

SPECIAL CAP MEETING – 19 JUNE 2024**ITEM 11.1**

DEVELOPMENT NO.:	21031284
APPLICANT:	PC Infrastructure Pty Ltd
ADDRESS:	160 LONGWOOD RD HEATHFIELD SA 5153 CT 6003/528
NATURE OF DEVELOPMENT:	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, retaining walls, car parking & landscaping (Amended Proposal)
ZONING INFORMATION:	Zones: <ul style="list-style-type: none"> • Rural Neighbourhood Subzones: <ul style="list-style-type: none"> • Adelaide Hills Overlays: <ul style="list-style-type: none"> • Hazards (Bushfire - High Risk) • Hazards (Flooding - Evidence Required) • Mount Lofty Ranges Water Supply Catchment (Area 2) • Native Vegetation • Prescribed Wells Area • Regulated and Significant Tree
LODGEMENT DATE:	1 February 2022
RELEVANT AUTHORITY:	Assessment Panel at Adelaide Hills Council
PLANNING & DESIGN CODE VERSION:	2022.1
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes – original proposal 11 February 2022 – 3 March 2022
RECOMMENDING OFFICER:	James Booker Team Leader Statutory Planning
REFERRALS STATUTORY:	Environment Protection Authority – original proposal
REFERRALS NON-STATUTORY:	<ul style="list-style-type: none"> - Council Engineering – original proposal - Council Open Space – original proposal - Council Environmental Health – original proposal - Resonate Acoustic Engineers – original proposal - MFY Traffic Engineers – original proposal

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ATTACHMENT 1: Compromise Proposal

ATTACHMENT 2: Previous CAP Report and Attachments

**ATTACHMENT 3: Minutes of Special CAP Meeting
26 July 2023**

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BACKGROUND:

At its meeting on 26 July 2023, the Council Assessment Panel (the Panel) considered the merits of the proposed development in Development Application 21031284 for a 24 hour retail fuel outlet with associated canopy, car cleaning and dog wash facilities, 70,000 L underground fuel storage tank, pylon advertising sign (maximum height 7m), combined fence and retaining wall (maximum height 6m), internal acoustic fencing (maximum height 3m), retaining walls (maximum height 3.25m), car parking and landscaping.

A total of 190 representations were received from members of the public during the notification period. A total of 37 representors spoke at the panel meeting in support of their representations.

The Panel determined that the application was seriously at variance with the provisions of the Planning and Design Code, and resolved to refuse the Planning Consent for the following reasons:

Rural Neighbourhood Zone

Desired Outcome 1:

The proposal is for a commercial development that is not considered to enhance rural residential amenity.

Performance Outcome 1.1:

The proposal is not considered to be a complementary ancillary non-residential use and it is not compatible with a spacious and peaceful lifestyle.

Performance Outcome 1.2:

The proposal is not considered to be of a scale and type that maintains residential amenity.

Performance Outcome 1.3:

The proposal is not considered to be sited and designed to complement the residential character and amenity of the neighbourhood.

Performance Outcome 1.4:

The proposal is not for any of the listed anticipated non-residential development types in the Zone.

Performance Outcome 3.1:

The setback of the proposed control/shop building to Longwood Road is not consistent with the existing streetscape on the southern side of Longwood Road.

Performance Outcome 4.1:

The setback of the automatic car wash building to the Scott Creek Road boundary does not maintain a pattern of separation between building walls and public thoroughfares.

Performance Outcome 5.1:

The setback of the shop/control building to the western side boundary is not considered to minimise impacts on the adjoining residential property.

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Adelaide Hills Subzone

Desired Outcome 1 and Performance Outcome 1.1:

The proposal is not for additional residential or tourist accommodation. It is not considered to embrace the values of retaining mature vegetation particularly as it relates to roadside vegetation. The proposal is not for an accommodation option, and it is not considered to complement residential character.

Overlays

Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay

Performance Outcome 4.1:

The proposal is not considered to minimise the need to modify landscapes and natural features with regard to the filling of land and road verge vegetation modification.

General Development Policies

Advertisements

Desired Outcome 1:

The proposed freestanding pylon advertisement is not considered to be appropriate to the residential context of the locality and former freestanding sign on the land.

Design

Desired Outcome DO1:

The proposal is not considered to be contextual as the building design and siting does not respond well to the slope of the land or character of the immediate area.

Performance Outcome 3.1:

The proposal does not incorporate soft landscaping and tree planting that enhances the appearance of land and streetscapes.

Performance Outcome 3.2:

The proposal does not maximise the use of locally indigenous plant species in soft landscaping and tree planting.

Performance Outcome 8:1:

The proposal does not minimise the need for filling of land so as to limit disturbance to natural topography.

Performance Outcome 9.1:

The fill concrete sleeper retaining walls on the Scott Creek Road boundary are considered to impact on visual amenity from the public realm. The fill concrete sleeper retaining walls on the western side and rear boundaries are considered to impact the amenity of the adjoining residential land. Additionally, the proposed fencing height will unreasonably impact upon the visual amenity of the locality.

Performance Outcome 9.2:

The fill retaining walls on the Scott Creek Road boundary are not landscaped on the low side.

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Interface Between Land Uses

Desired Outcome 1:

The proposal is not considered to be located and designed to mitigate adverse effects on neighbouring and proximate land uses. A retail fuel outlet is not a desired type of land use in the Rural Neighbourhood Zone.

Performance Outcome 1.2:

The proposal is not considered to be designed to minimise adverse impacts. Waste storage and the fuel re-filling location is proposed adjacent to an adjoining residential use. The proposal includes 3m high internal Colorbond fencing and a maximum 6m high combined fence & retaining wall structure along the shared boundaries with adjoining residential sites.

Performance Outcome 2.1:

The proposal is for a non-residential development type with unlimited hours of operation adjoining existing residential uses in a Zone that is primarily intended to be for residential development. Commercial non-residential development in the Zone is intended to be complementary uses such as tourist accommodation and small-scale shops, offices and consulting rooms.

Transport, Access and Parking

Desired Outcome 1:

The proposal does not contribute to a safe transport system. Minimum driver sightlines are not achievable at all access points, an access point to Longwood Road is within a prohibited access zone per AS/NZS2890.1:2004 and the design/location of the fuel pumps presents a potential crash risk.

Performance Outcome 2.1:

The sightlines at all crossovers cannot be maintained or enhanced to ensure safety for all road users.

Performance Outcome 3.1:

An access point to Longwood Road is not safe and convenient as it is within a prohibited access zone per AS/NZS2890.1:2004.

Performance Outcome 3.9:

The proposal is not designed to ensure vehicle circulation between the control/shop building and car wash and dog wash activity areas occurs within the site without the need to use public roads.

On 25 September 2023 the PC Infrastructure Pty Ltd lodged an appeal of the Panel's decision in the Environment, Resources and Development Court (ERD Court). The grounds of the appeal include the following:

- Having regard to all the relevant provisions of the Planning and Design Code that the proposed development should have been granted Planning Consent
- CAP erred in determining the proposed development is seriously at variance with the Planning and Design Code and did not provide reasons.

As part of these appeal proceedings, PC Infrastructure Pty Ltd has prepared an amended proposal as a compromise with the intent of addressing the concerns of the Panel prior to the matter being listed for a formal hearing. Accordingly, the following documents are submitted in support of their compromise:

- A letter from Minter Ellison Lawyers regarding the interpretation of the concept of 'seriously at variance' and its application in this matter;

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- A letter from Peregrine Corporation explaining the compromise position and the amended documentation;
- A revised environmental noise assessment prepared by Sonus;
- The amended plans which form the compromise proposal; and
- Data comparing the hourly transactions of OTR's Balhannah, Littlehampton & Mt Barker locations.

The ERD Court Directions Hearing has been adjourned to allow the CAP to consider the appeal compromise.

The previous CAP Agenda Report and Attachments for this proposal from the 26 July 2023 Agenda is contained in **Attachment 2** and the Minutes of the Meeting are contained in **Attachment 3**.

SUBJECT LAND & LOCALITY:

Location reference: 160 LONGWOOD RD HEATHFIELD SA 5153

Title ref.: CT 6003/528 **Plan Parcel:** D73422 AL41 **Council:** ADELAIDE HILLS COUNCIL

Site Description:

The subject land is an irregular shaped allotment, with an area of 2160 square metres. The primary street frontage is Longwood Road and there is a secondary street frontage to Scott Creek Road. The land is on the southern side of Longwood Road and western side of Scott Creek Road. The land is located at a four-way intersection. There are multiple access points to the subject land – one (1) on Longwood Road, one at the intersection of Longwood Road & Scott Creek Road and three (3) on Scott Creek Road.

The land contains a building which was previously utilised as a motor repair station with attached canopy which is located near the front of the land. There is an outbuilding located behind the existing motor repair station building. There were two side-by-side fuel bowsers located underneath the canopy but they have since been removed. There was also a 4m high freestanding non-illuminated sign located in front of the motor repair station building, near the western side boundary which has also been removed.

The motor repair station building has an approximate floor area of 219 square metres with an attached front canopy of 28 square metres. The motor repair station building is setback approximately 10m from the Longwood Road boundary. It is built side boundary to side boundary.

The land is on the low side of Longwood Road. The area for the motor repair station building is benched at one level, and land behind the motor repair station building is terraced following the downward slope of the land. The area behind the motor repair station building contains grass and shrubs.

The land is connected to mains SA Water sewer and water supply. There are no easements or other restrictions listed on the Certificate of Title.

The land is on the fringe of the Rural Neighbourhood Zone, with the Recreation Zone to the north, the Communities Facilities Zone to the north-west, Open Space Zone to the north-east and the Productive Rural Landscape Zone and Infrastructure Zone to the south and east.

Locality

The locality contains a mix of residential, community and infrastructure uses. The two adjoining properties which share common boundaries are residential containing single detached dwellings.

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The Council owned Heathfield Oval and a wooded reserve are on the opposite side of Longwood Road, and an SA Water infrastructure plant (large water storage tank) is on the opposite side of Scott Creek Road. Heathfield High School is approximately 400m west of the subject land on Longwood Road and the Council Waste Recovery Centre & Works Depot is approximately 175m south of the subject land on Scott Creek Road.

There is an SA Water sewer treatment plant to the south-west of the subject land on Brick Kiln Road. Brick Kiln Road runs off Scott Creek Road.

Longwood Road and Scott Creek Road are sealed Council roads. Longwood Road is a major collector road. There are informal footpaths along both road frontages, however there is no kerb & guttering. There is one street light at the intersection and overhead powerlines.

An Adelaide Metro bus stop in front of the subject land on Longwood Road.

The subject land is a similar size and dimension to both the adjoining residential allotments, and other residential allotments along the southern side of Longwood Road.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT**

Retail fuel outlet: Code Assessed - Performance Assessed

Advertisement: Code Assessed - Performance Assessed

Underground fuel tank: Code Assessed - Performance Assessed

Fence and walls – fence plus retaining wall: Code Assessed - Performance Assessed

Shade Sail: Code Assessed – Performance Assessed

- **OVERALL APPLICATION CATEGORY:**

Code Assessed - Performance Assessed

- **REASON**

The proposal is not listed as Accepted, Deemed to Satisfy or Restricted in the Planning & Design Code, so it defaults to being a Performance Assessed type of development.

PUBLIC NOTIFICATION

- **REASON**

A retail fuel outlet is not listed as being exempt from public notification per Table 5 procedural matters of the Rural Neighbourhood Zone. The proposal is not considered to be minor, and therefore public notification was required of the original proposal.

Public notification occurred between 11 February and 3 March 2022.

- **REPRESENTATIONS**

190 representations were received during the public notification period.

12 of the representations were supportive of the proposal, and the remainder were opposed to the proposal.

37 of the representors nominated to be heard in support of their representation.

A list of the representors and copies of representations is provided within the previous CAP agenda attached.

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DETAILED DESCRIPTION OF COMPROMISE PROPOSAL:

The compromise proposal contains the following changes to the development:

1. Removal of the manual car wash and plant room;



Location of manual car wash on previously refused proposal

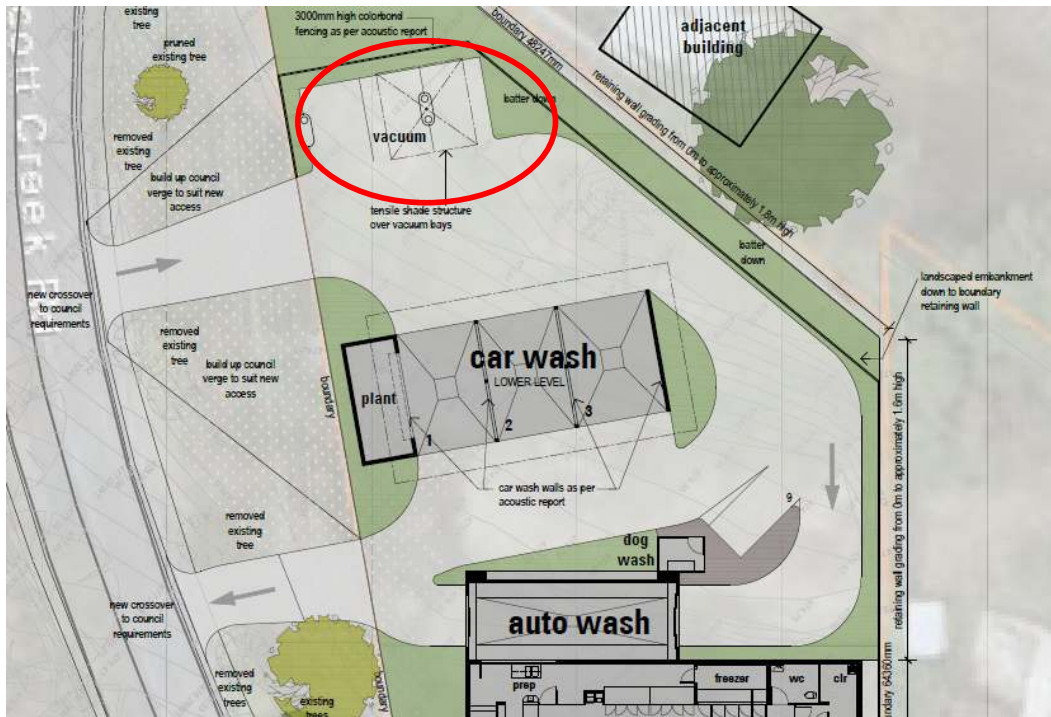


Removal of manual car wash on compromise proposal

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2. A reduction of vacuum bays from three to one and relocation of the vacuum bay adjacent to the automatic car wash;



Location of vacuum bays on previously refused proposal

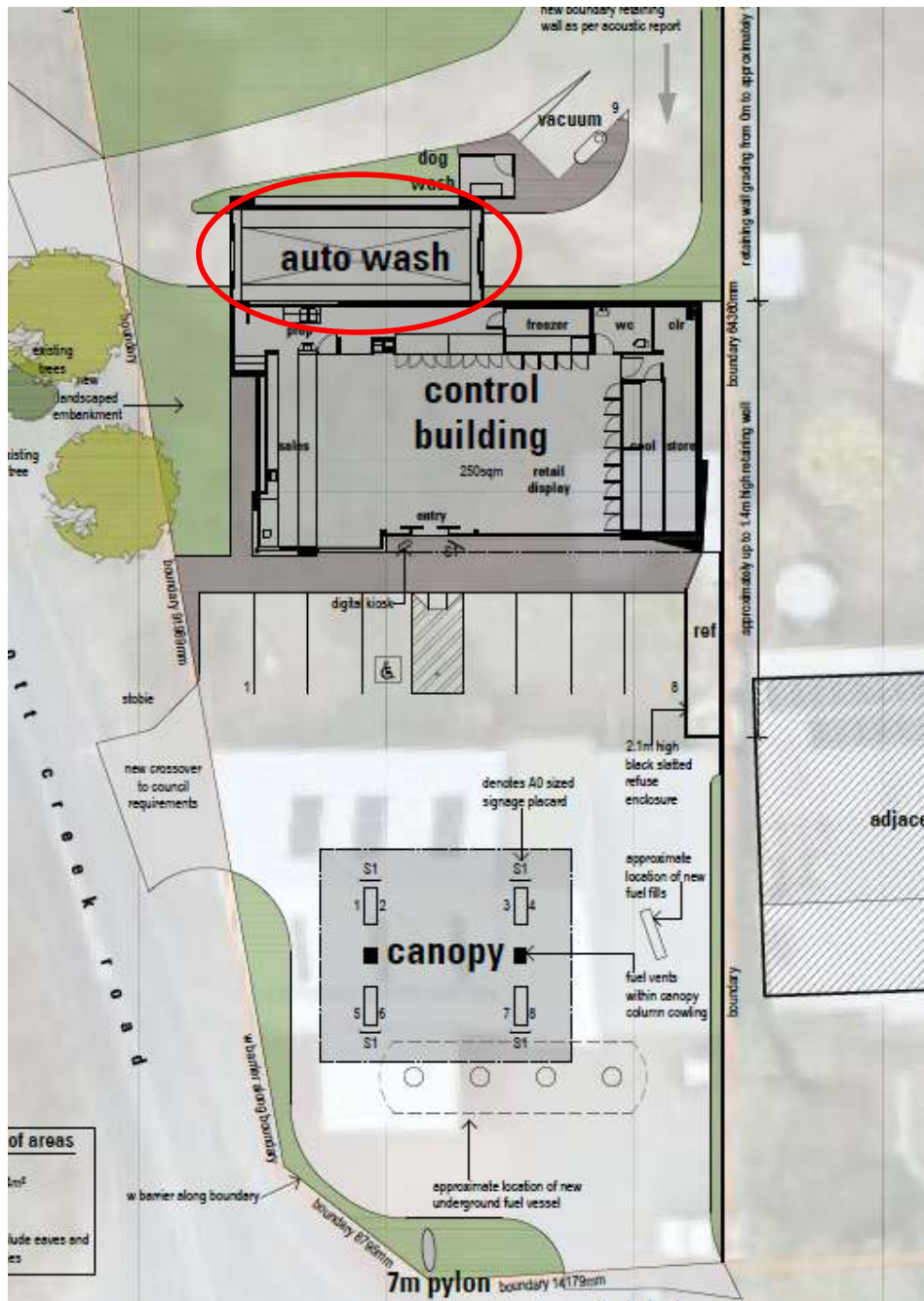


Relocated vacuum bay on compromise proposal

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- 3. The automatic car wash has been reduced from a 24 hour operation to 7am to 10pm;

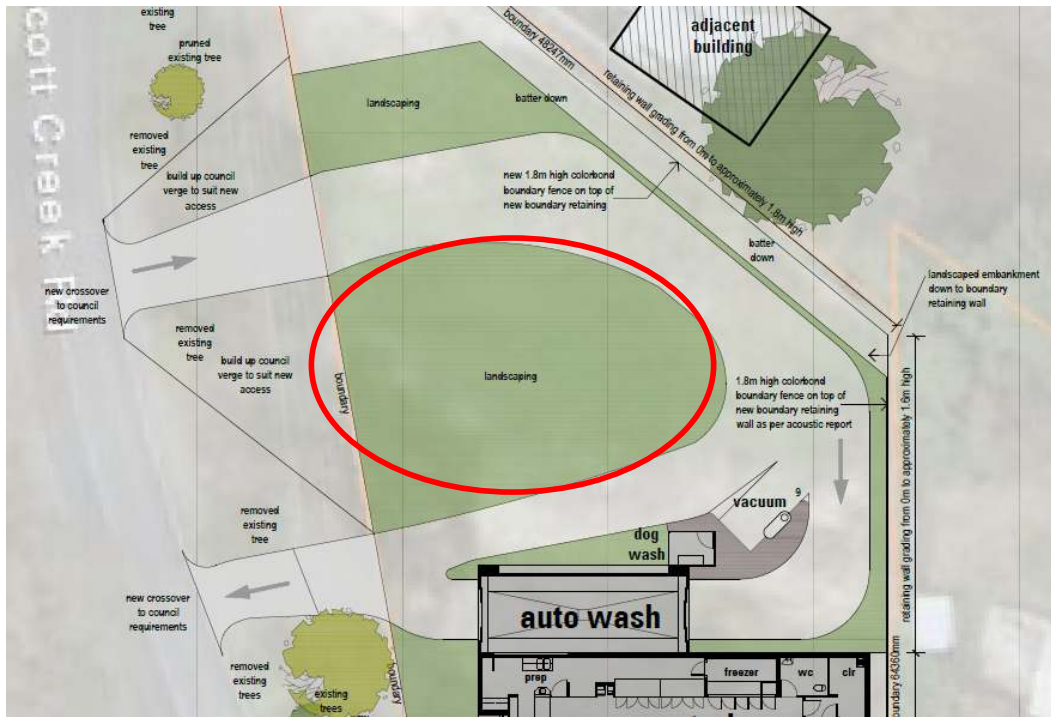


Location of car wash proposed to have reduced operation hours

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- 4. An increase of area identified for landscaping due to the removal of the manual car wash; and landscaped batter down to the rear retaining wall.



Increased area available for landscaping in compromise proposal

- 5. Removal of a three metre high acoustic fence adjacent the southern and south-western boundary; and addition of 1.8m high fence on top of retaining wall (maximum height 1.8m).

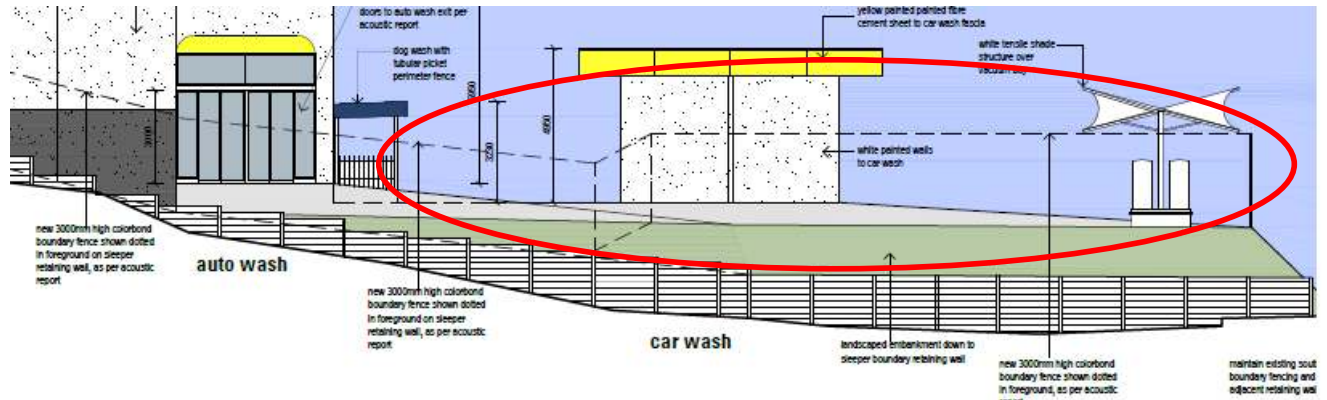


Area of acoustic fence which is proposed to be removed

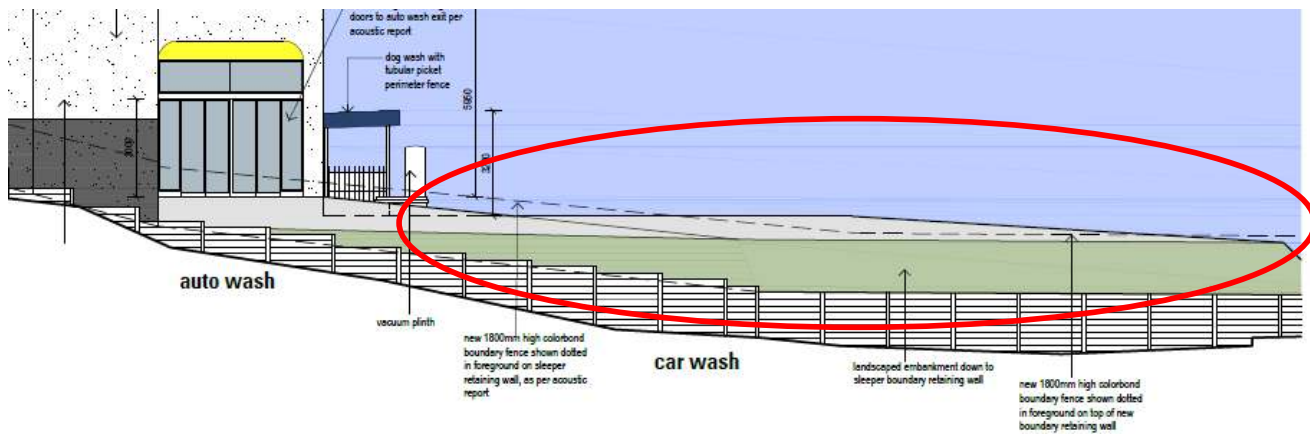
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- Reduction of the three metre high acoustic fence to 1.8m on the western boundary; except in the location forward of the control building where portion of the fence will transition in height from 3m to 1.8m on top of retaining walls.



Location of three metre high acoustic fence on western boundary on previously refused proposal



New 1.8m high colorbond fence on western boundary on compromise plans

- Material changes to the proposed three metre high fence on the western boundary north of the control building as recommended by the acoustic report; and
- Simplified on-site movement due to the removal of the manual car wash.

ASSESSMENT OF COMPROMISE PROPOSAL:

The applicant has provided amended plans including an acoustic assessment in an effort to demonstrate that the proposal warrants consent against the relevant provisions of the Planning and Design Code. The assessment below includes assessment of the varied aspects of the proposal.

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Rural Neighbourhood Zone

Desired Outcome	
DO1	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.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Land Use & Intensity PO1.1 & DTS/DPF1.1, PO1.2 & DTS/DPF1.2, PO1.3, PO1.4	
Building Height PO2.1	
Primary Street Setback PO3.1 & DTS/DPF3.1	
Secondary Street Setback PO4.1 & DTS/DPF4.1	
Side Boundary Setback PO5.1 & DTS/DPF5.1	
Rear Boundary Setback PO6.1 & DTS/DPF6.1	
Advertisements PO10.1 & DTS/DPF10.1	

PO 1.1

Predominantly residential development with complementary ancillary non-residential uses compatible with a spacious and peaceful lifestyle for individual households.

DTS/DPF1.1 gives an indication of the anticipated complementary non-residential uses in the Zone which are consulting rooms, offices, pre-schools, recreation areas and shops.

The essential nature of development of the proposal has not been altered within the compromise proposal despite some aspects being downsized or removed. The removal of the manual car wash bays and vacuum bays are no doubt a more positive outcome for adjoining properties as they also result in the removal of the previously proposed large acoustic fence. However, the development still proposed large retaining walls on the western boundary of the site and introduces a significant amount of fill to the southern portion of the land. The fill is proposed to have a battered slope to the west and southwest boundaries, and to be retained with walls up to 1.8m in height and fencing of 1.8m in height on top. The height of the combined fence and retaining walls is considered to be inadequate to avoid overlooking of both adjacent residential backyards from the highest aspect of the proposed benched area. It is considered that the amended proposal still compromises rather than enhances rural residential amenity.

Additionally, the compromise proposal does not alter the proposed built form of the control building, automatic car wash or advertisement display. As stated in the officer's report for the previously refused application, the set-back of the control building is problematic and fails to satisfy Performance Outcome 5.1 in terms of amenity impacts to adjoining properties.

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The proposed retail fuel outlet is to operate 24 hours of the day. Typically, the desired non-residential uses in the Zone (such as consulting rooms, offices and pre-schools) would have restricted trading hours. The operation of a 24-hour commercial land use is unanticipated within the Zone and the scale and type of use is expected to impact negatively upon the amenity of the adjoining residential land uses contrary to PO 1.2 and PO 1.3.

Adelaide Hills Subzone

Desired Outcome	
DO1	Additional residential and tourist accommodation that retains and embraces the values of the established mature vegetation as a defining characteristic of the area.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Land Use & Intensity PO1.1 & DTS/DPF1.1	

The Subzone is clear in its intent in considering tourist accommodation as an additional desired commercial use in this part of the Rural Neighbourhood Zone, as expressed in both PO1.1 and DO1.

The proposed retail fuel use is not a form of tourist accommodation, and as discussed above is not considered to be a small-scale non-commercial use as desired in the Zone. Tourist accommodation is considered to be akin to residential use in terms of its amenity impacts.

Regarding DO1 the compromise proposal is not considered to embrace the values of retaining established mature vegetation. There has been no alteration to the significant work on the Council verge and the proposal will require the removal or pruning of street trees and shrubs for an approximate length of 75m along Scott Creek Road for driver sightline distances.

Design

Desired Outcome	
DO1	Development is: a) contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributes to the character of the immediate areas b) dural – fit for purpose, adaptable and long lasting. c) inclusive – by integrating landscape design to optimise pedestrian and cyclist usability, privacy and equitable access, and promoting the provision of quality spaces integrated with the public realm that can be used for access and recreation and help optimise security and safety both internally and within the public realm for occupants and visitors. d) sustainable – by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimise energy consumption.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
All Development PO1.4 & DTS/DPF1.4, PO1.5	
Safety PO2.1, PO2.3	
Landscaping PO3.1, PO3.2	

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Carparking Appearance PO7.2, PO7.3, PO7.4, PO.7.5, PO7.6, PO7.7
Earthworks & Sloping Land PO8.1 & DTS/DPF8.1
Fences and Walls PO9.1 & PO9.2 & DTS/DPF9.2
All non-residential Development – Water Sensitive Design PO31.1, PO31.2

The character of the immediate area along the southern side of Longwood Road is predominantly single storey dwellings set close to the front boundary but with landscaped front yards. The setback of the shop/control building remains behind the dwelling on the adjoining site at 158 Longwood Road to accommodate the fuel canopy and sealed parking and manoeuvring areas at the front of the site.

The flat roof design of the shop/control building does not complement existing built form in the locality. In regards to landscaping, although the removal of the manual wash area and relocation of vacuum bays has freed up additional area for plantings and the battered embankment is intended to be landscaped, an updated landscaping plan has not been provided with the compromise proposal.

The landscaping proposed within the original application was limited to landscaping forward of the shop/control building being a 650mm wide strip along a portion of the western side boundary and a maximum 2m wide wrap around garden bed at the north-eastern corner of the land. Landscaping in this portion of the site comprises low level evergreen shrubs to a maximum height of 2m. Previously landscaping comprising tree planting was mainly limited to a portion of the southern side boundary between the internal acoustic fence and the boundary. It is unclear whether this is still proposed given the removal of the acoustic fence.

The compromise proposal remains at variance with landscaping module PO3.1 and PO3.2. PO3.1 seeks in part for landscaping to enhance the appearance of land and streetscapes and PO3.2 seeks for landscaping to maximise the use of locally indigenous plant species.

Presenting this compromise proposal was an opportunity for the applicant to address the design issues which make the proposal at odds with the surrounding locality. However, there does not appear to have been any changes to the proposal in terms of the level of fill to the southern portion of the land. The proposal introduces a substantial level of fill to the subject land which is best illustrated by the submitted elevations. For instance, the “East Elevation (Scott Creek Road)” image shows that the “existing retaining and fencing on the southern boundary is to be maintained”, however the introduced fill is proposed to be of a height which exceeds that of this fence. In order to accommodate this desired finished level extensive works on the Council verge are required to accommodate the proposed points of access. Likewise with the western boundary, a retaining wall is proposed but the height of the fill far exceeds the retaining wall height and as such the finished level batters down to the top of retaining wall height. The proposed filling of the site is at significant variance with PO8.1 and DTS/DPF8.1 which seeks for earthworks to limit disturbance to natural topography and to generally not exceed 1m in depth or height.

There remains inconsistency between the plans regarding the height of retaining walls along the western side boundary and rear boundary. There is an annotation on the site plan that retaining walls along these boundaries are a maximum of 1.6m in height (which was also shown on the previously considered site plan). A revised civil plan was not provided within the compromise proposal and as such it is considered that the civil design remains unchanged. The amended plans are inconsistent with the civil plan, which depicts via bottom and retaining wall levels that walls are more than 1.6m in height. As was the case in the previously considered application, this means that the retaining and fencing elevations are inconsistent with the civil plan and the amended plans may not reflect the full height of retaining wall and fence structures.

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Additionally, the submitted plans are contradictory in terms of works to the southern boundary of the site. The supplied “East Elevation (Scott Creek Road)” states “maintain existing southern boundary fencing and adjacent retaining walls”. However, the site plan indicates on the southern boundary “maintain existing boundary fencing where new boundary retaining walls do not occur” and “retaining wall grading from 0m to approximately 1.8m high” and “new 1.8m high colorbond boundary fence on top of new boundary retaining”. Although the previously refused application’s site plan did not show a retaining wall in this location, the civil plan indicated a maximum 3.45m high retaining wall in this location however elevations drawings were not provided previously, nor have they been provided in the compromise proposal. Without an updated civil plan which provides consistent information with the supplied site plan and elevations, it is difficult to ascertain the full extent of impact of the earthworks on adjacent properties.

Interface between Land Uses

Desired Outcome	
DO1	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate uses
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
General Land Use Compatibility PO1.2	
Hours of Operation PO2.1 & DTS/DPF2.1	
Overshadowing PO3.1 & DTS/DPF3.1, PO3.2 & DTS/DPF3.2, PO3.3	
Activities Generating Noise or Vibration PO4.1 & DTS/DPF4.1, PO4.2	
Air Quality PO5.1	
Light Spill PO6.1, PO6.2	

The proposal is considered to have the potential to unreasonably impact the amenity of existing residential uses with regard to the proposed hours of operation. The proposed use is a 24-hour operation, and it is a retail fuel outlet which is not a desired form of development in the Rural Neighbourhood Zone.

As a guide, DTS/DPF2.1 seeks that non-residential uses in the form of consulting room, offices and shops which are anticipated in the Rural Neighbourhood Zone close by 9:00pm Monday – Friday and 5:00pm Saturday - Sunday. The proposal represents a significant departure from DPF/DTS2.1.

The reduced scale of the proposal however does go some way to limit the visual amenity impact upon adjoining properties. For example, the removal of the three metre high acoustic fence adjacent to the south-western boundary would reduce the visual imposition of the development upon the adjacent property. Additionally, the removal of the manual car wash bays and the reduction and relocation of the vacuum bay go some way to reduce the impact of the development on adjoining land. The applicant has also provided an acoustic report which states that the proposed noise control measures will meet the Environment Protection (Noise) Policy 2007 criteria as stated in DTS/DPF4.1

Despite the above amendments to the proposal, the development is still considered to be at variance with DO1, PO1.2 & PO2.1, which relate to the fundamental proposed use of the land and its intensity.

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CONSIDERATION OF SERIOUSLY AT VARIANCE

Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* states that a Relevant Authority must not grant planning consent to an application which it determines to be seriously at variance with the Planning and Design Code. It is noted that Panel members discussed the matter of seriously at variance at the 26 July 2023 Panel meeting. The majority of members resolved that that the proposal represented a grave departure from the provisions of the Planning and Design Code and that the development achieved the threshold of being considered to be seriously at variance with the code.

The applicant has provided the attached legal opinion from Minter Ellison Lawyers regarding this matter and the consideration of whether the proposal is seriously at variance with the Planning and Design Code. The opinion cites relevant case law involving the seriously at variance determination and how it has been applied by both the Environment, Resources and Development Court and the Supreme Court of South Australia.

The applicant's legal opinion notes that the Rural Neighbourhood Zone envisages goods, services and facilities and complimentary ancillary non-residential uses such as shops and commercial activities which improve community access to services. It is stated that the compromise proposal, at its reduced scale does not represent a grave departure from the provisions of the zone and does not fail the intent of the zone.

The Panel have the opportunity to determine whether they believe that the compromise proposal has altered the development to such a degree that the proposal is now not seriously at variance with the Code. However, the determination of seriously at variance by the CAP is not necessarily required in the instance of a compromise proposal presented as part of a court appeal. Accordingly, this does not form part of the recommendation.

CONCLUSION

The compromise proposal decreases the intensity of the proposal in the southern portion of the subject land. The removal of the manual carwash, the reduction of vacuum bays from three to one and relocation of the vacuum bay adjacent to the automatic car wash; and removal of the three-metre-high acoustic fence will have a less of an amenity impact on occupiers of adjoining properties than the previously refused proposal. Despite this, the southern portion of the land is still proposed to include significant modifications in terms of filling the site in order to create a trafficable area. The proposal still includes substantial combined retaining walls and fencing to both the western boundary and the south-western boundary and steep batters to accommodate the desired level of fill. As demonstrated by the western boundary elevation, the degree of fill within the site even exceeds the 1.8m high fence on this boundary.

The Adelaide Hills Subzone and Rural Neighbourhood Zone are primarily intended for the development of residential uses, with some non-residential uses anticipated provided they are complementary to residential development and maintain or enhance residential amenity. In particular, commercial non-residential uses are encouraged to be small-scale and generally in the form of shops, consulting rooms, offices or tourist accommodation.

It is considered that that the scale of the compromise proposal is not complimentary to residential uses within the locality and will still have a negative impact on these residential uses, despite the reduced intensity of the proposal.

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RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

- 1) The compromise proposal for Development Application Number 21031284 by PC Infrastructure Pty Ltd for 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, retaining walls, car parking & landscaping (Amended Proposal) at 160 Longwood Road, Heathfield is NOT Supported.

OFFICER MAKING RECOMMENDATION

Name: James Booker

Title: Team Leader Statutory Planning



DEMOLITION PLAN

1:200 AT A1

existing building enclosed area 219sqm
existing canopy 28sqm

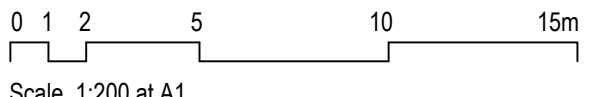
NEW SERVICE STATION COMPLEX
160 LONGWOOD ROAD, HEATHFIELD

PLANNING APPLICATION

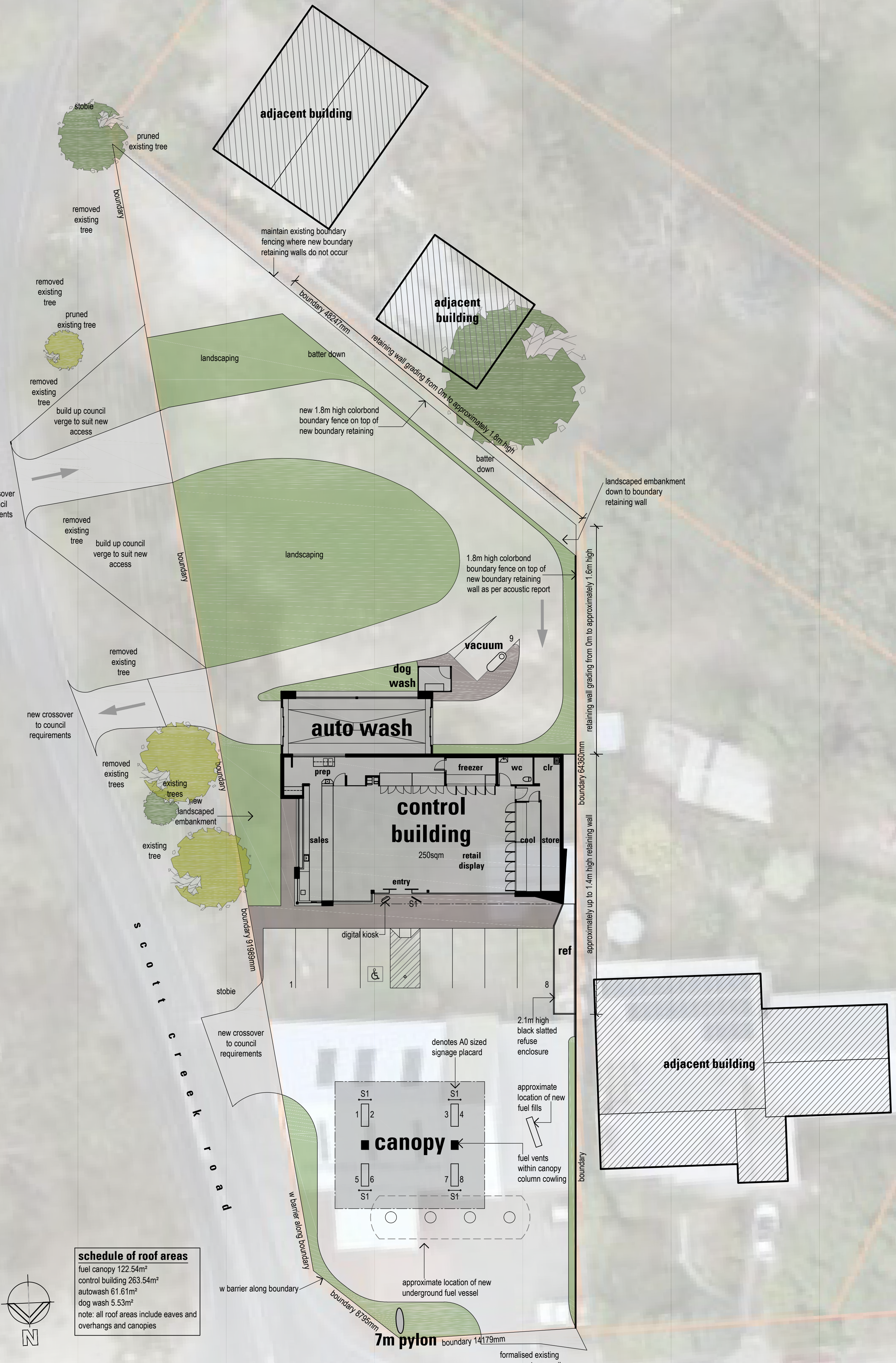
ADS Architects

93 Gilles Street Adelaide 5000 T:82232244

20.03.24
21JN1448.1 sk01



Scott Creek Rd



schedule of roof areas

fuel canopy	122.54m ²
control building	263.54m ²
autowash	61.61m ²
dog wash	5.53m ²

note: all roof areas include eaves and overhangs and canopies



SITE PLAN
1:200 AT A1

Longwood road

NEW SERVICE STATION COMPLEX
160 LONGWOOD ROAD, HEATHFIELD

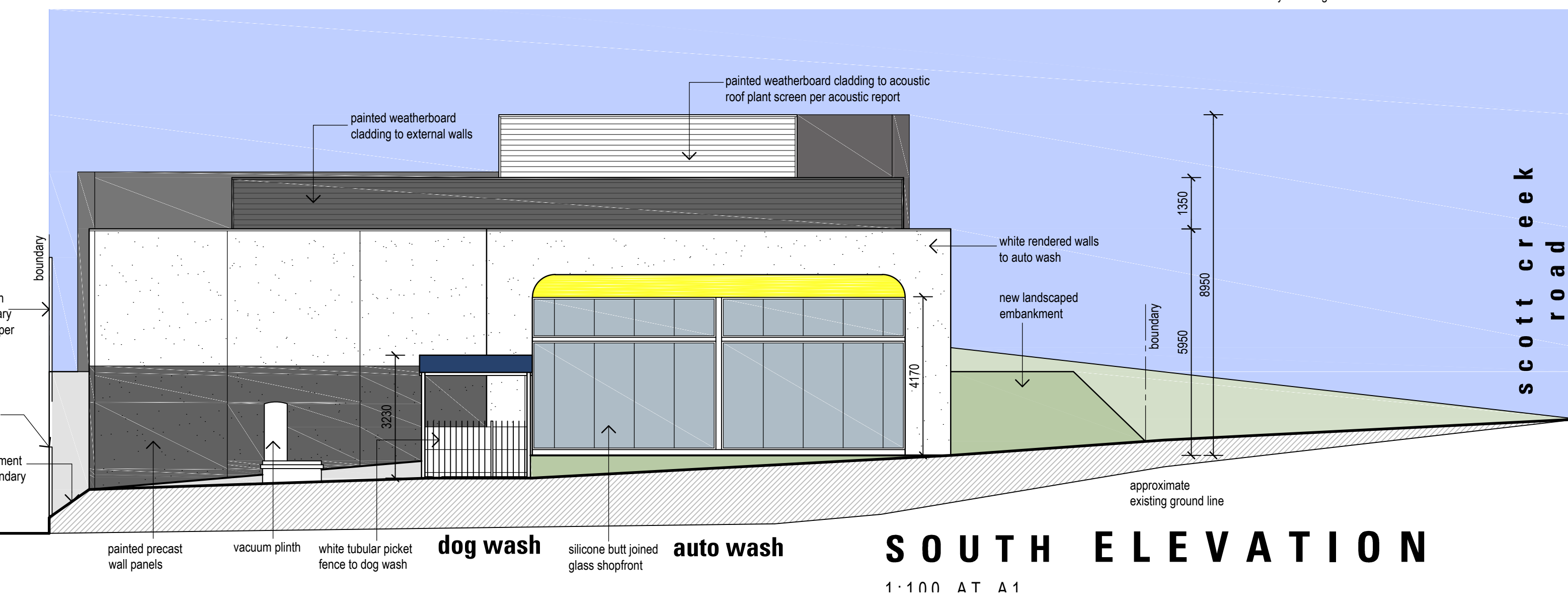
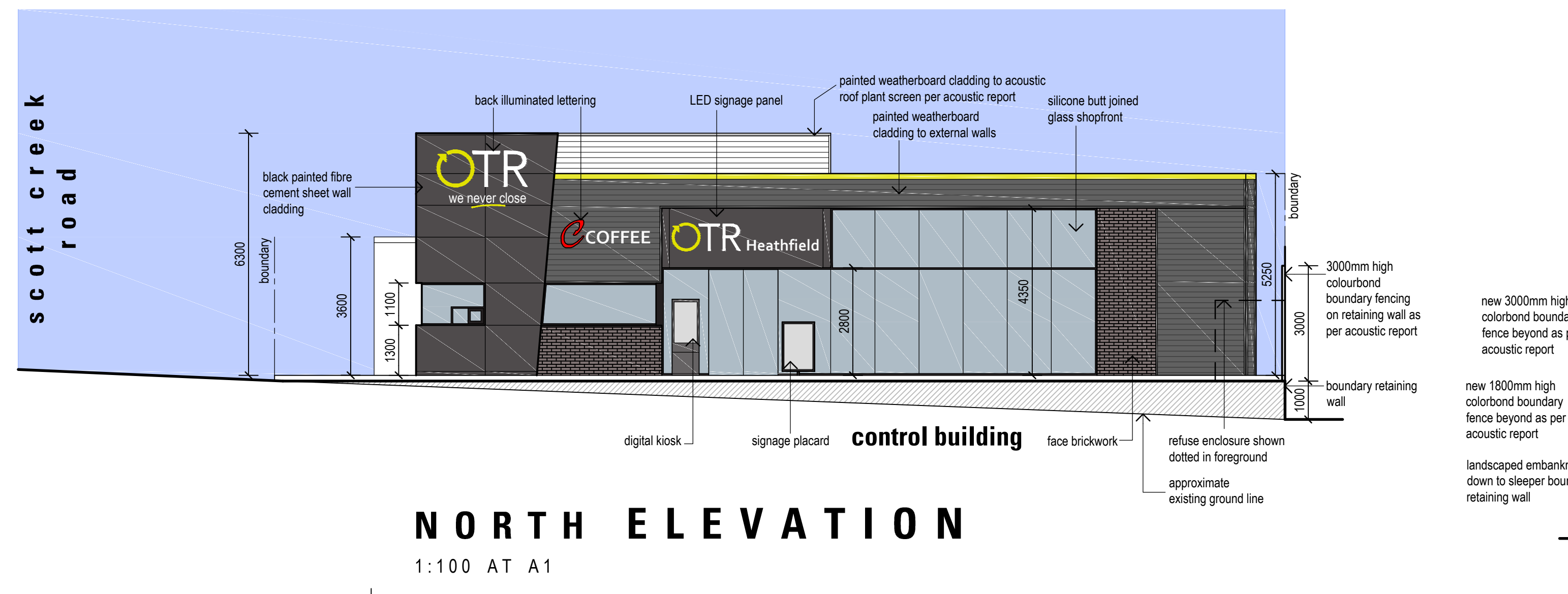
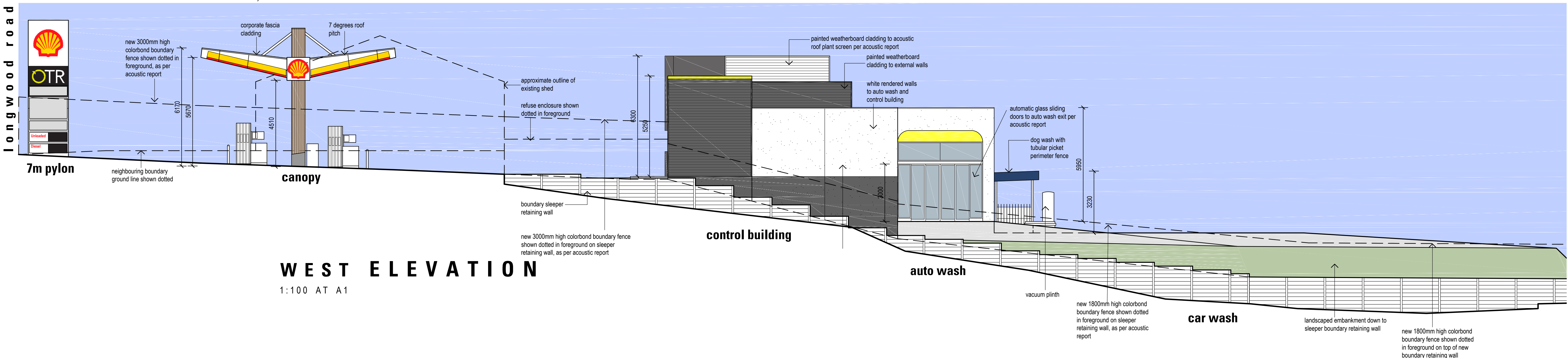
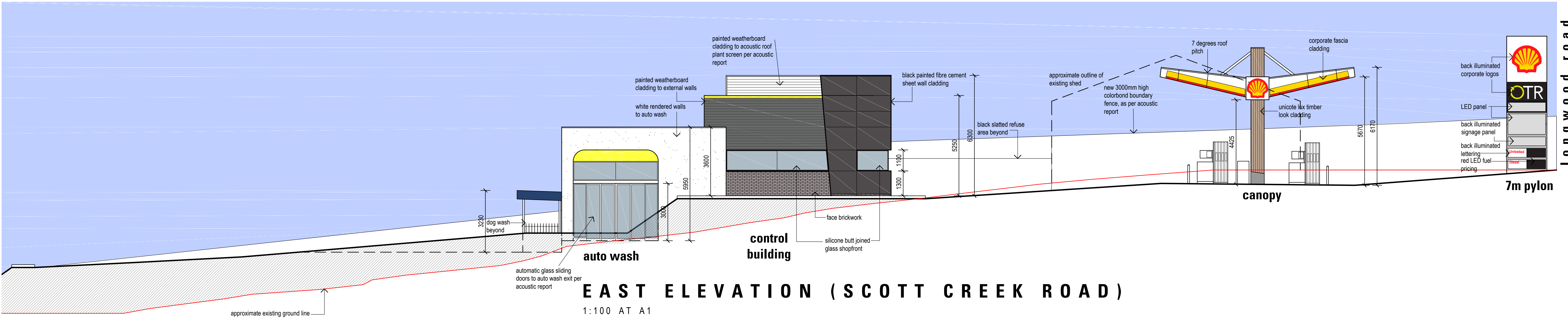


PLANNING APPLICATION

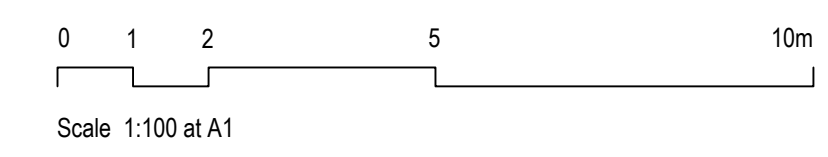
ADS Architects

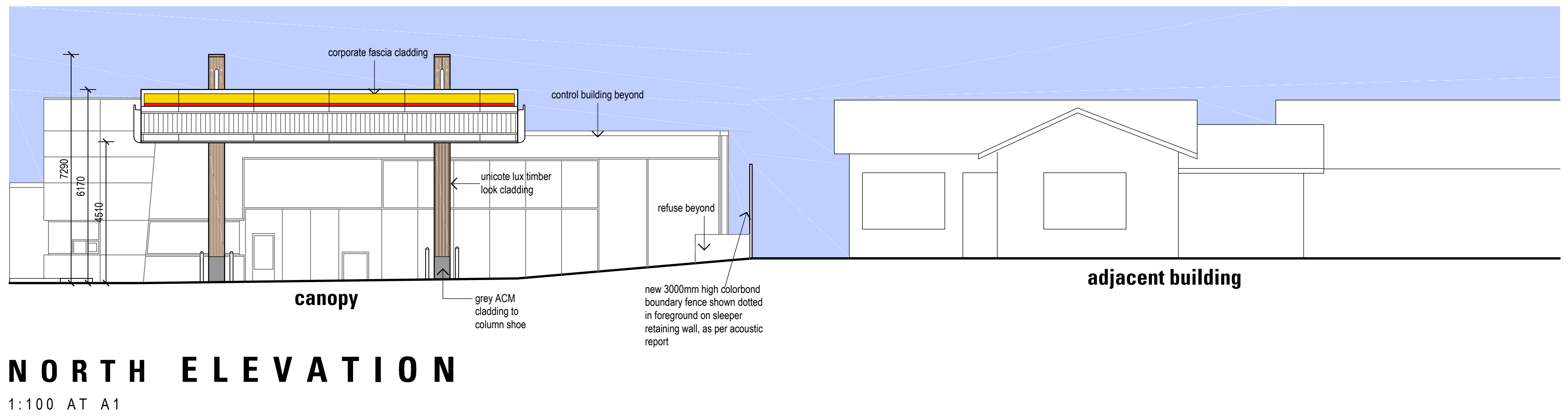
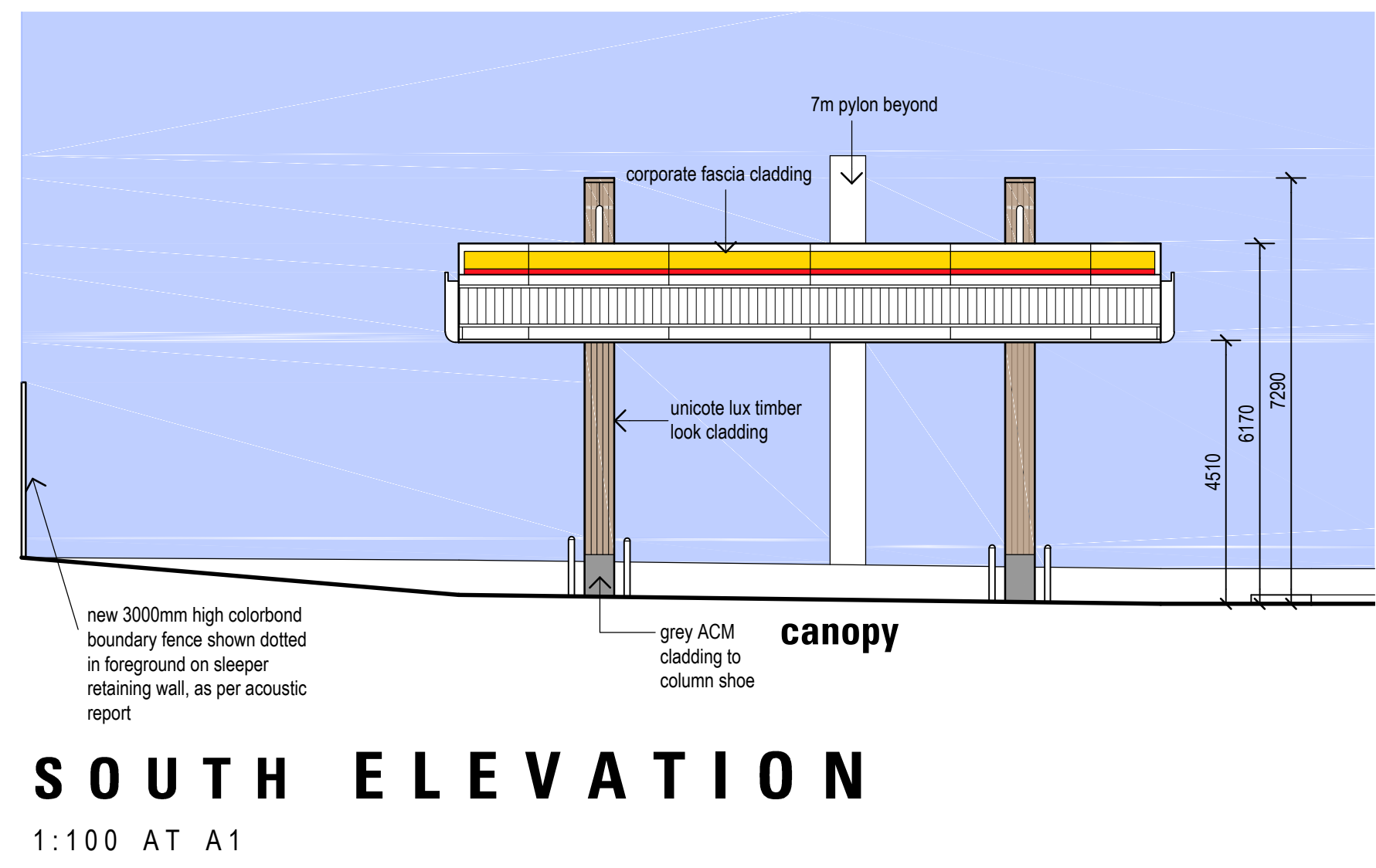
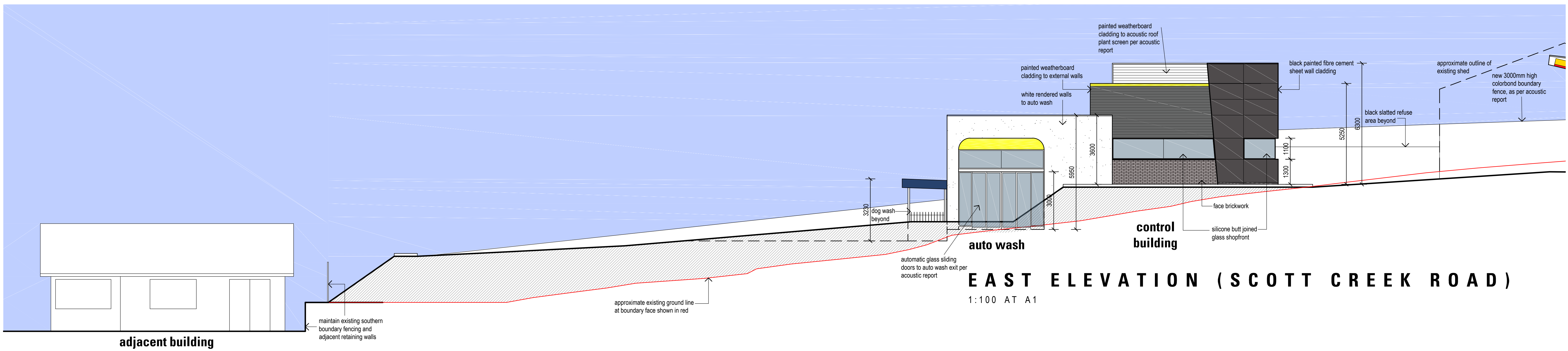
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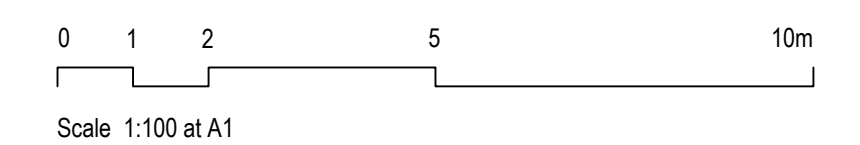
NEW SERVICE STATION COMPLEX
160 LONGWOOD ROAD, HEATHFIELD





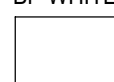






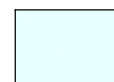

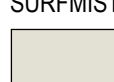
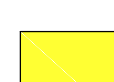
NEW SERVICE STATION COMPLEX
160 LONGWOOD ROAD, HEATHFIELD

PLANNING APPLICATION











ADS Architects
93 Gilles Street Adelaide 5000 T:82232244


COLOURS & FINISHES SCHEDULE

CONTROL BUILDING & AUTO WASH		
LOCATION	FINISHES	COLOUR
EXTERNAL WALLS	PRECAST PAINT FINISH	BP WHITE  COLORBOND MONUMENT 
	WEATHERBOARDS JAMES HARDIE PRIMELINE PAINTED	COLORBOND MONUMENT 
	FIBRE CEMENT SHEET JAMES HARDIE EXOTEC	COLORBOND MONUMENT  BLACK 
	BRICKWORK PGH MANHATTAN	BROOKLYN & TRIBECCA MIX 
WINDOWS	ALUMINIUM POWDERCOATED FRAMES	BLACK 
	LOW E GLAZING VLT ≥ 60%	GLASS 
ROOF SCREEN	WEATHERBOARDS JAMES HARDIE PRIMELINE PAINTED	BP WHITE 
ROOF	SURFMIST (OFF WHITE) SOLAR REFLECTIVE INDEX (SRI) 82	SURFMIST 
FASCIA TO AUTO WASH	PAINT FINISH	YELLOW "HAPPY WASH" BRAND COLOUR 

COLOURS & FINISHES SCHEDULE

CANOPY		
LOCATION	FINISHES	COLOUR
FASCIAS	ACM (NON PE CORE)	WHITE  RED  YELLOW  SHELL BRANDING
SOFFIT	STRAMIT MONOPANEL	COLORBOND MONUMENT 
ROOF	ZINCALUME KLIPLOK	
COLUMNS	UNICOTE	MAPLE 
	ACM (NON PE CORE)	GREY 

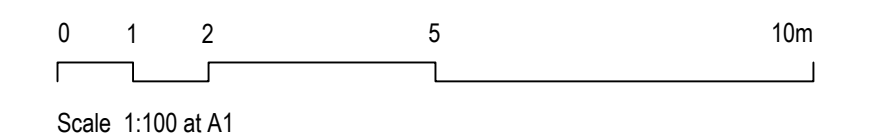
FENCING		
	CFC PAINTED FINISH COLORBOND METAL SHEETING	SURFMIST 

REFUSE ENCLOSURE		
	ALUMINIUM SLATS	BLACK 

COLOURS & FINISHES SCHEDULE

DOG WASH		
COLUMNS	PAINT FINISH	SURFMIST 
TUBULAR PICKET FENCING	COLORBOND	
FASCIA	PAINT FINISH	DOG WASH BRAND BLUE COLOUR 

NEW SERVICE STATION COMPLEX
160 LONGWOOD ROAD, HEATHFIELD



3 May 2024

Ms M Molinaro
Statutory Planner
Adelaide Hills Council

Submitted via email: mmolinaro@ahc.sa.gov.au

Dear Marie,

Compromise proposal – DA 21031284
PC Infrastructure Pty Ltd v Adelaide Hills Council Assessment Panel (ERD-23-000128)
160 Longwood Road, Heathfield (site)

We refer to the above appeal to the Environment, Resources and Development Court (**Court**) to which PC Infrastructure Pty Ltd (**Applicant**) is the Applicant for development application no. 21031284 (**application**) at the site.

This letter sets out the detail of a compromise proposal relating to the application.

Background

On 1 February 2022, the Applicant lodged the application for development described by Council as follows (**development**):

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 site is located in the Rural Neighbourhood Zone and the Adelaide Hills Sub-zone in the Planning and Design Code (**Code**).

At its meeting on 26 July 2023, the Adelaide Hills Council Assessment Panel (**CAP**) resolved that the development was seriously at variance with the Code and refused Planning Consent.

On 25 September 2023, the Applicant appealed to the Court against both the decision to refuse to grant Planning Consent, and to the extent necessary, the purported decision that the development is seriously at variance with the provisions of the Code.

Reasons for refusal

The CAP's reasons for refusal to grant planning consent for the application were on the basis that the following provisions of the Code were not satisfied:

- Desired Outcome (**DO**) 1 and Performance Outcomes (**PO**) 1.1, 1.2, 1.3, 1.4, 3.1, 4.1 and 5.1 of the Rural Neighbourhood Zone;
- DO 1 and PO 1.1 of the Adelaide Hills Sub-zone;
- PO 4.1 of the Mount Lofty Rangers Water Supply Catchment (Area 2) Overlay;
- DO 1 of the Advertisements General Development Policy;
- DO 1 and POs 3.1, 3.2, 8.1, 9.1 and 9.2 of the Design General Development Policy;
- DO 1 and POs 1.2 and 2.1 of the Interface Between Land Uses General Development Policy;
- DO 1 and POs 2.1, 3.1 and 3.9 of the Transport, Access and Parking General Development Policy.

A copy of the Decision Notification Form with expanded refusal reasons is **enclosed**.

Compromise proposal

Whilst the Applicant maintains that having regard to all relevant provisions of the Code the application should have been granted Planning Consent, having regard to the above Reasons for Refusal, a compromise proposal is submitted for the CAP's consideration (**compromise proposal**).

The application is proposed to be varied as follows:

1. The manual car wash and plant room have been removed entirely.
2. The vacuum facility has been moved away from the southern boundary and closer to the control building, and the number of vacuum bays has been reduced from 3 to 1..
3. Reduction in the hours of operation of the auto car wash from 24hrs to 7am to 10pm.
4. The area identified for landscaping (in the location of the previously proposed manual car wash and plant room) has been substantially increased.
5. Removal of the 3 metre high acoustic fence adjacent to the southern and south-western site boundaries.
6. Reduction in the height of a portion of the western boundary acoustic fence (south of the control building) from 3 metres proposed in the application to 1.8 metres in the compromise proposal, to be constructed from sheet steel with a minimum 0.35mm base material thickness (BMT), such as "Colorbond" or another material with the same or greater surface density (as recommended by Sonus in the **enclosed** updated Environmental Noise Assessment).
7. Construction of a fence on a portion of the western boundary (north of the control building) to a height of 3 metres, to be constructed from sheet steel with a minimum 0.35mm base material thickness (BMT), such as "Colorbond" or another material with the

same or greater surface density (as recommended by Sonus in the **enclosed** updated Environmental Noise Assessment).

8. Vehicle movement within the southern portion of the site has been simplified with one single 'lane' for traffic flow.

Please find **enclosed** the following documents in support of the Compromise Proposal:

1. **updated Environmental Noise Assessment** prepared by Sonus Acoustic Engineers, dated March 2024 and numbered 'S7036C3';
2. **existing site plan** prepared by ADS Architects, dated 20 March 2024 and numbered 21JN1448.1 sk01;
3. **amended site plan** prepared by ADS Architects, dated 9 April 2024 and numbered 21JN1448.1 sk02a;
4. **amended elevation plans** prepared by ADS Architects, dated 9 April 2024 and numbered 21JN1448.1 sk04a and 21JN1448.1 sk05a;
5. **colour and finishes schedule** prepared by ADS Architects, dated 20 March 2024 and numbered 21JN1448.1 sk06; and
6. **hourly sales transaction data for OTR comparison sites** prepared by PC Infrastructure Pty Ltd.

Discussion

The removal of the proposed manual car wash facility and plant room will significantly address one of the key reason for refusal, being the scale and intensity of the land use in the context of its site. This alteration to the built form will open up the southern portion of the site for additional landscaping, will reduce the need for acoustic fencing and minimise any modification of the natural appearance of the site and will address and reduce the potential for negative residential interface impacts. The reduced acoustic fencing along the western and south-western boundaries of the site are shown on the amended application drawings, as recommended and further described in the updated Environmental Noise Assessment prepared by Sonus (**enclosed**).

The resultant simplification of the vehicle movements and flow on the southern portion of the site will have a positive impact on traffic safety and vehicular access and movement generally.

The other significant variation, being the reduction in hours of operation of the auto car wash from 24 hours as originally proposed to 7am to 10pm will also address any potential for negative impact on residential amenity. This variation is proposed notwithstanding that the Applicant maintains its previous position that the 24 hour noise generating activities from the site will comply with all relevant Performance Outcomes of the Code and the EPA's Environment Protection (Noise) Policy 2007 (as assessed and confirmed by Sonus).

As a result of the variation, only the control building and the fuel bowsers will operate 24/7. The car wash, vacuum bays and dog wash will operate within limited hours from 7am until 10pm. These hours are consistent with day-time period as defined within the Environment Protection (Noise) Policy 2007.

We provide an **enclosed** spreadsheet that provides sales transaction data from 3 comparable sites within the Adelaide Hills.

This comparison provides data from OTR Balhannah, OTR Littlehampton and OTR Mt Barker Knott Street. These sites were selected due to their Adelaide Hills location and the fact that the retail component and services of the sites are reasonably equivalent to the scale and offerings of the proposed site.

A review of the comparable sales data demonstrates a significant reduction in hourly transaction averages between 11:00pm and 6.00am.

It is entirely reasonable to predict that the number of transactions between 11:00pm and 6:00am at the proposed OTR Heathfield site will demonstrate a similar or greater reduction to those currently occurring at the Adelaide Hills comparison sites. This anticipated reduction in activity, combined with the Applicant's commitment to construct and operate the site per the recommendations in the Sonus Environmental Noise Assessment, will further ensure that the development is compatible with a spacious and peaceful lifestyle and maintains and complements the residential amenity of the neighbourhood.

Existing context of site

The Applicant maintains that the Desired and Performance Outcomes of the Rural Neighbourhood Zone and the Adelaide Hills Sub-zone, and indeed the Code generally need to be applied in the context of the existing condition of the site, and its locality.

Historically the site has been used as a motor repair station and for fuel sales. The motor repair station included a substantial workshop building constructed boundary to boundary, including on its western aspect where a recently removed lean-to structure abutted the boundary in the immediate vicinity of the adjoining dwelling. The site also contained a small fuel canopy, two fuel bowsers and vehicle forecourt fronting Longwood Road. There is significant contamination associated with these historical uses of the land and while a 2019 site contamination audit concluded the land could be remediated for residential and other less sensitive uses, the costs associated with this make it unlikely.

Longwood Road is a major collector road. The site itself is at the eastern fringe of or interface of the Rural Neighbourhood Zone and except for the strip of dwellings along the southern side of Longwood Road, the site is predominately surrounded by non-residential uses including Heathfield Oval to the north, SA Water infrastructure plant and water storage tank to the east and an industrial use in the form of the Council Waste Recovery Centre and Works Depot to the South.

The CAP itself acknowledges the practical impacts these existing conditions may have on the quality of the residential amenity that is currently enjoyed in the locality. It is in this context that the compatibility of the proposed development (as now proposed to be significantly varied) must be assessed when considering the merits of the development.

The Compromise Proposal addresses the CAP's primary concerns of over-intensive development of the site and the negative impact on residential amenity. The Compromise Proposal comprises a significant paring back of the development, which results in the Applicant accommodating (to an even greater extent) the physical limitations of the site, the need to protect the existing residential amenity of the locality to the south and west and the concerns about the scale and intensity of the use.

Seriously at variance with the Code

The applicant has obtained a legal opinion in respect to the application of seriously at variance principles to the assessment of the compromise proposal (**enclosed**). Given the elements of the compromise proposal, the above analysis and the legal opinion, the Applicant is of the view that the compromise proposal is not seriously at variance with the provisions of the Code, and section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* (SA) does not prevent the Council from assessing and granting planning consent to the compromise proposal.

Conclusion

Please consider the contents of this letter (along with the enclosures) as the Applicant's Compromise Proposal. The Applicant commends the proposal to the CAP on the basis that each of the CAP's reasons for refusal have been appropriately addressed.

The Applicant would appreciate if the Compromise Proposal could be considered by the CAP at its earliest convenience. The Applicant would also appreciate the opportunity to attend at the CAP's meeting at which the Compromise Proposal is considered to present the proposal and respond to any queries.

In the meantime, please contact the writer if you have any queries or require further information.

Yours faithfully



Tim Beazley
Senior Town Planner
PC Infrastructure Pty Ltd

Enclosed: As above.

3 May 2024

Private and confidential

Tim Beazley
Peregrine Corporation
270 The Parade
Kensington SA 5068

Dear Tim

PC Infrastructure Pty Ltd v Adelaide Hills Council Assessment Panel ERD-23-000128 Compromise Proposal – Submissions on Seriously At Variance 160 Longwood Road, Heathfield

The purpose of this letter is to provide commentary as to the interpretation of the phrase '*seriously at variance*', including how it should be applied in relation to the above matter.

Summary

In our submission, and applying the principles from Court authorities, the Compromise Proposal is not seriously at variance with the relevant provisions of the Code, and must proceed to a planning assessment.

1. Background - Development Application ID 21031284

OTR 346 Pty. Ltd. (ACN 645 444 846) is the registered proprietor of the land located at 160 Longwood Road, Heathfield and comprised in Certificate of Title Volume 6003 Folio 528 (**Land**).

On 1 February 2022, PC Infrastructure Pty Ltd ACN 612 900 946 (**PC Infrastructure**) lodged development application number 21031284 seeking Planning Consent for a 24 hour retail fuel outlet with associated canopy, car cleaning and dog wash facilities, 70,000L underground fuel storage tank, pylon advertising sign (maximum height 7m), combined fence and retaining wall (maximum height 6m), internal acoustic fencing (maximum height 3m), retaining walls (maximum height 3.25m), car-parking and landscaping (**Proposed Development**) on the Land.

The Land is located in the Rural Neighbourhood Zone and the Adelaide Hills Subzone in the Planning and Design Code (**Code**).

At its meeting on 26 July 2023, the Adelaide Hills Council Assessment Panel (**CAP**) resolved that the Proposed Development was '*seriously at variance*' with the Code and refused Planning Consent. A Decision Notification Form dated 28 July 2023 was issued by the CAP (although it does not reference any decision that the Proposed Development is considered seriously at variance).

On 25 September 2023, PC Infrastructure appealed to the ERD Court against the decision of the CAP to refuse to grant Planning Consent, and the purported decision of the CAP that the Proposed Development is seriously at variance with the provisions of the Code.

2. Compromise Proposal

PC Infrastructure has redesigned the Proposed Development (**Compromise Proposal**). The Compromise Proposal includes the following modifications:

- (a) the manual car wash and plant room have been removed entirely;
- (b) the vacuum facility has been moved away from the southern boundary and closer to the control building, and reduced in operating capacity;
- (c) the area identified for landscaping (in the location of the previously proposed manual car wash and plant room) has been substantially increased; and
- (d) vehicular movement within the southern portion of the site has been simplified with one single 'lane' for traffic flow.

We understand it is PC Infrastructure's intention to lodge the Compromise Proposal for assessment by the CAP.

3. Planning and Design Code

The planning assessment report considered by the CAP at its 26 July 2023 meeting noted the following as the provisions of the Rural Neighbourhood Zone relevant to the Proposed Development:

Rural Neighbourhood Zone

Desired Outcome	
DO1	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.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
Land Use & Intensity PO1.1 & DTS/DPF1.1, PO1.2 & DTS/DPF1.2, PO1.3, PO1.4	
Building Height PO2.1	
Primary Street Setback PO3.1 & DTS/DPF3.1	
Secondary Street Setback PO4.1 & DTS/DPF4.1	
Side Boundary Setback PO5.1 & DTS/DPF5.1	
Rear Boundary Setback PO6.1 & DTS/DPF6.1	
Advertisements PO10.1 & DTS/DPF10.1	

We specifically note Performance Outcome (**PO**) 1.1, PO 1.2 and PO 1.3 of the Rural Neighbourhood Zone of the Code which provide as follows:

- PO 1.1* *Predominantly residential development with complementary ancillary non-residential uses compatible with a spacious and peaceful lifestyle for individual households.*
- PO 1.2* *Commercial activities improve community access to services are of a scale and type to maintain residential amenity.*
- PO 1.3* *Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood.*

4. Seriously at variance - meaning

In accordance with section 107 of the *Planning, Development and Infrastructure Act 2016* (SA), development that is to be assessed against the Code must not be granted planning consent if it is, in the opinion of the relevant authority, 'seriously at variance' with the Code.

The term 'seriously at variance' is not defined in the PDI Act (nor associated Regulations) and therefore guidance on interpretation of this term should most appropriately be obtained from the Court's previous consideration.

In the Supreme Court matter of *Mar Mina (SA) Pty Ltd v City of Marion* [2008] SASC 120 (**Mar Mina**) the Honourable Justice DeBelle relevantly stated:

33. *The first question is what is meant by the expression "seriously at variance". In this context "seriously" is the adverb reflecting the fourth of the meanings by which the epithet "serious" is defined in The Macquarie English Dictionary, namely "weighty or important". Thus, the expression "seriously at variance with the Development Plan" refers to that which is **an important or grave departure in either quantity or degree from the Development Plan. It denotes something which is plainly not slight or trifling.** See also *The Shorter Oxford English Dictionary*. It is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it: *Courtney Hill Pty Ltd v Planning Commission* (SA) (1990) 59 SASR 259 at 261–262.*

(Our emphasis)

In the matter of *Inglis v District Council of Grant* [2018] SAERDC 46, the Environment, Resources and Development Court of South Australia undertook a similar inquiry, citing both the Honourable Justice DeBelle judgment in *Mar Mina* and His Honour Judge Costello's judgment in *Terra Group Pty Ltd v City of Port Adelaide* [2015] SAERDC 26. More specifically, Commissioner Rumsby commented that:

97. *Costello J observed that in order for a proposal to be seriously at variance, its grave departure from the Development Plan must be readily identifiable. That is, without balancing the countervailing provisions of the Development Plan; or weighing the impact of an existing, or approved, use of the land on the achievement of the planning goals; or assessing those goals in the context of any strongly prevailing local features where at odds with those goals.*
98. *Hence, the departure from the Development Plan must be, both, of such importance as to demonstrably fail the zone and policy area intent and to be clearly so without the need to carefully weigh the circumstances or balance the planning judgment.*

These comments were repeated again by Commissioner Rumsby in *Beltrame v State Commission Assessment Panel* [2020] SAERDC 2 [105]-[109], and in *Terramin Exploration Pty Ltd v Adelaide Hills Council* [2020] SAERDC 27 [67]-[70], being a decision of Her Honour Judge Tracey, Commissioner Rumsby and Commissioner Hodgson.

Applying these authorities to both the Proposed Development and Compromise Proposal, it is clear that the Compromise Proposal cannot be considered seriously at variance with the Rural Neighbourhood Zone and the Adelaide Hills Subzone of the Code.

5. Is the Compromise Proposal seriously at variance with the Code

Neither the planning officer's assessment report considered at the 26 July 2023 CAP meeting, nor the accompanying meeting minutes, contain any discussion or consideration of whether the Proposed Development is 'seriously at variance' with the Code. Despite this, the CAP saw fit to resolve on 26 July 2023 that the Proposed Development was in fact seriously at variance with the provisions of the Code.

We consider this to be a flawed decision. In our opinion, the Proposed Development was not seriously at variance with the Code, nor did the CAP have sufficient regard to this matter to support the above mentioned determination.

It will be necessary for the CAP to consider whether the Compromise Proposal is seriously at variance with the Code.

As indicated above, the Rural Neighbourhood Zone envisages goods, services and facilities (DO1) and complementary ancillary non-residential uses (PO 1.1, PO 1.2, PO 1.3) including development such as shops (DTS/DPF 1.1). Critically, the Zone envisages commercial activities that improve community access to services (PO 1.2).

The Compromise Proposal clearly provides improved access to services for the community, and removes a number of the elements which may have caused concern to the CAP (manual wash and plant room), has moved the vacuum away from boundaries (also with reduced number of bays from 3 to 1 and the already reduced operating hours) and increases area proposed for landscaping.

Applying the concepts and principles from the relevant judicial authority extracted above, a retail fuel outlet, particularly of the modified scale proposed, does not present a grave departure from the provisions of the Rural Neighbourhood Zone, and does not demonstrably fail the intent of the Zone. Instead it clearly improves community access to services whilst being conscious to minimise impacts (if any) to residential amenity.

Respectfully, it cannot be said that the Compromise Proposal so clearly fails the intent of the Zone that it can be said to be seriously at variance with those provisions and should not be assessed. Rather, there remains a need to carefully weigh the circumstances as a matter of planning judgement.

Having regard to the nature of the development subject of the Compromise Proposal (including the significant modifications proposed), the provisions of the Code and the judicial authority noted above, the Compromise Proposal is not seriously at variance with the Code.

Please contact me should you wish to discuss the above or should you have any queries with respect to the same.

Yours sincerely

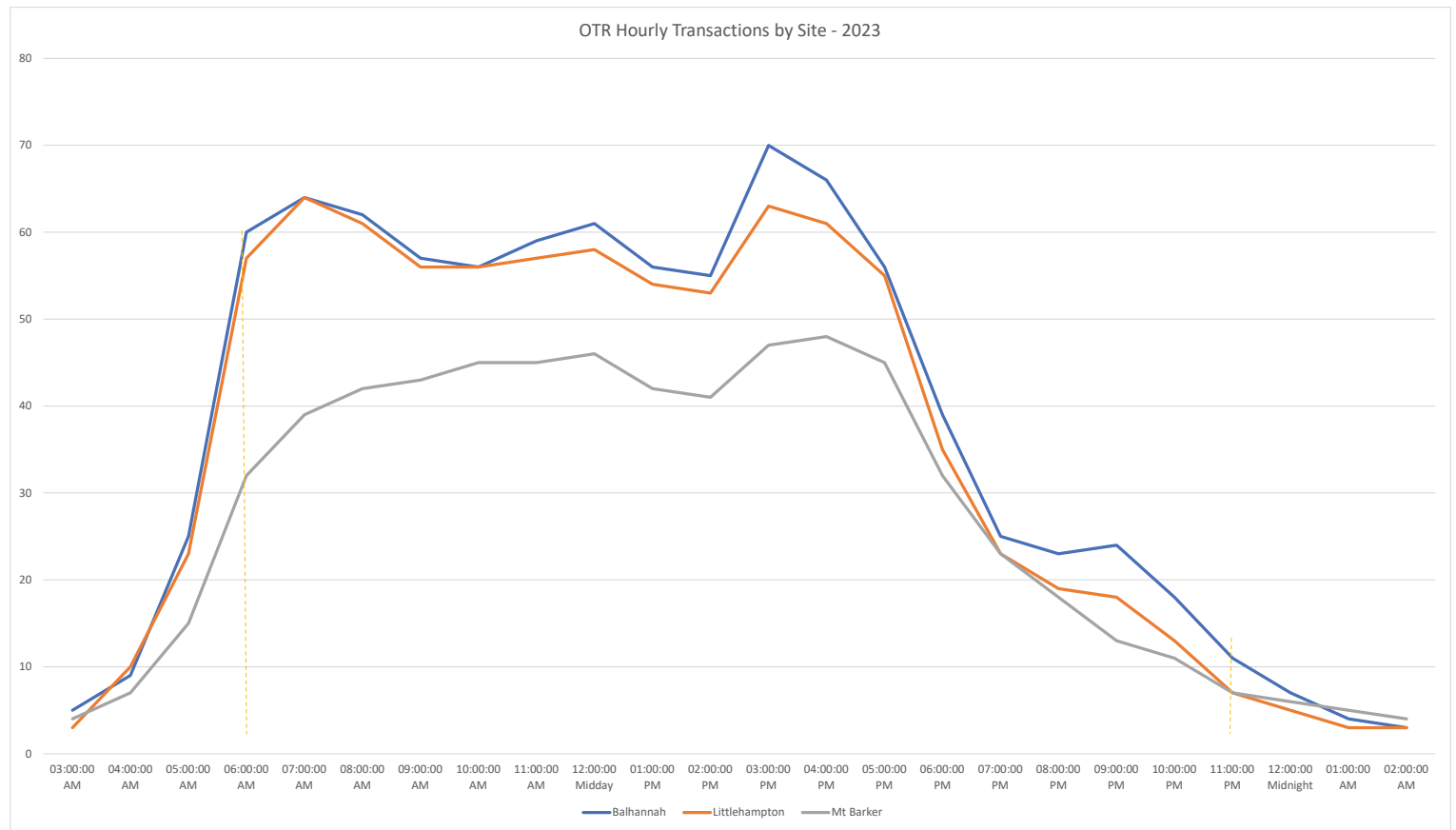


Jeremy Hill
Partner

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E: jeremy.hill@minterellison.com
OUR REF: 1463707

Hourly Transactions - 2023			
Hour	Balhannah	Littlehampton	Mt Barker
03:00:00 AM	5	3	4
04:00:00 AM	9	10	7
05:00:00 AM	25	23	15
06:00:00 AM	60	57	32
07:00:00 AM	64	64	39
08:00:00 AM	62	61	42
09:00:00 AM	57	56	43
10:00:00 AM	56	56	45
11:00:00 AM	59	57	45
12:00:00 Midday	61	58	46
01:00:00 PM	56	54	42
02:00:00 PM	55	53	41
03:00:00 PM	70	63	47
04:00:00 PM	66	61	48
05:00:00 PM	56	55	45
06:00:00 PM	39	35	32
07:00:00 PM	25	23	23
08:00:00 PM	23	19	18
09:00:00 PM	24	18	13
10:00:00 PM	18	13	11
11:00:00 PM	11	7	7
12:00:00 Midnig	7	5	6
01:00:00 AM	4	3	5
02:00:00 AM	3	3	4
TOTAL	915	857	660
11PM-6AM	64	54	48
6AM-11PM	851	803	612

% of transactions 11pm-6am	6.99%	6.30%	7.27%
% of transactions 6am-11pm	93.01%	93.70%	92.73%



OTR Heathfield

Environmental Noise Assessment

S7036C3

March 2024

sonus.

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Document Title : OTR Heathfield
Environmental Noise Assessment
Client : Peregrine Corporation Pty Ltd
Document Reference : S7036C3
Date : March 2024
Author : Chris Turnbull, MAAS

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1 INTRODUCTION

Sonus previously conducted an environmental noise assessment (the **Original Assessment**) for the proposed OTR integrated service station development at 160 Longwood Road, Heathfield. The Original Assessment was summarised in Sonus report “S7036C1”, dated December 2021. Since the Original Assessment, the proponent is now proposing to remove the manual car wash bays and one of the vacuum cleaners, and to relocate the remaining vacuum cleaner.

An updated environmental noise assessment has been performed to consider the proposed changes.

The development now comprises a service station, automatic car wash, dog wash, vacuum unit, and associated plant and equipment. The assessment considers noise levels resulting at nearby sensitive receivers from activity at the site, including:

- Car parking and refuelling activity.
- Automatic car wash activity.
- Vacuum cleaner operation.
- Dog wash operation.
- Mechanical plant operation.
- Deliveries.

The closest sensitive receivers to the site are located adjacent the western and southern boundaries of the site, and on the opposite side of Scott Creek Road to the east. An overview of the subject site and surrounding area is shown in Figure 1.

The assessment has been based on:

- *ADS Architects* drawing “21JN1448sk02g” for “NEW SERVICE STATION COMPLEX” located at “160 LONGWOOD ROAD, HEATHFIELD”, dated 1 December 2023.
- Previous noise measurements and sound power level data obtained from similar sites for plant and equipment, car parking activity, washing and vacuum activity, and fuel deliveries.



Figure 1: Subject site and locality.

2 CRITERIA

2.1 Planning and Design Code

The subject site is located within the *Adelaide Hills Council* local government area and is subject to the provisions of the *Planning and Design Code* (the **Code**) under the *Planning, Development and Infrastructure Act 2016*.

In accordance with the Code, the subject site and the closest sensitive receivers located to the south and west are within the *Adelaide Hills Subzone* of the *Rural Neighbourhood Zone*. An additional sensitive receiver is located to the east on the opposite side of Scott Creek Road in the *Productive Rural Landscape Zone*. The Code has been reviewed and the provisions considered relevant to the assessment are included in Appendix A.

Performance Outcome (PO) 4.1 of the *Interface between Land Uses* section of the Code specifically requires that noise from a development *does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers)*. The Deemed-to-Satisfy / Designated Performance Feature (**DTS/DPF**) for PO 4.1 references the *Environment Protection (Noise) Policy*. The Original Assessment was performed in accordance with the provisions of the *Environment Protection (Noise) Policy 2007*. Since the Original Assessment, the noise policy which underpinned the assessment has been superseded by the *Environment Protection (Commercial and Industrial Noise) Policy 2023* (the **Policy**), which has been used for this updated assessment.

2.2 Environment Protection (Commercial and Industrial Noise) Policy 2023

The Policy provides objective noise criteria to assess the environmental noise emissions from a proposed development. The noise criteria provided by the Policy are based on the *World Health Organisation Guidelines for Community Noise (1999)* (the **WHO Guidelines**) to prevent community annoyance, sleep disturbance and adverse impacts on the amenity of a locality. Therefore, compliance with the Policy is considered to satisfy the WHO Guidelines and the subjective requirements of the Code relating to environmental noise.

The Policy establishes goal noise levels to be achieved at sensitive receivers based on the zones in which the noise source (the development) and sensitive receivers (the residences) are located. For new developments, Part 5 of the Policy provides goal noise levels which are 5 dB(A) more onerous than those which would otherwise apply when assessed at existing noise sensitive receivers.

Based on the above, the Policy provides the following goal noise levels to be achieved at sensitive receivers in the locality:

- Within the *Adelaide Hills Subzone of the Rural Neighbourhood Zone*
 - An average noise level (L_{eq}) of 47 dB(A) during the day (7:00am to 10:00pm).
 - An average noise level (L_{eq}) of 40 dB(A) during the night (10:00pm to 7:00am).
 - A maximum instantaneous noise level (L_{max}) of 60 dB(A) during the night (10:00pm to 7:00am).
- Within the *Productive Rural Landscape Zone*
 - An average noise level (L_{eq}) of 50 dB(A) during the day (7:00am to 10:00pm).
 - An average noise level (L_{eq}) of 43 dB(A) during the day (7:00am to 10:00pm).

When predicting noise levels for comparison with the Policy, adjustments may be made to the average noise levels for each “annoying” characteristic of tonality, impulsiveness, intermittency, low frequency, and modulation of the noise source. The characteristic must be dominant in the acoustic environment and therefore the application of penalties can vary depending on the assessment location, time of day, the noise source being assessed, and the predicted noise level. The application of penalties is discussed further in the Assessment section.

3 ASSESSMENT

3.1 Noise Sources

Noise levels at sensitive receivers have been predicted based on a range of previous noise measurements and observations at similar facilities, including:

- Automatic car wash facilities
- Use of vacuum unit
- Dog wash activity
- Vehicle movements and car parking activity
- Delivery truck activity
- Mechanical plant serving the control building

The detailed design of the mechanical plant systems, including the refrigeration and air conditioning components, typically takes place after the Development Approval stage. As such, the assessment has considered typical air conditioning and refrigeration plant noise data collected from similar facilities to provide an indicative assessment. It is recommended that the assessment of mechanical plant be updated if the noise from the selected units is different to that assumed in this assessment. The assessment has been based on the following indicative equipment located on the roof of the control building:

- 1 x evaporative cooler
- 1 x amenity exhaust fan
- 1 x small freezer condenser unit
- 1 x large cool room condenser unit
- 2 x air conditioning condenser units

The sound power levels for these activities and equipment are provided in Appendix B.

3.2 Operational Assumptions

The predictions of noise from the facility have been based on the following operational assumptions for the level of activity in any 15-minute¹ period:

- During the day (7:00am to 10:00pm)
 - Continuous operation of all mechanical plant serving the control building.
 - 10 vehicles using the petrol filling stations and car parking bays.
 - A stationary vehicle idling continuously at half of the refuelling bays (while waiting to use the filling station).
 - The automatic wash bay operating for the duration of the assessment.
 - A stationary vehicle idling continuously at the automatic wash entry (while waiting to use the automatic wash bay).
 - The dog wash operating for 10 minutes.
 - Continuous operation of the vacuum unit.
 - A single fuel or goods delivery.
- During the night (10:00pm to 7:00am)
 - Continuous operation of all mechanical plant serving the control building.
 - 5 vehicles using the petrol filling stations and car parking bays.
 - A stationary vehicle idling continuously at half of the refuelling bays (while waiting to use the filling station).
 - The automatic wash bay operating for the duration of the assessment.
 - The dog wash operating for 10 minutes.
 - Continuous operation of the vacuum unit.

3.3 Recommendations

A noise model of the site and sensitive receivers has been created using *SoundPLAN* noise modelling software. The noise model considers the level of activity at the site described above, the sound power level of each source, the distance to receivers, and the effects of barriers such as fences and buildings.

¹ The default assessment period of the Policy.

Based on the noise model, without incorporating specific acoustic treatments to the site, the noise criteria under the Policy are predicted to be exceeded at sensitive receivers. Therefore, the following acoustic treatments are recommended for the site:

3.3.1 General Activity

- Play any proposed amplified music outdoors at a level which is inaudible at any sensitive receiver.
- Reduce the noise from any site equipment alarms, such as for compressed air, as far as practical and such that they are inaudible at any sensitive receiver.
- Ensure there are no irregularities on the site and all inspection points, grated trenches, etc. are correctly fixed to remove the potential for impact noise being generated when driven over.
- Construct boundary fences for the extents shown as **CYAN** and **RED** in Figure 2.
 - The fence shown as **CYAN** should be at least 3m tall. If required, this fence can utilise a cantilevered construction, provided the overall height above ground level is maintained.
 - The fence shown as **RED** should be at least 1.8m tall.
 - All fences should be constructed from a solid material such as 0.35 BMT sheet steel (*Colorbond* or similar).
 - All heights provided are from the top of any retaining walls on the site boundary.
 - All fences should be sealed airtight at all junctions, including at the ground, joins to other fences, and joins to the building.

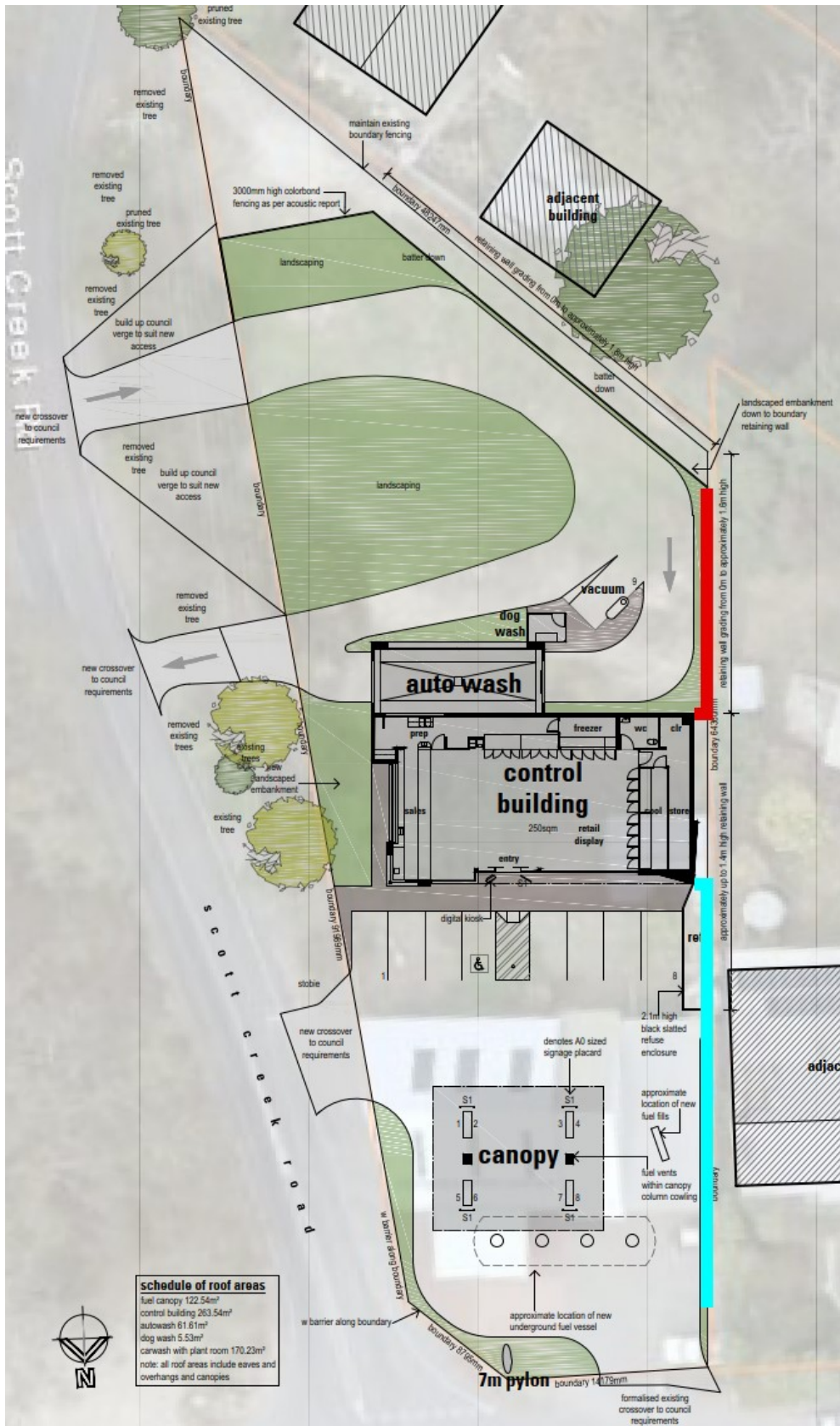
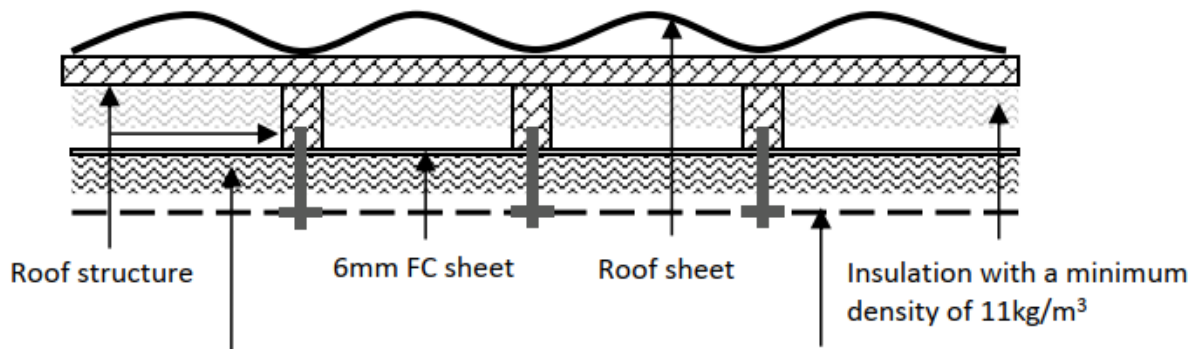


Figure 2: Acoustic barrier locations

3.3.2 Automatic Car Wash

- Ensure the car wash is fully enclosed (other than the entry and exit openings for vehicles), and the walls have a minimum surface density of at least 8 kg/m^2 (such as 6mm thick compressed fibre cement sheet or 10.38mm thick laminated glass), and seal airtight at all junctions.
- Install glass doors to the entry and exit of the car wash which automatically close during operation (i.e., close before the start of the wash cycle and do not open until the wash cycle, including any drying, has ceased). The doors should be constructed from a minimum of 10.38mm thick laminated glass (or a material with a higher surface density) and be sealed as close to airtight as possible at all junctions when closed.
- Incorporated a layer of 6mm thick fibre cement sheet (or equivalent material with a surface density of at least 8 kg/m^2) to the underside of the automatic car wash roof structure and include insulation (with a density of at least 11 kg/m^3) in the resulting cavity. In addition, incorporate acoustic absorption to the underside of the fibre cement sheet (such as 50mm thick insulation with a minimum density of 32 kg/m^3), generally in accordance with Detail 1



50mm thick acoustic insulation with a minimum density of 32 kg/m^3 . The insulation should be installed to the full extent of the ceiling. Other materials such as "Pyrotek Reapor" can be used in lieu of the insulation.

Perforated material with an open area greater than 15% spaced from the insulation as required to provide weatherproofing. Examples of the products are perforated sheet steel, slotted timber, etc.

Detail 1: Automatic car wash roof/ceiling (section view).

3.3.3 Mechanical Plant

- Incorporate an in-line attenuator to the discharge side of any significant exhaust fans if present.
- Locate the rooftop mechanical plant within the area shaded in **ORANGE** in Figure 3.
- For the extent shown as **BLUE** in Figure 3, construct a solid screen around the rooftop mechanical plant units, which extends to a height of at least 0.5m above the tallest unit. A suitable material is 0.35 BMT sheet steel (*Colorbond* or similar). Ensure that the side facing Scott Creek Road is acoustically open with either no screening or with a standard open louvre construction.
- Install acoustic absorption, such as 50mm thick insulation with a minimum density of 32 kg/m³, to the full extent of the mechanical plant side of the screen. The absorption material should be installed in accordance with Detail 2.

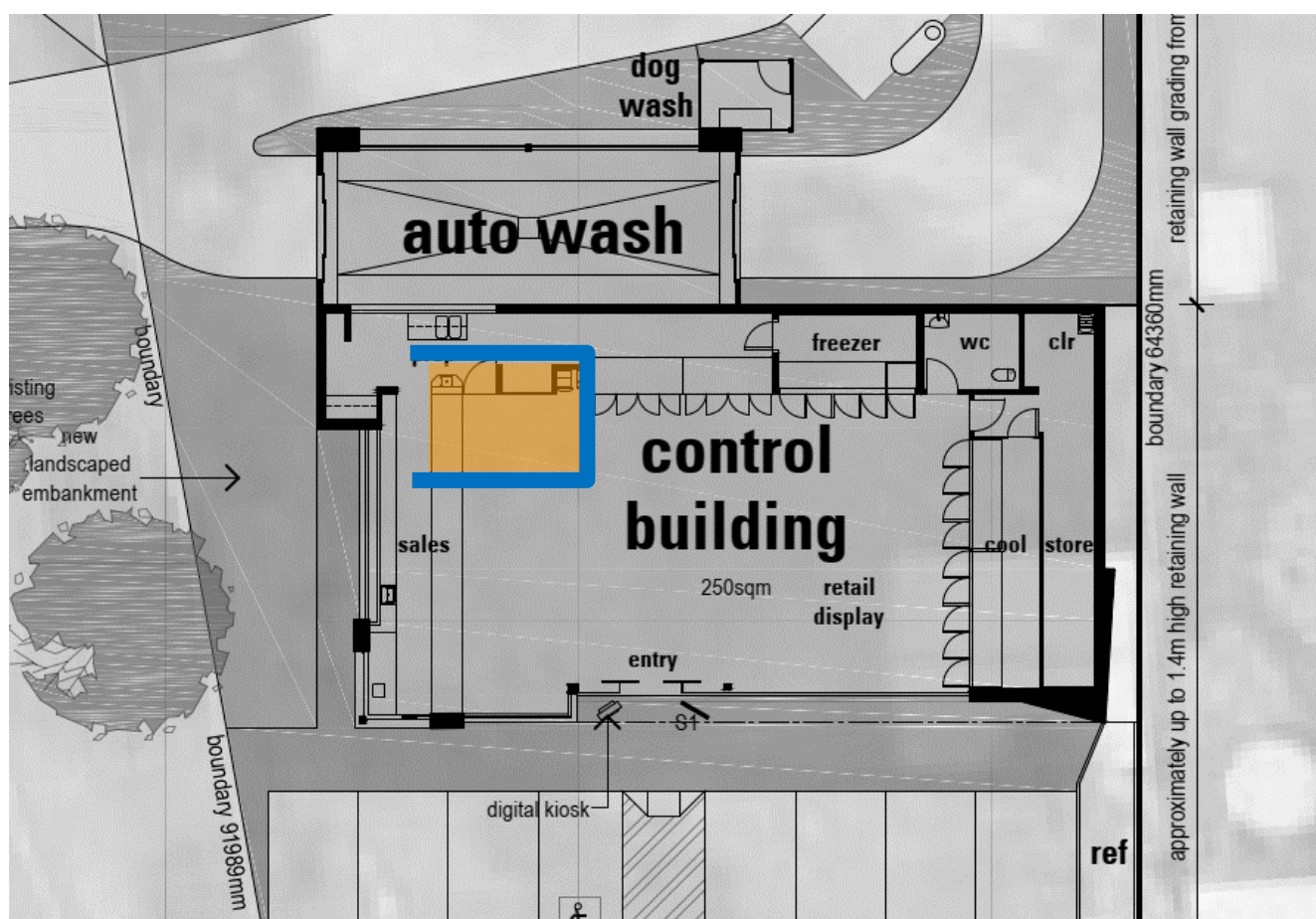
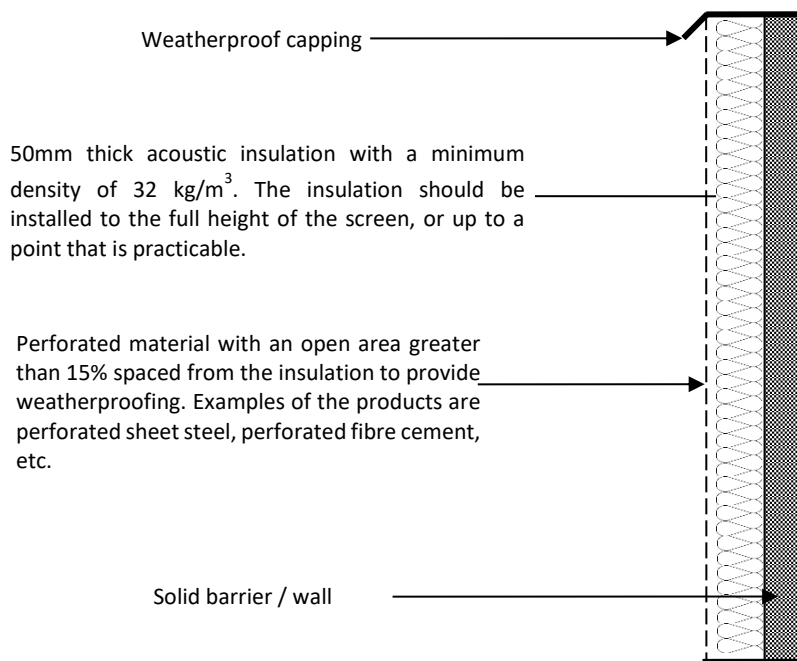


Figure 3: Mechanical plant location and treatment extent.



Detail 2: Acoustic absorption installation.

3.3.4 Fuel & Truck Deliveries

Restrict the hours of all deliveries by truck to the daytime hours of the Policy. That is, only between the hours of 7:00am and 10:00pm on any day. Deliveries required during the night time hours of the Policy (10:00pm to 7:00am) may be made with vans.

3.4 Predicted Noise Levels

Based on the assumed levels of activity and the incorporation of the recommended acoustic treatments, the predicted average noise levels (L_{eq}) at sensitive receivers will be no higher than those shown in Table 1.

Table 1: Predicted noise levels at sensitive receivers.

Sensitive Receiver Location	Period	Criterion (dB(A))	Predicted Noise Level (dB(A))
Adelaide Hills Subzone	Day	47	47
	Night	40	40
Productive Rural Landscape Zone	Day	50	41
	Night	43	40

The noise from the site is unlikely to attract any character penalties, as the noise from activity at the site is unlikely to be cyclical (required for a modulation penalty to apply), and the noise from mechanical plant will be broadband in nature and at a continuous level. Therefore, it is considered that no adjustments to the predicted average noise levels are required.

Maximum Instantaneous Noise Levels

The instantaneous noise levels (L_{max}) have also been predicted for all sensitive receivers within the *Adelaide Hills Subzone*. Predictions have been made based on measurements performed at a variety of similar sites and include short term transient events such as car doors slamming and vehicles accelerating. The highest maximum instantaneous noise level predicted for any sensitive receiver from such activity is 56 dB(A).

Based on the above, the 60 dB(A) criterion will be achieved at all sensitive receivers.

On this basis, it is considered that the noise goals of the Policy will be achieved at all sensitive receivers in the locality. Where the Policy is satisfied, it is considered that all relevant Performance Outcomes of the *Planning and Design Code* related to environmental noise will be satisfied.

4 CONCLUSION

An environmental noise assessment has been conducted for the proposed OTR integrated service station development at 160 Longwood Road, Heathfield.

The assessment considers noise at the surrounding sensitive receivers from operation of the automatic car wash facilities, vacuum operation, dog wash operation, mechanical plant operation, vehicle movements, car park activity, deliveries, and rubbish collection.

The predicted noise levels from the development will achieve the relevant requirements of the *Environment Protection (Commercial and Industrial Noise) Policy 2023*, subject to the incorporation of the acoustic treatments recommended in this report, including:

- Constructing specific boundary fences.
- Restricting the times of deliveries to the day period of the Policy (7:00am to 10:00pm).
- Incorporating doors to the entry and exit of the automatic car wash.
- Incorporating absorptive material and specific roof structure to the automatic car wash.
- Reducing the noise from any alarms as far as practical.
- Ensuring all inspection points, grated trenches, etc. are correctly fixed.
- Screening of the mechanical plant.
- Installing absorption material to the mechanical plant screen.

Based on the assessment, the proposed development will *not unreasonably impact the amenity of sensitive receivers*, thereby achieving the relevant provisions of the South Australian *Planning and Design Code* related to environmental noise.

APPENDIX A: PLANNING AND DESIGN CODE – RELEVANT PROVISIONS

Part 4 – General Development Policies – Interface between Land Uses

Desired Outcome	
D01	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
General Land Use Compatibility	
<p>PO 1.2</p> <p>Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.</p>	<p>DTS/DPF 1.2</p> <p>None are applicable.</p>
Activities Generating Noise or Vibration	
<p>PO 4.1</p> <p>Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).</p>	<p>DTS/DPF 4.1</p> <p>Noise that affects sensitive receivers achieves the relevant Environment Protection (Noise) Policy criteria.</p>
<p>PO 4.2</p> <p>Areas for the on-site manoeuvring of service and delivery vehicles, plant and equipment, outdoor work spaces (and the like) are designed and sited to not unreasonably impact the amenity of adjacent sensitive receivers (or lawfully approved sensitive receivers) and zones primarily intended to accommodate sensitive receivers due to noise and vibration by adopting techniques including:</p> <ul style="list-style-type: none"> (a) locating openings of buildings and associated services away from the interface with the adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers (b) when sited outdoors, locating such areas as far as practicable from adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers (c) housing plant and equipment within an enclosed structure or acoustic enclosure (d) providing a suitable acoustic barrier between the plant and / or equipment and the adjacent sensitive receiver boundary or zone. 	<p>DTS/DPF 4.2</p> <p>None are applicable.</p>

APPENDIX B: SOUND POWER DATA

Activity		Sound Power Level [dB(A)]
Car Park Activity	General activity	83
	Idling car	75
	Moving car	82
	Car accelerating (L _{max})	93
	Car door slam (L _{max})	96
Washing	Automatic wash – wash cycle	87 (internal sound pressure level)
	Automatic wash – dry cycle	92 (internal sound pressure level)
Vacuum units	Vacuum unit – loaded	82
	Vacuum unit – unloaded	76
Dog wash	Dog wash unit – high	84
	Dog wash unit – low	80
Mechanical Plant	Air conditioning condenser unit	76
	Freezer condenser unit	75
	Evaporative cooler	80
	Cool room condenser unit	80
	Amenity exhaust fan	67