



NOTICE OF SPECIAL COUNCIL MEETING

To: Mayor Jan-Claire Wisdom

Councillor Ian Bailey
Councillor Kirrilee Boyd
Councillor Nathan Daniell
Councillor Pauline Gill
Councillor Chris Grant
Councillor Linda Green
Councillor Malcolm Herrmann
Councillor John Kemp
Councillor Leith Mudge
Councillor Mark Osterstock
Councillor Kirsty Parkin
Councillor Andrew Stratford

Notice is hereby given pursuant to the provisions under Section 82 of the *Local Government Act 1999* that a Special meeting of the Council will be held on:

Tuesday 1 March 2022
6.30pm
Zoom Virtual Meeting Room

Business of the meeting:

1. Council Development Representation Submission – 160 Longwood Road Heathfield

A copy of the Agenda for this meeting is supplied under Section 83 of the Act.

Following amendments to s90 of the Act, this meeting of the Council is taken to be conducted in a place open to the public given that the Council Members will be participating via electronic means and the public can access a live stream of the meeting via the link contained on Council's website.

Andrew Aitken
Chief Executive Officer



AGENDA FOR SPECIAL COUNCIL MEETING

**Tuesday 1 March 2022
6.30pm
Zoom Virtual Meeting Room**

ORDER OF BUSINESS

1. COMMENCEMENT

2. OPENING STATEMENT

Council acknowledges that we meet on the traditional lands and waters of the Peramangk and Kurna people. They are Custodians of this ancient and beautiful land and so we pay our respects to Elders past, present and emerging. We will care for this country together by ensuring the decisions we make will be guided by the principle that we should never decrease our children's ability to live on this land.

3. APOLOGIES/LEAVE OF ABSENCE

- 3.1. Apology
- 3.2. Leave of Absence
- 3.3. Absent

4. DECLARATION OF INTEREST BY MEMBERS OF COUNCIL

5. PRESIDING MEMBER'S OPENING REMARKS

6. BUSINESS OF THE MEETING

- 6.1. Council Development Representation Submission – 160 Longwood Road Heathfield

7. CLOSE SPECIAL COUNCIL MEETING

**ADELAIDE HILLS COUNCIL
SPECIAL COUNCIL MEETING
Tuesday 1 March 2022
AGENDA BUSINESS ITEM**

Item:	6.1
Responsible Officer:	Lachlan Miller Executive Manager Governance & Performance Office of the Chief Executive
Subject:	Council Development Representation Submission – 160 Longwood Road Heathfield
For:	Decision

SUMMARY

At its 15 February 2022 meeting, Council resolved to prepare and lodge a Representation Submission regarding the proposed development of a 24 hour fuel outlet at 160 Longwood Road Heathfield.

Council received initial advice in relation to the proposed development at a workshop on 22 February 2022. Council subsequently resolved for a Special Council meeting (this meeting) to receive the draft Representation Submission regarding the proposed development.

The draft Representation Submission has been prepared and is attached (*Appendix 1*).

The purpose of this report is to seek Council's consideration of the draft Representation Submission and to resolve its intentions with regard to the Submission.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted**
- 2. That it objects to the proposed development of a 24 hour retail fuel outlet at 160 Longwood Road Heathfield (PlanSA Ref:21031284) and submits that planning consent be refused. The proposed development is considered to be seriously at variance with the Planning and Design Code, specifically the Rural Neighbourhood zone and the Adelaide Hills subzone. Further it is considered to lack merit with the relevant provisions of the Code in relation to character and amenity, size and scale, hours of operation, bushfire mitigation, advertising, and land use interfaces.**
- 3. To approve the draft Representation Submission for the proposed development of a 24 hour retail fuel outlet at 160 Longwood Road Heathfield (PlanSA Ref:21031284) as contained in Appendix 1 for lodgement.**

4. To authorise the Chief Executive Officer to make any minor changes to the draft Representation Submission arising from Council’s consideration of the matter and to finalise and lodge the submission prior to the conclusion of the public notification period.
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1. GOVERNANCE

➤ Strategic Management Plan/Functional Strategy/Council Policy Alignment

Strategic Plan 2020-24 – A brighter future

Goal 1 A functional BUILT ENVIRONMENT

Objective B2 Preserve and enhance the unique character of the Hills for current and future generations

Priority B2.3 Proactively work with developers to ensure that built form complements or enhances existing local character whilst preserving the character and amenity of our towns, historic buildings and scenic environment

Goal 5 A Progressive ORGANISATION

Objective O4 We actively represent our community

Priority O4.3 Advocate to, and exert influence with, our stakeholders on behalf of our community to promote the needs and ambitions of the region

➤ Legal Implications

The Development Application will be assessed under the relevant provisions of the *Planning, Development and Infrastructure Act 2016* (PDI Act).

The AHC Council Assessment Panel (CAP) is the decision authority.

Special Council and Information or Briefing Sessions are conducted in accordance with the relevant provisions of sections 82 and 90A of the *Local Government Act 1999* (the “Act”) respectively.

➤ Risk Management Implications

The preparation of a representation submission will assist in mitigating the risk of:

Council Members not being representative of community sentiment regarding the potential character and amenity impact of developments occurring within the Council area leading to a loss of community confidence.

Inherent Risk	Residual Risk	Target Risk
High (4C)	Low (2D)	Low

Representations as they are required will be mitigating actions.

➤ **Financial and Resource Implications**

The financial implications associated with the engagement of a planning lawyer/consultant for the development of the representation submission have already been contemplated in the 15 February 2022 Special Council meeting report.

There are no further financial implications associated with the finalisation and lodgement of the representation submission.

The resource implications are the activities associated with the finalisation and lodgement of the representation submission by the Office of the Chief Executive staff.

➤ **Customer Service and Community/Cultural Implications**

While there is a misconception in some sections of the community that the Council (elected body) determines development applications and/or can direct the assessment process, under the provisions of the PDI Act these actions are prohibited.

Notwithstanding the above, it is a reasonable expectation that the community regards the Council as having a significant interest in the character and amenity of the district and advocating where appropriate in relation to the development of the Council area.

➤ **Sustainability Implications**

Not directly applicable.

➤ **Engagement/Consultation conducted in the development of the report**

Consultation on the development of this report was as follows:

Council Committees: Not Applicable

Council Workshops: A Council workshop was conducted on 15 February 2022 to provide an overview of the proposed development as contained in the public notification documents.

Advisory Groups: Not Applicable

External Agencies: PlanSA website
Kelledy Jones Lawyers

Community: Some members of the community were indirectly consulted via Council Members who provided the information to the Administration.

2. BACKGROUND

PC Infrastructure Pty Ltd lodged a development application (PlanSA Application ID: 21031284) on 1 February 2022 for 160 Longwood Road Heathfield (CT6003/528) with the following description noted on PlanSA:

24 hour retail fuel outlet with associated canopy, car cleaning & dog wash facilities, 70,000L underground fuel storage tank, pylon advertising sign (maximum height 7m), combined fence & retaining walls (maximum height 4.8m), retaining walls (maximum height 3.25m), car-parking & landscaping

The application is on public notification from 11 February until 11.59pm, Thursday 3 March 2022. The public notification documents in relation to the proposed development are available on the Plan SA site in the Notified developments section utilising the Application ID 21031284 (www.plan.sa.gov.au).

The CEO called a Special Council meeting on Tuesday 15 February 2022 upon the request of three Council Members to consider a Motion on Notice proposed by Councillor Mark Osterstock.

In consideration of the motion, Council resolved (22/22) as follows:

- 1. To engage an experienced and well credentialed planning lawyer/consultant to prepare a representation submission in relation to the proposed development of a 24 hour retail fuel outlet at 160 Longwood Road Heathfield (PlanSA Ref:21031284). The scope and nature of the matters to be addressed are to include, yet are not limited to,**
 - **Character and Amenity**
 - **Bulk and Scale**
 - **Hours of Operation [Noise]**
 - **Traffic Management**
- 2. To allocate a budget of up to \$10,000 in relation to the preparation of the representation submission.**
- 3. To conduct a workshop (information or briefing session) on 22 February 2022 to enable the Council Members to receive a briefing from the planning lawyer/consultant in relation to the proposed development.**
- 4. To authorise the Chief Executive Officer to finalise and lodge the submission prior to the conclusion of the public notification period.**

To give effect to the resolution a procurement process in accordance with Council's *Procurement Policy* was undertaken and Ms Victoria Shute of Kelledy Jones Lawyers was engaged to provide initial advice in relation to the development application, conduct a workshop with Council on the matter; to prepare and refine the submission on the basis of feedback received from Council Members and, if required, to attend Special Council and Council Assessment Panel meetings in relation to the proposed development.

In accordance with part 3 of the above resolution, Council adjourned its Ordinary Council meeting and conducted a workshop (information or briefing session) on 22 February 2022 to discuss Ms Shute’s initial legal advice regarding the proposed development. As the workshop was receiving legal advice it was closed to be public and held in confidence in accordance with the provision of s90A(4) of the Act and Council’s *Information or Briefing Sessions Policy*.

Upon the resumption of the Ordinary Council meeting, the Council considered a Motion Without Notice and resolved:

**Moved Cr Mark Osterstock
S/- Cr Kirsty Parkin**

39/22

As a result of the information received at this evening’s confidential information session concerning this proposed development, 160 Longwood Road, Heathfield (OTR Heathfield), that a Special Meeting of Council be convened for Tuesday, 1 March 2022 at 6.30pm, for Council to finalise a representation to the Council Assessment Panel concerning this proposal.

Carried Unanimously

3. ANALYSIS

Planning consultant, Victoria Shute has completed a draft Representation Submission of the proposed development based on the documents on public notification, the provisions of the *Planning & Design Code* and the feedback provided by Council Members.

The draft Representation Submission is contained at **Appendix 1**.

It will be for Council to consider the draft Representation Submission, to seek clarification or provide further feedback prior to determining whether to resolve a position in relation to the proposed development.

If Council resolves to take a position in relation to the proposed development and the approval and lodgement of the draft Submission, the CEO will cause the final version of the Submission to be lodged prior to the close of the public notification period for this development application.

4. OPTIONS

Council has the following options:

- I. To determine a position in relation to the proposed development at 160 Longwood Road Heathfield (Recommended)
- II. To resolve to approve the draft Representation Submission at Appendix 1 or in an amended form (Recommended)
- III. Via Council’s resolution 22/22 of 15 February 2022, the CEO has the authority to lodge a Representation Submission. If Council determines not to proceed with the lodgement of the Submission it would need to rescind that part of the 15 February 2022 resolution (Not recommended).

5. APPENDIX

- (1) Draft Representation Submission - Proposed development at 160 Longwood Road Heathfield

Appendix 1

*Draft Representation Submission - Proposed
development at 160 Longwood Road
Heathfield*

28 February 2022

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Deryn Atkinson
Assessment Manager
Adelaide Hills Council Assessment Panel
PO Box 44
WOODSIDE SA 5244

VIA PLANSA PLANNING PORTAL

Dear Deryn

DA 21031284 – OTR PROPOSAL AT 160 LONGWOOD ROAD, HEATHFIELD – REPRESENTATION BY ADELAIDE HILLS COUNCIL

We act for the Adelaide Hills Council (“the Council”).

We refer to DA 21031284 being for a proposed development to be located at 160 Longwood Road, Heathfield (“the Land”), the nature of which is described on the SA planning portal (“PlanSA”) as:

24 hour retail fuel outlet with associated canopy, car cleaning & dog wash facilities, 70,000L underground fuel storage tank, pylon advertising sign (maximum height 7m), combined fence & retaining walls (maximum height 4.8m), retaining walls (maximum height 3.25m), car-parking and landscaping.

We are instructed to make this representation on the behalf of the Council pursuant to section 107(3)(b) of the *Planning, Development and Infrastructure Act 2016* (“the Act”).

The Council **objects** to the proposed development and submits that planning consent for DA 21031284 should be **refused**.

We set out the Council’s detailed representation below.

1. **Seriously at variance**

- 1.1 We submit that DA 2101284 is, clearly, seriously at variance to the Planning and Design Code (“the Code”) and **must be refused** pursuant to section 107(2)(c) of the Act.¹
- 1.2 In determining whether the proposed development is seriously at variance with the Code, guidance is provided in numerous Supreme Court and ERD Court case law authorities which concerned section 35(2) of the *Development Act 1993* which was

¹ See *R v City of Munno Para; ex parte John Weeks Pty Ltd* (1987) 46 SASR 400

phrased in very similar terms to section 107(2)(c) of the Act, and which means that these authorities remain of relevance to planning assessments under the Act.

- 1.3 The task that the relevant authority must undertake in determining whether a proposed development is seriously at variance to the Code is to undertake an “*examination on what is the essential thrust and objective of the (Code) ... so far as they apply to the land the subject of the intended development and its locality*”.
- 1.4 The Land is located within the Rural Neighbourhood zone and the Adelaide Hills subzone of the Code.
- 1.5 According to Part 1 – Rules of Interpretation in the Code, if there is an inconsistency between provisions of the Code for a proposed development, subzone policies prevail over a zone policy or a general development policy and zone policies prevail over a general development policy. On this basis, the subzone should be contemplated ahead of the zone.
- 1.6 The provisions of the Adelaide Hills subzone **do not contemplate** retail fuel outlets or any of their component activities including shop uses. It is entirely clear from subzone DO 1, PO 1.1 and DTS/DPF 1.1 that the **only** form of non-residential development contemplated in the subzone is **tourist accommodation**.
- 1.7 Turning to the Rural Neighbourhood zone, DO 1 seeks:

*Housing on large allotments in a spacious rural setting, often together with large outbuildings. Easy access and parking for cars. Considerable space for trees and other vegetation around buildings, as well as on-site wastewater treatment where necessary. **Limited goods, services and facilities that enhance rather than compromise rural residential amenity.***

(my emphasis)

- 1.8 According to Part 1 – Rules of Interpretation in the Code, Desired Outcomes set a “general policy agenda for a zone”. It is DO 1 that the remaining provisions of the zone must be applied consistently with.
- 1.9 The Land Use and Intensity Performance Outcomes and Deemed-to-Satisfy Criteria/Designated Performance Features **do not contemplate** retail fuel outlets. Whilst shops (a component of a retail fuel outlet) are contemplated, they are contemplated, consistent with DO 1 in **very limited circumstances** as follows being where they are:
 - 1.9.1 “complementary ancillary...compatible with a spacious and peaceful lifestyle for individual households”²
 - 1.9.2 “of a scale and type to maintain residential amenity”³

² Zone PO 1.1

³ Zone PO 1.2

- 1.9.3 located on the same allotment and in conjunction with a dwelling, does not exceed 50m² in gross leasable floor area⁴ and does not involve the display of good in a window or about the dwelling or its curtilage⁵
- 1.9.4 reinstating “a former shop, consulting room or office **in an existing building**” and where the building is a State or Local Heritage Plans and the shop” **is in conjunction with a dwelling** and there is no increase in the gross leasable floor area previously used for non-residential purposes”⁶ (my emphasis)
- 1.9.5 “small-scale”⁷.
- 1.10 The above provisions demonstrate that the essential thrust and objective of the Code as it applies to the Land is that the proposed development is seriously at variance to the Code by virtue of its very nature alone.
- 1.11 The proposed development is so clearly seriously at variance to the Code that it is not even contemplated in the zone and subzone.
- 1.12 Even if it could be argued that, despite the very clearly-stated provisions of the subzone, that the zone contemplates shops and other commercial land uses and that the proposed development should proceed to a merits assessment on this basis, the proposed development is clearly, seriously at variance with the Code when the zone provisions are considered alone.
- 1.13 The proposed development comprises:
- 1.13.1 a “control building” which will contain the “shop” component of the retail fuel outlet of 250m², **five (5) times larger** than the gross leasable floor area tolerated for shops in the zone (50m²);
- 1.13.2 the gross leasable floor areas for the other component land uses comprise:
- (a) a fuel canopy of 122.54m²;
 - (b) an autowash of 61.61m²;
 - (c) a dog wash of 5.53m²;
 - (d) a carwash with is associated plant room of 170.23m².
- 1.14 The total gross leasable floor area for the proposed development is 609.91m² - **more than twelve (12) times (or 120%) more than the 50m² contemplated in the zone.**

⁴ Gross leasable floor area is defined in Part 8 of the Code to mean “*the total floor area of a building excluding public or common tenancy areas such as malls, hallways, verandahs, public or shared tenancy toilets, common storage areas and loading docks*”

⁵ Zone DTS/DPF 1.2(a)

⁶ Zone DTS/DPF 1.2(b)

⁷ Zone PO 1.4

- 1.15 Further and significantly, the proposed development does not incorporate a dwelling or any sort, the existing building on the Land is to be demolished and the existing building is not a State or Local Heritage Place.
- 1.16 The proposed development also incorporates a significant amount of advertising signage and a large, 7m-high pylon sign which is not contemplated at all in the zone. To demonstrate how large the proposed development will be, I provide images of the Land below.



Figure 1.1 – View towards the Land from Longwood Road, facing WNW.



Figure 1.2 – View towards the Land from Heathfield Road, facing SSW



Figure 1.3 – View towards the Land from Longwood Road, facing SE



Figure 1.4 – View of the Land from Scott Creek Road, facing NNE

1.17 The locality is entirely consistent with the zone and subzone and the current buildings on the Land are of an appropriately-small scale. Introducing the proposed development into the locality cannot be considered to be anything other than seriously at variance to the Code.

1.18 Of direct relevance to the assessment of the proposed development is the Supreme Court decision in *Hayes and Ors v Development Assessment Commission and Ors*,⁸ in which a retail development comprising 4,676m² of gross leasable floor area in a Local Centre Zone where the maximum gross leasable floor area for retail developments in the Zone was 3,700m². The Court found, relevantly, that:

1.18.1 the proposed floor area, which exceeded the Zone's maximum by approximately 27% was a serious departure from the provisions of the Zone; and

⁸ [1997] SASC 6155

1.18.2 the thrust and intent of the Development Plan was to create a “hierarchy” of Centre Zones, each with differing scales of retail development. The proposed development in this case was a serious variance from the Development Plan.

1.19 We submit that the proposed development is clearly seriously at variance with the Code. It is clearly and seriously contrary to the intent and objective of the subzone and zone, not only on mathematical calculation of floor area, but in terms of the overall structure of the Code which seeks to limit shop and retail-type developments in the subzone and zone to only the **smallest** forms of developments and **only in conjunction with residential land uses**.

1.20 We submit that the proposed development must be refused on this basis.

2. **Notwithstanding, DA 21031284 should be refused on its merits**

2.1 Should the relevant authority determine that the proposed development is not seriously at variance with the Code (a determination that we strongly disagree with), we submit that the proposed development should be refused on its merits for the reasons given below.

2.2 **Approach to assessment**

2.2.1 As stated above, Part 1 of the Code contains rules of interpretation applying to the Code. Importantly, a hierarchy of provisions is provided for where, in the event of any inconsistencies between any relevant provisions of the Code:

- (a) the provisions of an overlay prevail over all other policies applying in the particular case;
- (b) a subzone policy will prevail over a zone or a general development policy; and
- (c) a zone policy will prevail over a general development policy.

2.2.2 Zones, subzones and overlays contain Desired Outcomes, Performance Outcomes and DTS/DPF assessment criteria. The hierarchy of those provisions is as listed, Desired Outcomes prevail over Performance Outcomes and Performance Outcomes have greater weight than DTS/DPF criteria. Performance Outcomes and DTS/DPF criteria are somewhat interrelated in that the DTS/DPF criteria provide quantitative guidance of examples of what is considered acceptable for the Performance Outcome.

2.2.3 The starting point for an assessment of a development application is to identify all relevant provisions of the Code applicable to the site of the proposed development.

2.2.4 The approach to assessment thereafter involves:

- (a) identifying relevant zone, subzone, overlay and general development policy provisions;

- (b) identifying any inconsistencies between the hierarchy of provisions and resolving them;
- (c) applying the provisions to the proposed development and reaching an “on balance” assessment as to whether the proposed development should or should not be granted a planning consent.

2.3 Zone and subzone provisions

2.3.1 We set out each of the relevant zone and subzone provisions, together with our submissions on each provision, below.

Provision	Commentary
<p>Subzone DO 1; DO2; PO 1.1 and DTS/DPF 1.1; PO 2.1 and DTS/DPF 2.1; PO 2.2.</p>	<p>These provisions create a clear intent and purpose for the subzone to encourage residential development (in the form of dwellings and supported accommodation) and tourist accommodation only.</p> <p>Other forms of land uses are not contemplated.</p> <p>We submit that the fact that other land uses – including the retail fuel outlet proposed in DA 21031284 – are not contemplated in the subzone means that any zone or general development policies which do contemplate them (remotely or otherwise) should be read down such that such uses should only be contemplated in extenuating circumstances as discussed at paragraph [4] below.</p>
<p>Zone DO 1</p> <p>Housing on large allotments in a spacious rural setting, often together with large outbuildings. Easy access and parking for cars. Considerable space for trees and other vegetation around buildings, as well as on-site wastewater treatment where necessary. Limited goods, services and facilities that enhance rather than compromise rural residential amenity</p>	<p>The proposed development does not comprise housing in a spacious rural setting.</p> <p>The proposal is not “limited”; it is a 24/7 retail fuel outlet as that term is defined in the Code. The proposed development does not enhance rural residential amenity, especially visual amenity.</p> <p>We refer to Figures 1.1 – 1.4 above. The existing building on the Land is “limited” in its size and does not compromise rural amenity. The proposed development, by comparison contravenes DO 1 in its size, scale and potential to attract</p>

	customers from outside of the locality and area.
<p>PO 1.1</p> <p>Predominantly residential development with complementary ancillary non-residential uses compatible with a spacious and peaceful lifestyle for individual households.</p> <p>DTS/DPF 1.1</p> <p>Development comprises one or more of the following:</p> <ul style="list-style-type: none"> (a) Ancillary accommodation (b) Consulting room (c) Detached dwelling (d) Office (e) Outbuilding (f) Pre-school (g) Recreation area (h) Shop 	<p>The proposed development is not residential, nor is it an “ancillary” use which is compatible with a spacious and peaceful lifestyle for individual households.</p> <p>The proposal is for a “retail fuel outlet” which is a defined land use in Part 7 of the Code. Whilst it contains a shop component, it is not a shop. It is a distinct form of development which is not recognised in DTS/DPF 1.1.</p>
<p>PO 1.2</p> <p>Commercial activities improve community access to services are of a scale and type to maintain residential amenity.</p> <p>DTS/DPF 1.2</p> <p>A shop, consulting room or office (or any combination thereof) satisfies any one of the following:</p> <ul style="list-style-type: none"> (a) it is located on the same allotment and in conjunction with a dwelling where all the following are satisfied: <ul style="list-style-type: none"> (i) does not exceed 50m² gross leasable floor area (ii) does not involve the display of goods in a window or about the dwelling or its curtilage (b) it reinstates a former shop, consulting room or office in an existing building (or portion of a building) and satisfies one of the following: <ul style="list-style-type: none"> (i) the building is a State or Local Heritage Place (ii) is in conjunction with a dwelling and there is no increase in the gross 	<p>The size, scale and type of the shop component as well as the overall proposed development are clearly contrary to PO 1.2 – it a very large development especially when assessed against DTS/DPF 1.2 and will be very visible in the locality and will, arguably have other impacts on residential amenity.</p> <p>Whilst the proposed development is not a “shop” as defined in Part 7 of the Code, it does contain a “shop” component and, as such PO 1.2 and DTS/DPF 1.2 have relevance. On this basis, the proposed development is not in conjunction with a dwelling and, in any event, considerably larger than the 50m² gross leasable floor area envisaged in the Zone and will involve the display of goods which will, necessarily, be visible in the locality.</p> <p>Again, we refer to Figures 1.1 – 1.4 above to compare the proposed development to the existing state of the Land which we submit is considerably more in keeping with these provisions.</p>

<p>leasable floor area previously used for non-residential purposes.</p>	
<p>PO 1.3</p> <p>Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood.</p>	<p>A 24/7 retail fuel outlet does not, of itself, complement the residential character and amenity of the neighbourhood. Whilst the subject land is presently a motor repair station (mechanic), this use is considerably smaller in scale in terms of the footprint of the use, the size and scale of the buildings and its capacity for vehicle movements and use generally.</p> <p>It is also of significance that the existing motor repair station is the only commercial/non-residential land use within the locality. This is not a locality in which commercial and non-residential uses are commonplace. It is a locality of residential, village-like character and not a locality where the proposed development could be described as complementary.</p>
<p>PO 1.4</p> <p>Non-residential development located and designed to improve community accessibility to services, primarily in the form of:</p> <ul style="list-style-type: none"> (a) small-scale commercial uses such as offices, shops and consulting rooms (b) community services such as educational establishments, community centres, places of worship, pre-schools and other health and welfare services (c) services and facilities ancillary to the function or operation of supported accommodation or retirement facilities (d) open space and recreation facilities 	<p>The proposed development does not fall within any of these envisaged land uses.</p> <p>It is a large retail fuel outlet which will attract traffic and users from far beyond the local community, contrary to PO 1.4.</p>
<p>PO 2.1</p> <p>Buildings contribute to a low-rise residential character and complement the height of nearby buildings.</p> <p>DTS/DPF 2.1</p> <p>Building height (excluding garages, carports and outbuildings) is no greater than 2 building levels and 9m and wall height no</p>	<p>Whilst the proposed development complies with DTS/DPF 2.1, it arguably contravenes PO 2.1 in that its design and the number of buildings grouped together will not contribute the 'low-rise residential character' of the Zone.</p> <p>Rather, it will result in a visibly more "cluttered" and denser site than that in the prevailing character of the</p>

<p>greater than 7m except in the case of a gable end.</p>	<p>locality. The fuel canopy will be closer to Longwood Road than the present mechanic building. It will also be considerably larger than the existing canopy. The built form will extend towards the entire rear area of the Land which is currently open. It will appear, in the context of the locality, to be a very large and 'closed-off' development with its high retaining walls and fences.</p>
<p>PO 4.1</p> <p>Buildings are set back from secondary street boundaries to maintain a pattern of separation between building walls and public thoroughfares and reinforce a streetscape character.</p> <p>DTS/DPF 4.1</p> <p>Buildings walls are set back at least 2m from the boundary of the allotment with the secondary street frontage.</p>	<p>The car wash control building does not meet this criteria, nor does the fencing to the rear of the Land.</p> <p>When viewed in the context of the locality, these areas of deficiency are significant and unwarranted and will detrimentally affect the character of the locality.</p>
<p>PO 5.1</p> <p>Buildings are set back from side boundaries to allow maintenance and access around buildings and minimise impacts on adjoining properties.</p> <p>DTS/DPF 5.1</p> <p>Building walls are set back from the side boundaries at least 2m.</p>	<p>As above for PO 4.1 and DTS DPF/4.1.</p>
<p>PO 7.1 and DTS/DPF 7.1; PO 7.2 and DTS/DPF 7.2; PO 8.1 and DTS/DPF 8.1;</p>	<p>These provisions clearly reaffirm the intent and purpose of the Zone is to accommodate rural-style residential development and very small, limited shops and services. The proposed development is contrary to this intent and purpose and should be refused.</p>
<p>PO 10.1</p> <p>Advertisements identify the associated business activity, and do not detract from the residential character of the locality.</p> <p>DTS/DPF 10.1</p> <p>Advertisements relating to a lawful business activity associated with a residential use do not exceed 0.3m² and mounted flush with a wall or fence.</p>	<p>The proposed advertisements in their size, scale, number and visibility clearly contravene this criteria.</p> <p>We acknowledge that the number of signs and the amount of branding proposed for the proposed buildings is considerably less and more muted than other OTR developments located within the Council's area.</p>

	<p>However, the advertisements proposed will detract from the residential character of the locality.</p> <p>They clearly exceed the DTS/DPF criteria.</p> <p>They arguably include all areas painted in OTR corporate colours (black/charcoal and yellow) as no distinction has been made between 'lettering' and the area upon which said 'lettering' is not delineated or distinguished from the blade walls, fascia and other areas upon which they are placed in the elevation plans or other drawings. This means that the advertising areas could lawfully increase over time without requiring development approval.</p>
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2.4 Overlay provisions

2.4.1 The following Overlays apply to the site of the proposed development:

- (a) Hazards (Bushfire – High Risk) Overlay
- (b) Hazards (Flooding – Evidence Required) Overlay
- (c) Mount Lofty Ranges Water Supply Catchment (Area 1) Overlay
- (d) Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay
- (e) Native Vegetation Overlay
- (f) Prescribed Wells Overlay
- (g) Regulated and Significant Tree Overlay.

2.4.2 The Council submits that the proposed development does not demonstrate sufficient compliance with the requirements of the Hazards (Bushfire – High Risk) Overlay and should be refused.

2.4.3 In particular:

- (a) Overlay DO 1, DO 2 and DO 3 and Overlay PO 1.1 provide:

Desired Outcome	
DO 1	<p>Development, including land division is sited and designed to minimise the threat and impact of bushfires on life and property with regard to the following risks:</p> <p>(a) potential for uncontrolled bushfire events taking into account the increased frequency and intensity of bushfires as a result of climate change</p> <p>(b) high levels and exposure to ember attack</p> <p>(c) impact from burning debris</p> <p>(d) radiant heat</p> <p>(e) likelihood and direct exposure to flames from a fire front.</p>
DO 2	Activities that increase the number of people living and working in the area or where evacuation would be difficult is sited away from areas of unacceptable bushfire risk.
DO 3	To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger.

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
Land Use	
PO 1.1 Development that significantly increases the potential for fire outbreak as a result of the spontaneous combustion of materials, spark generation or through the magnification and reflection of light is not located in areas of unacceptable bushfire risk.	DTS/DPF 1.1 None are applicable.

- (b) the only detail concerning how these extremely important provisions have been considered and addressed in the proposed development are three (3) sentences at page 9 of the applicant's covering letter for DA 21031284 (page 14 of the application documents obtained from PlanSA), stating:

"The development has been designed to provide access to emergency service vehicles from two public road frontages. Furthermore, the buildings are within close proximity to both Scott Creek Road and Longwood Road and the site is serviced by mains water. The proposed development does not trigger a referral to the South Australian Country Fire Service"

- (c) with respect to the applicant, these three (3) sentences are wholly insufficient to address the abovementioned Overlay provisions and reveal a complete lack of appreciation and understanding of the locality;
- (d) the Ash Wednesday I fire on 20 February 1980 began in Heathfield, at what is now known as the Heathfield Resource Recovery Centre at 32 Scott Creek Road, approximately 600 metres "as the crow flies" from the Land;⁹

⁹ Please note that the Centre is located in an Infrastructure Zone and not the Rural Neighbourhood Zone

- (e) the locality has been subject to bushfires on numerous occasions since then, including the Ash Wednesday II fire in 1983 and in 1995 and has been threatened on numerous occasions since;
- (f) despite this, **no detail** has been provided as to:
 - (i) fire mitigation measures or even a bushfire plan in the event that the proposed development is threatened by a bushfire;
 - (ii) measures to ensure that the proposed development is sufficiently protected in the event of ember attack;
 - (iii) measures to ensure sufficient risk mitigation in the event of exposure to burning debris, radiant heat and flames from a direct fire front;
- (g) the mere proximity of the Land Scott Creek Road and Longwood Road and accesses being designed to accommodate emergency service vehicles does not address the relevant DO's and PO 1.1;
- (h) the fact that no referral to the CFS is required for DA 21031284 does not mean that the abovementioned DO's and PO 1.1 have been fulfilled;
- (i) the Council strongly submits that, **at the very least** given the locality and its present bushfire risk, a report from a fire safety engineer should accompany DA 21031284 to confirm that it satisfactorily complies with the abovementioned DO's and PO 1.1;
- (j) again, with respect to the applicant, the absence of this information, at best, indicates a failure to understand the locality, local conditions, the Overlay and the present bushfire risk and, at worst, suggests that the proposed development cannot satisfactorily meet the abovementioned DO's and PO 1.1.

3. General Development Policies

3.1 The following provisions are relevant to the proposed development:

Provision	Commentary
<p>Advertisements DO 1</p> <p>Advertisements and advertising hoardings are appropriate to context, efficient and effective in communicating with the public, limited in number to avoid clutter, and do not create hazard.</p>	<p>We submit that this DO 1 must be read down in accordance with the zone provisions which discourage advertisements and require them to only be in association for a home-based business and limited to 0.3m².</p> <p>Accordingly, this DO 1 does not provide support for the proposed development, particularly the large pylon sign which is considerably larger than that desired in the zone.</p>

<p>Advertisements PO 1.1</p> <p>Advertisements are compatible and integrated with the design of the building and/or land they are located on.</p> <p>DTS/DPF 1.1</p> <p>Advertisements attached to a building satisfy all of the following:</p> <p>...</p> <p>(a) <i>are not located in a Neighbourhood-type zone</i></p> <p>...</p>	<p>Read together with zone PO 10.1 and the DTS/DPF 1.1 criteria (a), the proposed development clearly breaches this provision.</p> <p>Advertisements attached to a building are clearly discouraged in all Neighbourhood-type zones and especially the Rural Neighbourhood Zone. Corporate logos are prominent as is branding and the use of corporate colours for the exterior finishes of the buildings, especially the yellow used on the car wash buildings. The 7m-high advertising pylon sign is very high and will be visually prominent in the locality (refer to Figures 1.1 – 1.4 above).</p>
<p>PO 1.2</p> <p>Advertising hoardings do not disfigure the appearance of the land upon which they are situated or the character of the locality.</p> <p>DTS/DPF 1.2</p> <p>Where development comprises an advertising hoarding, the supporting structure is:</p> <p>(a) concealed by the associated advertisement and decorative detailing or</p> <p>(b) not visible from an adjacent public street or thoroughfare, other than a support structure in the form of a single or dual post design.</p>	<p>Whilst some efforts have been undertaken to comply with these provisions, demonstrated through the less-than-usual and muted OTR branding and number of signs, especially behind the control building, these measures arguably do not overcome the Zone provisions and PO 1.1 which strongly discourage advertisements altogether.</p> <p>Further and in any event, we submit that PO 1.2 and DTS/DPF 1.2 are inconsistent with the provisions of the zone and subzone and must be read down accordingly. We submit that the correct interpretation of these provisions in light of the zone and subzone is that they do not encourage advertising hoardings and only apply where the advertising hoardings comply with the zone and subzone provisions first.</p>
<p>PO 1.3</p> <p>Advertising does not encroach on public land or the land of an adjacent allotment.</p> <p>DTS/DPF 1.3</p> <p>Advertisements and/or advertising hoardings are contained within the boundaries of the site.</p>	<p>Whilst the proposed development complies with these provisions, limited weight attaches to this compliance given the overarching weight attached to the zone provisions and PO 1.1 above.</p>
<p>PO 1.5</p>	<p>Whilst the advertisements are reduced in size and number from 'usual' OTR developments, they are still of a size and</p>

<p>Advertisements and/or advertising hoardings are of a scale and size appropriate to the character of the locality.</p>	<p>scale foreign and incompatible with the locality.</p> <p>In any event, the advertisements are inconsistent with the Zone and PO 1.1 and these non-compliances are not 'made good' by compliance with, or attempts to comply with, this provision (refer to Figures 1.1 – 1.4 above)</p>
<p>PO 2.1</p> <p>Proliferation of advertisements is minimised to avoid visual clutter and untidiness.</p> <p>DTS/DPF 2.1</p> <p>No more than one freestanding advertisement is displayed per occupancy.</p>	<p>Whilst these criteria are arguably met, however and as discussed above, this does not overcome the identified non-compliances with applicable Zone criteria and PO 1.1 above.</p>
<p>PO 2.3</p> <p>Proliferation of advertisements attached to buildings is minimised to avoid visual clutter and untidiness.</p> <p>DTS/DPF 2.3</p> <p>Advertisements satisfy all of the following:</p> <ul style="list-style-type: none"> (a) are attached to a building (b) other than in a Neighbourhood-type zone, where they are flush with a wall, cover no more than 15% of the building facade to which they are attached (c) do not result in more than one sign per occupancy that is not flush with a wall. 	<p>The proposed development does not satisfactorily comply with these provisions.</p> <p>Whilst the number of size of advertising signs is reduced from what the Council considers to be a "typical" OTR development, these provisions are not satisfied. In particular, PO 1.1 above and the zone and subzone provisions discourage advertising signs altogether and DTS/DPT 2.3 reflects this, as it means that there is no envisaged amount of advertising areas in the zone.</p>

<p>Design DO 1</p> <p>Development is:</p> <ul style="list-style-type: none"> (a) contextual - by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributes to the character of the immediate area <p>...</p>	<p>This DO criteria is not met given the sheer size and scale of the proposed development when considered in its locality where it will be the only commercial/retail-type development.</p> <p>To the extent that the proposed development has been designed to be of a lower-scale to a 'usual' OTR development and uses darker, more natural colours to achieve this criteria, the zone provisions must be afforded</p>
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	<p>more weight than this provision and, as the zone discourages the proposed development, compliance with this criteria does not warrant the grant of planning consent.</p>
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<p>Design in Urban Areas DO 1</p> <p>Development is:</p> <p>(a) contextual - by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributes to the character of the immediate area</p> <p>...</p>	<p>Note – this is identical to Design DO 1.</p> <p>See submissions made above.</p>
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<p>Interface between Land Uses DO 1</p> <p>Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.</p> <p>...</p>	<p>The main potential for adverse impacts on neighbouring land uses is from noise.</p> <p>The Sonus report provided with the application documents considers residential noise level criteria under the Environment Protection (Noise) Policy and confirms compliance, subject to the provision of a 3 metre high fence, limited hours for deliveries, etc, plantings and construction techniques.</p> <p>We note that the Sonus report is premised upon limited hours for deliveries being imposed. Should the relevant authority determine to approve the proposed development, we urge it to impose conditions reflecting the recommended hours.</p> <p>However, we also note that the Sonus report is premised on the construction of a 3m-high fence which will be located on top of relatively high retaining walls at some locations on the Land.</p> <p>The 3m-high fence and the significantly-high retaining walls are of serious concern.</p> <p>Neither the fence nor the retaining walls are shown on any elevations.</p>
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	<p>In the locality, such a high fence will cause adverse visual amenity impacts and be contrary to the established character of the Zone as it is considerably higher than a “standard” fence (2.1 metres), and will be even higher than 3 metres when the boundary retaining walls are taken into account. The Council is rightly concerned that the fence will be perceived as a large and solid intrusion into what is, currently and in consistency with the intent and purpose of the zone, a rural-type locality with small-scale buildings and high visual amenity.</p> <p>This deficiency provides compelling reasons to object to the proposed development together with the relevant zone provisions mentioned above.</p>
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4. Conclusion

- 4.1 The Council submits that, for the reasons given at paragraph [1] above, DA 2101284 is clearly, seriously at variance to the Code and must be refused.
- 4.2 Even if the relevant authority disagrees with this position, we submit that DA 2101284 must be refused on its merits. As discussed above, the proposed development is clearly and significantly deficient and does not satisfactorily meet the most relevant and significant provisions of the Code.
- 4.3 Further, there is simply no justification for departing from the very clearly expressed provisions of the Code which are not satisfied by the proposed development.
- 4.4 The key case law authority which applies to circumstances in which clearly expressed provisions of the Code can be departed from, and which we submit applies under the Act, is the Supreme Court decision in *Town of Gawler v Impact Investment Corporation Pty Ltd*.¹⁰ In this decision, the Court provided ten (10) relevant considerations to apply whenever the departure from clearly-expressed provisions of the Code are proposed, being:
- 4.4.1 the language of the principle or principles concerned- whether it is direct or contemplates some flexibility in approach;
 - 4.4.2 whether the relevant principle is in conflict with some other applicable planning principle.
 - 4.4.3 the evident purpose and objective of the policy expressed in the principle or principles concerned;

¹⁰ [2007] SASC 356

- 4.4.4 the significance of the policy to the particular proposed development.
 - 4.4.5 where the policy contemplates possible degrees of compliance, the extent of the proposed development's compliance with the policy;
 - 4.4.6 consistency of the proposed development with other objectives and purposes of the Zone;
 - 4.4.7 whether there is something unusual about the proposed of the land on which it is to take place which makes the policy inapplicable or inappropriate;
 - 4.4.8 whether other events have happened since the Code was adopted which make the policy redundant, either generally or in respect of this particular development;
 - 4.4.9 the probable effect of non-compliance with the policy on the planning objectives of the zone; and
 - 4.4.10 whether non-compliance with the policy in this case is likely to encourage other similar developments in the zone.
- 4.5 We submit that, applying the *Impact* test, there is no justification for this proposed development to be approved.
- 4.6 DA 2101284 is significantly out of conformity with all relevant provisions of the zone and subzone.
- 4.7 It does not demonstrate compliance with the Hazards (Bushfire – High Risk) Overlay.
- 4.8 No justifiable reasoning has been provided as to why the very clear and applicable provisions of the zone, subzone and overlay should be departed from.
- 4.9 Whilst DA 2101284 demonstrates some compliance with general development policies, this does not justify its approval, particularly in light of the clear and prevailing zone and subzone provisions which must be afforded the most weight in the assessment of the proposed development.
- 4.10 DA 2101284 is completely inappropriate when assessed against the Code and must be refused.
- 4.11 Whilst we acknowledged that, of itself, community objection to a proposed development is not relevant to an assessment of a proposed development against the Code, the Council notes the high level of community objection to DA 2101284. The Council submits that this high level of community objection is simply a reflection of the community's awareness that DA 2101284 is completely contrary to the relevant provisions of the zone and subzone, which provisions reflect the unique, rural-village style character of the locality and which render DA 2101284 not worthy of approval.

I confirm that the Council wishes to be heard on its representation and that I have been instructed to appear at the relevant assessment panel meeting to make a verbal representation.

Please advise of the meeting date and time in due course.

Yours sincerely

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