTY LTD**



**Alex Morabito**

**Associate**



LIVING BY DESIGN  
5/37 Onkaparinga Valley Road  
BALHANNAH SA 5242

ABN : 66 420 226 695

16 March 2021

Mr and Mrs John Nitschke  
Carlton Farm  
359 Nairne Road  
WOODSIDE SA 5244

**RE : CLEAN-UP OF CARLTON FARM - 359 NAIRNE ROAD**

Just a quick note to confirm we have put a structure in place to clean up the warehouse premises at Carlton Farm immediately.

The steps we have just implemented are :

1. All boxes and rubbish will be removed from outside the warehouse by COB Wed 17 March.
2. We are getting daily collections of waste and recycled bins each day until completely cleaned up.
3. We are having a POP-UP furniture clearance this weekend at our Adelaide Hills store to move through some seconds furniture items quickly.
4. We have hired a team of temp labourers effective Wed 18 March to consolidate the internal warehouse space.
5. We have signed off an internal racking system to consolidate + organise the internal parts of the warehouse. Stage 1 of 3 will commence installation the week after Easter.
6. We have just commissioned a Safety Report on the warehouse to ensure we meet and exceed appropriate safety + traffic regulations.

Regards,

Tim Bowring  
Director

**ADELAIDE HILLS COUNCIL  
RECEIVED 19 March 2021**

STATUTORY DECLARATION  
State of South Australia -  
Oaths Act 1936

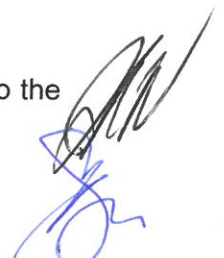
I, **JOHN VICTOR NITSCHKE**, of **185 Balhannah Rd Hahndorf**, do **SOLEMNLY AND SINCERELY DECLARE THAT:**

**BACKGROUND**

1. I am, together with my wife Lynette Anne Nitschke and the entity John Nitschke Nominees Pty. Ltd. (ACN: 007 758 947) (of which my wife and I are directors), the registered proprietor of the land comprised in Certificate of Title Volume 5439 Folio 561 commonly known as 359 Nairne Road, Woodside (**the Land**).
2. Shown to me now and marked "**JVN 1**" is a copy of a letter dated 10 October 2019 (**letter**) that I instructed my solicitors to send to the Adelaide Hills Council (**Council**). I instructed my solicitors to send the letter to the Council in support of my development application, DA 19/210/473 (**the DA**) which I lodged on a without prejudice basis. The letter supports my contention that the Land enjoys existing use rights.
3. I refer to and reiterate the matters detailed in the letter marked "JVN 1". I now clarify and/or provide further details about those matters as stated below.

**HISTORICAL USE OF THE LAND and MY OPERATIONS IN THE AREA**

4. Although I became the registered proprietor of the Land in 2012 I have lived in the nearby area my whole life. My family has owned farmed land close to the Land for many years. For this reason I have historical knowledge of the area. To the best of my knowledge the Land has been used for farming since 1860.
5. By way of background I confirm I currently own a significant number of properties across the state. My properties are located in Woodside, Hahndorf, Balhannah, Padthaway, Naracoorte, Marcollat, Roxby Downs and Middleton.
6. I operate a business, Nitschke Group. This is a civil engineering business with other bases at Newman in Western Australia and Morenba in Queensland. The main base for the Nitschke group is 185 Balhannah Road.
7. I farm the land at all of my properties from time to time. My farming operations are dynamic. While the farms are located in different areas I, in a way, operate them as one large farm. In order to do this I have a significant number of vehicles and machinery. This means the agricultural equipment I own I transport and use across all the farms. I frequently transfer crops, such as hay, from one location to another. Depending on the exact state of the land (e.g soil, crop, weather etc) it is difficult to predict when and where I might need equipment, vehicles, crops or animals transferred from one farm to another. This is not unusual. In my experience and knowledge as a farmer, this practice is consistent with many farmers who have land at different locations and who transport vehicles, equipment and crops etc across all of their sites.
8. Specifically, in relation to the Land I make the following comments in relation to the historical use of the Land:





- 1.1 My own knowledge of the locality and the fact that my great grandfather started farming in this locality in 1870 informs me that the Land has been used for farming since the early days of settlement in 1860;
- 1.2 From 1979 the property was used for farming and a bulk seed store by the Langseed Company, managed by Barry Langbein;
- 1.3 Additions were added in September 1980, April 1983 and November 1983;
- 1.4 Mount Barker Rural Pty Ltd later used the building to retail agricultural items such as fencing materials, pipes, fertilizer etc, I know this because I was a regular customer;
- 1.5 I purchased the land in September 2012, at that stage it had no tenants, I procured tenants for the available space after I purchased it.
- 1.6 Having been a local resident for the last 74 years it is my strong belief that the Land has at all times been used for farming, in addition to other uses. As part of the farming use of the Land all manner of Agricultural equipment, including trucks and tractors and prior to that horse drawn vehicles and implements, have been used on the Land

#### **MY USE OF THE LAND**

9. I became one of the registered proprietors of the Land in September 2012.
10. Local knowledge and my inspection of the land prior to purchase informed me that as well as containing the large shed which had been used for the retail of agricultural products the land had been cropped and grazed.
11. Since 2012 my family and our various companies have used the Land in the following ways:
  - a. the paddocks have been used for cropping and grazing on a rotational basis, in accordance with good farming practice. This has included seasonally sowing the paddocks with forage oats and rye grasses and low-intensity grazing of cattle and sheep;
  - b. we have grown and cut hay from some paddocks every summer and stored it in the main building or in the paddocks, which requires tractors and other heavy vehicles;
  - c. the main building has continued to be used for agricultural storage purposes, including for our own farm equipment, which requires heavy vehicles for transporting that equipment;
  - d. the parking of heavy vehicles and equipment for purposes associated with the farming use of the Land and for the transporting of equipment etc between our other farm locations and in association with the storage use of the main building;
  - e. some areas in the north-eastern corner of the land have been used for the parking of a small number, but typically up to about 4 heavy vehicles or pieces

of equipment associated with the land, our other farms and the storage use of the main building. The precise number of vehicles/equipment fluctuates according to our needs.

- 12. In relation to heavy vehicles on the Land, I note that a small number of trucks are occasionally parked in the north-eastern corner of the Land.
- 13. I confirm I do not, and never have had, road trains parked on the Land.
- 14. Nairne Road is not a B double Route so it would be illegal for anyone to drive B doubles to/from the Land.
- 15. I own more than 10 trucks (none of which could be classified as a "road train") across all my farms and strategically use the vehicles across all of my properties.
- 16. The operational needs of my farms necessitate that I park various trucks from time to time. As referred to above, the purpose of the heavy vehicles is for the conveyance of farm machinery, fertilizer, baled hay etc from farm to farm. My management of my numerous farms is dynamic and subject to daily changes depending on the water, market prices, movements of my staff, fencing and maintenance works at my Woodside, Naracoorte, Balhannah, Padthaway, Marcollat and Hahndorf farms. Some of the trucks that I use for my business at Hahndorf are used on my farms. I do not "segregate" my trucks they are used as and when needed for my business and farms.
- 17. There have been occasions in the past where more than 4 trucks are located on the land. This is a rare occurrence and has occurred in the past as a result of various operational needs of my farms including the planting of crops, movement of stock, floating of machinery and carting of hay.
- 18. The parking of trucks and other heavy vehicles on the land is part of the general farming use of the Land. Some of my tenants need rigid trucks to move items on and off the site, these are generally not parked overnight on the Land but on occasion are parked in the shed depending on the operational needs of the businesses.

**And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1936 (SA).**

Declared at HAHANDORF


in the State of South Australia, this  
2nd<sup>th</sup> day of MARCH 2020

Before me,

Signature of authorised witness

*Peter David Meline*  
a Justice of the Peace for and  
in the State of South Australia  
ID 24407

" JUN 1 "

  
2/3/20

Our ref: TLC/219134

10 October 2019

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

By email: [mmolinaro@ahc.sa.gov.au](mailto:mmolinaro@ahc.sa.gov.au)

*Without prejudice where so marked*

Dear Marie

**DA 19/210/473 - 359 Nairne Road, Woodside**

I refer to your letter dated 8 August 2019 and subsequent correspondence.

As requested in your email, I am instructed to respond to numbered requests 1 and 2 of your letter. My client's planning consultant, Mr Meline, will address the balance of the requests for information in your letter.

I respond below by adopting your numbered requests for information and clarification in your letter.

**1) Confirmation that the 'Flat Out Freight' business operations at the site will cease.**

I am instructed that the 'Flat Out Freight' business operations have already ceased on the land. That use had ceased prior to your letter dated 8 August 2019.

With respect, the combined Statement in Support/Statement of Effect dated June 2019 (SOE) and the amended "Current Uses Plan" area marked "storage of agricultural equipment" submitted with that SOE made it plain that my client's application was varied such that it no longer seeks approval for truck parking associated with 'Flat Out Freight'. The proposed use of that portion of the building is as described in the SOE.

**WITHOUT PREJUDICE**

**2) Confirmation that the separate Nitschke group truck parking occurring outside of the main building will cease.**

In short, our client's response to this request (which is entirely without prejudice to its position in the current section 84 notice appeal) is that:-

- (1) The land viewed as a whole enjoys broad lawful existing use rights for:
  - (a) farming; and
  - (b) storage use in the main building, of a very substantial scale; and
  - (c) administration and office uses;
  - (d) residential purposes.
- (2) Parking of heavy vehicles has lawfully occurred ancillary to the lawful existing farming and storage uses of the land;
- (3) It is a notorious fact that heavy vehicle parking occurs as an ancillary activity to any farming use;
- (4) Some heavy vehicle parking was impliedly (if not expressly) authorised in association with the storage use of the main building, which is substantial in scale;<sup>1</sup>
- (5) The parking of my client's own heavy vehicles associated with the lawful existing farming and storage use of the land (and my clients' other farms) are within the ambit of the land's lawful existing use rights and may continue;
- (6) In the alternative, the parking of my client's heavy vehicles is an accessory use which does not require approval pursuant to Schedule 3, clause 5 of the *Development Regulations 2008*;
- (7) My clients do not intend to cease the parking of their own heavy vehicles associated with their farming enterprise.

We will elaborate upon the legal and factual basis for our client's position below.

**The law - existing use rights and changes of use**

As we have identified in previous correspondence,<sup>2</sup> the principles for construing a lawful existing use establish that it would be unjust to deprive a landowner of the right to use land for an existing purpose.

Accordingly, the nature of an existing use should be liberally construed<sup>3</sup> and that it is only necessary to identify the broad "genus" of the existing use. Importantly, it is wrong to conduct a detailed analysis of individual processes and activities on land when construing an existing use.

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<sup>1</sup> DA4/169, DA 4/252, DA 563/4, DA 563/4- 361/83.

<sup>2</sup> Statement in Support/Statement of Effect dated June 2019.

<sup>3</sup> *City of Mitcham v Fusco* [2002] SASC 423.

Further, where the land has been lawfully used for more than one activity (most relevantly, the farming and storage), the ancillary uses may be disregarded, because they are subsumed by the dominant uses.<sup>4</sup>

The question of whether an activity changes the use of land will then require an assessment of the lawful existing use rights and the circumstances after that activity is undertaken.<sup>5</sup>

Finally, Schedule 3, clause 5 of the *Development Regulations 2008 (Regulations)* also provides that the following accessory uses of land and buildings are excluded from the definition of development for the purposes of the Act:

**5—Use of land and buildings**

- (1) *The use of land and the use of any lawfully-erected building which is ordinarily regarded as (and is in fact) reasonably incidental to any particular use of the land and the building, or the land or the building, and which is for the substantial benefit of the person or persons who, in any capacity, are making use of the land and the building, or the land or the building.*

With these legal principles in mind, I will analyse the nature of the lawful existing use of the land and the main building and then expand on our client's position as to your contentions about their heavy vehicle parking.

**Existing use rights**

I refer to page 2 of the Statement of Effect wherein we listed the known statutory approvals for the land and dealt with the existing use of the main building.

It is tolerably clear from the statutory approvals and approved plans that:-

- (A) the approvals for storage are granted in very broad terms.
- (B) there are no conditions or other limitations on the intensity of the storage uses, or the types or sizes of vehicles used in association with it;
- (C) the approved storage building is very substantial in size and scale (well over 4,000 m<sup>2</sup> in total floor area), which necessitates large vehicles for transporting and manoeuvring items and goods stored there;
- (D) heavy vehicle parking and movements are part-and-parcel of any storage facility of such a scale.
- (E) authorisation for the storage use necessarily implied the ancillary parking and movement of some heavy vehicles (and other vehicles) at the land.

Further to the uses authorised by approvals, to the best of our client's knowledge, the land has been used for farming since before the promulgation of planning controls and has never been discontinued.

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<sup>4</sup> *Foodbarn Pty Ltd v Solicitor-General* (1975) 32 LGRA 157, at 160.

<sup>5</sup> *Prestige Car Sales P/L v The Corporation of the Town of Walkerville and Shuttleworth* (1979) 20 SASR 514 at [522] and *Eliza Jane Investments Pty Ltd v City of Playford* [2009] SASC 260.

We refer to Annexure 1 and to the **attached** South Australian Integrated Land Information System (SAILIS) system title searches, which are consistent with our contentions and confirm that the land has always been owned and tenanted by entities carrying on businesses in agriculture and primary production.

Most recently, my clients understand that Seed Technology and Marketing Pty Ltd and Seedco cropped the paddocks during their tenancies, in addition to their use of the main building for storage and office purposes.

Since 2012, I am instructed that the Nitschke family and their companies have:-

- (a) used the paddocks for cropping and grazing on a rotational basis, in accordance with good farming practice. This has included seasonally sowing the paddocks with forage oats and rye grasses and low-intensity grazing of cattle and sheep.
- (b) grown and cut hay from some paddocks every summer and stored it in the main building or in the paddocks, which requires tractors and other heavy vehicles;
- (c) continued to use the main building for agricultural storage purposes, including for their own farm equipment, which requires heavy vehicles for transporting that equipment;
- (d) parked heavy vehicles and equipment for purposes associated with the farming use of the land and our client's other farms elsewhere and in association with the storage use of the main building;
- (e) used some areas in the north-eastern corner of the land, for the parking of a small number, but typically up to about 4 heavy vehicles or pieces of equipment associated with this farm and their other farms and their storage use of the main building. The precise number of vehicles/equipment fluctuates according to my clients' requirements.

Having regard to the above, our clients contend that the land has been lawfully used for a mix of uses most relevantly including farming and large-scale storage, together with ancillary heavy vehicle parking which subserves the farming and storage uses.

Our clients do not accept that the parking of their own heavy vehicles and farming equipment on the land in to the extent associated with their farming and storage activities constitutes a change of use of the land to "truck parking" or similar.

The main building is clearly a very substantially-sized building and capable of storing significant quantities of goods, vehicles, equipment and machinery. As mentioned, the statutory approvals granted for that main building impliedly authorised some heavy vehicle parking. That follows from the sheer size of the facility that has been approved and its likely uses for large-scale agricultural-type storage activities.

Further, the available historic authorisations granted under planning legislation are granted in broad terms. There are no limitations in the approvals about the sizes of vehicles used to transport, deliver or collect the goods stored in the main building. Nor are there any controls over the scale, nature and type of goods that can be stored in that building (noting the broad and benevolent approach to existing use rights adopted by the Courts).

Moreover, there is evidence that the land has lawful existing use rights for broad farming purposes. There is no evidence that this use was ever discontinued. On the contrary, the only available evidence supports the continuation of the farming use, including by our clients and their predecessors in title.

Plainly, the parking of trucks and other heavy vehicles is part and parcel of any farming use. Our clients are farmers. They use this land for farming in conjunction with their other farms elsewhere. The vehicles parked at the north-eastern corner of the land are used either in association with farming activities or storage activities undertaken at the land.

In particular, my client's director, Mr John Nitschke has instructed me that all of the heavy vehicles and equipment parked from time to time at the land are used, amongst other things, for hay carting, farm staff amenities, site administration, ploughing, planting harvesting, stock transport and similar farm-related activities.

It follows from the above 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 thereon.

The scale and intensity of those parking activities (which are dynamic and highly variable, but up to about 4 vehicles or pieces of equipment exceeding 3,000 kgs each at any one time) is not sufficient to make it a separate and distinct land use (and therefore "development") in its own right.

Furthermore, the use of the north-eastern part of the land for the parking of heavy vehicles properly falls within the accessory use provision in Schedule 3, clause 5 of the *Development Regulations 2008*. In our submission, the parking of heavy vehicles is a use of land that is ordinarily regarded as, and is in fact, reasonably incidental to the use of the land and the main building for farming and large-scale storage activities.

This can be reasonably inferred from all the circumstances, but particularly from the factors I have mentioned above at page 3, paragraphs (A) - (E).

It follows that our clients do not intend to cease the heavy vehicle parking of their own vehicles that is undertaken at the land.

I trust this makes our clients' position clear on numbered points 1 and 2 of your letter.

Yours faithfully



**Tom Crompton**  
**Senior Associate**  
**BOTTEN LEVINSON**  
Email: [tlc@bllawyers.com.au](mailto:tlc@bllawyers.com.au)

## ANNEXURE 1

### SCHEDULE OF OWNERSHIP AND TENANCIES

1. As at 20 October 1953, the land was part of a larger allotment described as Part 5240 and was owned by an "Alfred Henry Wuttke of Oakbank, Farmer";
2. On 26 October 1965, Part 5240 incorporating the land was transferred to a "D.H. Wuttke & Son Pty Ltd" at which time was known as "*The Homestead*";
3. On 31 August 1966, Part 5240 was transferred to "Wendy Melva Wuttke, Spinster, and Maclolm Alfred Wuttke, Grazier and Farmer";
4. In 1972, the certificate of title for Part 5240 was cancelled and Part 5240 was divided and converted into three new, smaller titles, including CT 3895/155.
5. CT 3895/155 issued on 18 December 1972 for the allotment comprising the subject land that exists today.
6. On 22 May 1979 the land was transferred to B. S. J. Langbein Nominees Pty Ltd (**Langbein**).
7. During the early to mid 2000s, Langbein leased the land to Seed Technology and Marketing Pty Ltd<sup>6</sup> and Seedco Australia Co-operative Ltd<sup>7</sup>;
8. On 25 February 2008, Langbein sold the land to Mount Barker Rural Pty Ltd.
9. On 20 September 2012, John Nitschke Nominees Pty Ltd, John and Lynette Nitschke purchased the land and have owned it since that time.

---

<sup>6</sup> Lease dated 25 June 2003.

<sup>7</sup> Lease dated 19 January 2001.



## Certificate of Title

**Title Reference:** CT 5439/561  
**Status:** CURRENT  
**Parent Title(s):** CT 3895/155  
**Dealing(s) Creating Title:** CONVERTED TITLE  
**Title Issued:** 31/07/1997  
**Edition:** 9

## Dealings

Lodgement Date	Completion Date	Dealing Number	Dealing Type	Dealing Status	Details
05/09/2012	20/09/2012	11815810	TRANSFER	REGISTERED	JOHN NITSCHKE NOMINEES PTY. LTD. (ACN: 007 758 947), JOHN VICTOR NITSCHKE, LYNETTE ANNE NITSCHKE
05/09/2012	20/09/2012	11815809	DISCHARGE OF MORTGAGE	REGISTERED	11294945
09/08/2011	24/08/2011	11626647	DISCHARGE OF MORTGAGE	REGISTERED	10896525
19/11/2009	03/12/2009	11294945	MORTGAGE	REGISTERED	ST.GEORGE BANK LTD. (ACN: 055 513 070)
08/02/2008	25/02/2008	10896525	MORTGAGE	REGISTERED	B & J LANGBEIN NOMINEES PTY. LTD. (ACN: 007 762 521)
08/02/2008	25/02/2008	10896524	TRANSFER	REGISTERED	MOUNT BARKER RURAL PTY. LTD. (ACN: 120 042 033)
08/02/2008	25/02/2008	10896523	DISCHARGE OF MORTGAGE	REGISTERED	8465208
23/04/2007	02/07/2007	10687550	DISCHARGE OF MORTGAGE	WITHDRAWN	9611178 9630274
03/07/2003	25/11/2003	9630274	MORTGAGE OF LEASE	REGISTERED	ST.GEORGE BANK LTD. (ACN: 055 513 070) 9611178
03/07/2003	24/11/2003	9630273	DISCHARGE OF MORTGAGE	REJECTED	8343976
12/06/2003	25/06/2003	9611178	LEASE	REGISTERED	SEED TECHNOLOGY & MARKETING PTY. LTD.
19/12/2000	19/01/2001	9015001	LEASE	REGISTERED	SEEDCO AUSTRALIA CO-OPERATIVE LTD.
31/03/1998	06/04/1998	8465208	MORTGAGE	REGISTERED	ST.GEORGE BANK LTD. (ACN: 055 513 070)
31/03/1998	06/04/1998	8465207	DISCHARGE	REGISTERED	4449617

Lodgement Date	Completion Date	Dealing Number	Dealing Type	Dealing Status	Details
			OF MORTGAGE	D	6605492
11/08/1997	10/11/1997	8343976	MORTGAGE OF LEASE	REGISTERED	ST.GEORGE BANK LTD. (ACN: 055 513 070) 8310187
12/06/1997	10/11/1997	8310187	LEASE	REGISTERED	SOUTH AUSTRALIAN SEEDGROWERS CO-OPERATIVE LTD.
12/06/1997	10/11/1997	8310186	DISCHARGE OF MORTGAGE	REGISTERED	4663113 5414349
21/09/1988	03/11/1988	6605492	MORTGAGE	REGISTERED	
09/04/1985	09/04/1985	5414349	MORTGAGE	REGISTERED	
22/12/1980	29/12/1980	4663113	MORTGAGE	REGISTERED	
22/05/1979	22/05/1979	4449617	MORTGAGE	REGISTERED	

South Australia.

(CERTIFICATE OF TITLE.)



Register Book,

Vol. 2293

Folio 91

Pursuant to Memorandum of Transfer No.1803508 Registered on Vol.2082 Folio 98

ALFRED HENRY WUTTKE of Oakbank Farmer

is the proprietor of an estate in fee simple subject nevertheless to such encumbrances liens and interests as are notified by memorial underwritten or endorsed hereon in THAT piece of land situate in the HUNDRED of ONKAPARINGA COUNTY of ADELAIDE being PORTION OF SECTION 5240 containing fifty acres or thereabouts and more particularly delineated and bounded as appears in the plan in the margin hereof and therein colored green EXCEPT and always reserved to the South Australian Company all coals seams of coal mines minerals and quarries but paying reasonable compensation to the said proprietor

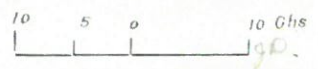
Which said Section is delineated in the public map of the said Hundred deposited in the Land Office at Adelaide.

In witness whereof I have hereunto signed my name and affixed my seal this twenty seventh day of October 1953

Signed the 27th day of October 1953 in the presence of [Signatures]

Registrar-General. [Seal of Registrar-General South Australia]

EXCEPT MINERALS



CAVEAT No. 2579709 LODGED BY A.H. Wuttke & Son Pty. Ltd. PRODUCED 13/11/53 AT 3.15pm

CAVEAT No. 2579709 HAS BEEN WITHDRAWN VIDE No. 2672366 PRODUCED 26.10.1953 AT 11.40am

TRANSFER No. 2672367 to A.H. Wuttke & Son Pty. Ltd. of 'The Homestead' Woodside OF THE WITHIN LAND. PRODUCED 26.10.1953 at 11.40am

[Signature]

OVER

MORTGAGE No. 2672368 *Wuttke*  
to *Alfred Henry Wuttke*  
(INCLUDING OTHER LAND)  
PRODUCED: C. 10 1969 AT 11:40am  
*R. Gordon*  
(Single Copy only)  
DEP. REG. GEN.

*T/A 2672368*

APPLICATION No. 2678600 THE WITHIN mortgage No. 2672368  
IS TRANSMITTED TO *Douglas Victor Wuttke of Oakbank*  
*Farmer and Ronald John Cook of Oakbank*  
*Main Street Woodside Registered of*  
AS THE EXECUTORS NAMED IN THE WILL DATED *2.12.1947*  
of *Alfred Henry Wuttke* WHO DIED *29.9.1969* Tax agent  
VIDE PROBATE DATED *24.12.1964* PRODUCED *17.11.65* AT *11am*  
*Griffiths*  
DEP. REG. GEN.

*T/A 2755615*

TRANSFER No. 2755615 to *Wendy Melva Wuttke*  
*Spinster and Malcolm Alfred Wuttke Griegier*  
*and Farmer both of Oakbank as Tenants in*  
*Common Mortgage No. 2672368*  
THE WITHIN MORTGAGE PRODUCED *31-8-1966* AT *3-30 pm*  
*R. Gordon*  
DEP. REG. GEN.

*T/A 2840541* *T/A 2840542*

MARRIAGE No. 2840541 *Wendy Melva Wuttke*  
WAS MARRIED TO *Harry Duncan Griffiths of 609*  
*West 7th Street Los Angeles California Clark*  
ON *27-8-1966* AT *Vancouver B.C.*  
ENTERED *28-7-1967* AT *11am* PRODUCED *25-7-1967* AT *11:30 am*  
*Hogbock*  
DEP. REG. GEN.

DISCHARGE OF MORTGAGE No. 2672368 VIDE No. 2840542  
PRODUCED *25-7-1967* AT *11:30am*  
*Hogbock*  
DEP. REG. GEN.

*#3034979*

MORTGAGE No. 3034979  
Provident Fund Incorporated.  
TO THE BANK OF ADELAIDE, PRODUCED *9.9.1969* AT *11am*  
(INCLUDING OTHER LAND)  
*B. Nelson Hayler*  
DEP. REG. GEN.

MORTGAGE No. 3034980  
TO THE BANK OF ADELAIDE, PRODUCED *9.9.1969* AT *11am*  
(INCLUDING OTHER LAND)  
*B. Nelson Hayler*  
DEP. REG. GEN.

*4 NCT to issue Viole Dht 1/72*

CANCELLED  
AND 2 New Balance CERTIFICATE OF TITLE  
ISSUED VIDE *UO DKT VOL 3895 FOL 154, 155 & 156*  
*1347-1972*  
*R. Gordon*  
DEP. REG. GEN.

South Australia

(CERTIFICATE OF TITLE)



Register Book,

Vol. 3895 Folio 155

New Certificate of Title for portion of the Land in Vol. 2293 Folio 91

A. H. WUTKE & SON PROPRIETARY LIMITED of "The Homestead" Woodside 5244

is the proprietor of an estate in fee simple

subject nevertheless to such encumbrances liens and interests as are notified by memorial underwritten or endorsed hereon in THAT PIECE of land containing twenty acres or thereabouts situated in the HUNDRED OF ONKAPARINGA COUNTY OF ADELAIDE being PORTION OF SECTION 5240 more particularly delineated and bounded as appears in the plan in the margin hereof by bold black lines

WHICH said Section is delineated in the Public Map of the said Hundred deposited in the Land Office at Adelaide

In witness whereof I have hereunto signed my name and affixed my seal this 18th day of December 1972 Signed the 18th day of December 1972, in the presence of Maurie

C. L. Nairn Deputy Registrar-General



Mortgage No. 3034979 to The Bank of Adelaide Provident Fund Incorporated Produced 9.9.1969 at 11 a.m. (Including other land)

C. L. Nairn Dep. Reg. Genl.

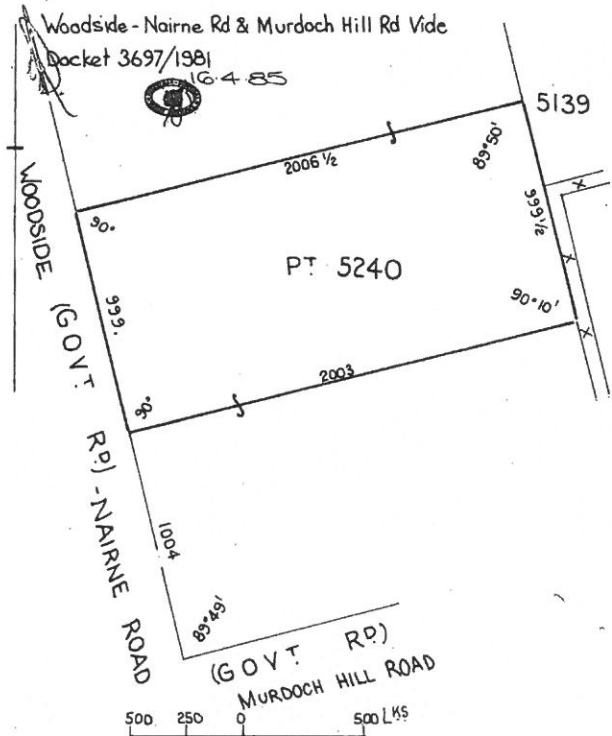
Mortgage No. 3034980 to The Bank of Adelaide Produced 9.9.1969 at 11 a.m. (Including other land)

C. L. Nairn Dep. Reg. Genl.

3034979 3034980 3568530

DISCHARGE OF MORTGAGES Nos 3034979 3034980 BY ENDORSEMENT THEREON. PRODUCED 21.1.1974 AT 11.30 am J. J. Sherman Dep. Reg. Genl.

MORTGAGE No. 3568530 TO THE NATIONAL BANK OF AUSTRALASIA LIMITED PRODUCED 21.1.1974 AT 11.30 am J. J. Sherman Dep. Reg. Genl.



OVER, UN

EN.

Am 4381778 T. 4381779.

THE WITHIN LAND IS DISCHARGED FROM MORTGAGE  
No. 3568532 VIDE No. 281738 PRODUCED 22.5.1979

TRANSFER No. 4381739 to  
P. S. J. Langbein Nominees Pty. Ltd.  
of 51 Main Street Woodside 5244  
OF THE WITHIN LAND. PRODUCED 22.5.1979  
at 8:35 P.M.

M4449617

MORTGAGE No. 4449617  
TO THE BANK OF ADELAIDE. PRODUCED 2.10.1979 AT 2.00 PM

M44663113

MORTGAGE No. 4663113 TO  
The South Australian Seed Growers  
Co-operative Limited  
PRODUCED 22.10.1980 AT 11.45 am

M5444349

MORTGAGE No. 5414349 TO  
South Australian Seedgrowers Co-operative Limited  
PRODUCED 9.4.1985 AT 11:10

MORTGAGE No. 6605492 TO  
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
PRODUCED 21.9.1988 AT 10:00

**CANCELLED**

CONVERTED TO A COMPUTERISED TITLE

## Melanie Scott

---

**From:** Marie Molinaro  
**Sent:** Thursday, 26 March 2020 11:14 AM  
**To:** 'Pip Metljak'  
**Cc:** 'Peter Meline'  
**Subject:** RE: stat dec jv nitschke.pdf

Hi Pip

Sorry for the delay in responding to the stat dec. information re truck parking.

Whilst we do think four trucks is a large number for the grazing use, we accept the parking of trucks on the land as outlined in the stat dec.

This partly resolves the Section 84 Notice. We are still awaiting a response to the last request for additional information to progress the development application seeking approval for the remaining unauthorised uses detailed in the Notice.

- 5) Information as to the how the proposed industry uses will operate.  
Some information has been provided in the statement of support & statement of effect, however the further following additional information is required:

*Viticultural equipment manufacture:*

Understand the assembly of the equipment is not occurring, however the packing is still a form of industry. You also advised that you would seek revised advice from the acoustic engineer– a short statement or similar from the report author in regards to the noise associated with testing of the equipment would be suitable.

It also anticipated that they may be other equipment used in the packing process – forklifts etc used to get the products onto pallets and into the containers. Please detail, and provide acoustic engineer advice also.

Where are the shipping containers and pallets for packing stored? Please indicate on the plans.

Also provide an amended statement of effect which is consistent with the revised information. The floor plan also still reflect storage and assembly, not packaging.

- 9) Existing dimensioned elevation plan.  
A proposed/current elevation plan has been provided, however please provide reflecting the pre-existing elevation plan. It is not clear if there have been any changes to the openings of the building.

Your email had the same elevation plan attached twice – east and north elevation. The store addition is not clearly reflected, please amend.

We have the same historic elevation plans on Council records. You need to consolidate the historic elevations onto one plan – existing elevation plan. We won't be relying on the historic elevation plans for assessment purposes.

Kind regards  
Marie

**Marie Molinaro – Statutory Planner | Strategy and Development**  
Adelaide Hills Council

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**From:** Pip Metljak [mailto:pmm@bllawyers.com.au]  
**Sent:** Tuesday, 3 March 2020 1:52 PM

**To:** Marie Molinaro  
**Subject:** stat dec jv nitschke.pdf

Hi Marie

Please find attached the signed statutory declaration. We had hoped to get you this sooner but it took longer than expected to compile the relevant information. I apologise for the delay.

We would obviously like to adjourn the conference tomorrow. Do you consent to an adjournment? If so, I will email the court and CC you in to the request.

Kind regards  
Pip



**Pip Metljak**  
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