

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

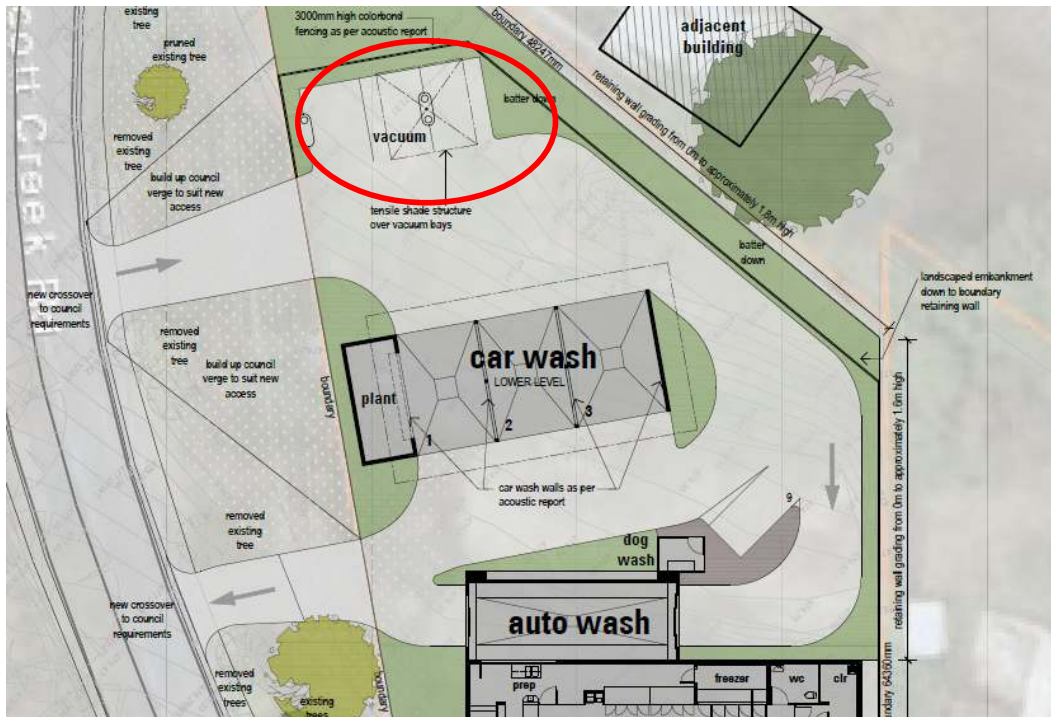


Removal of manual car wash on compromise proposal

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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

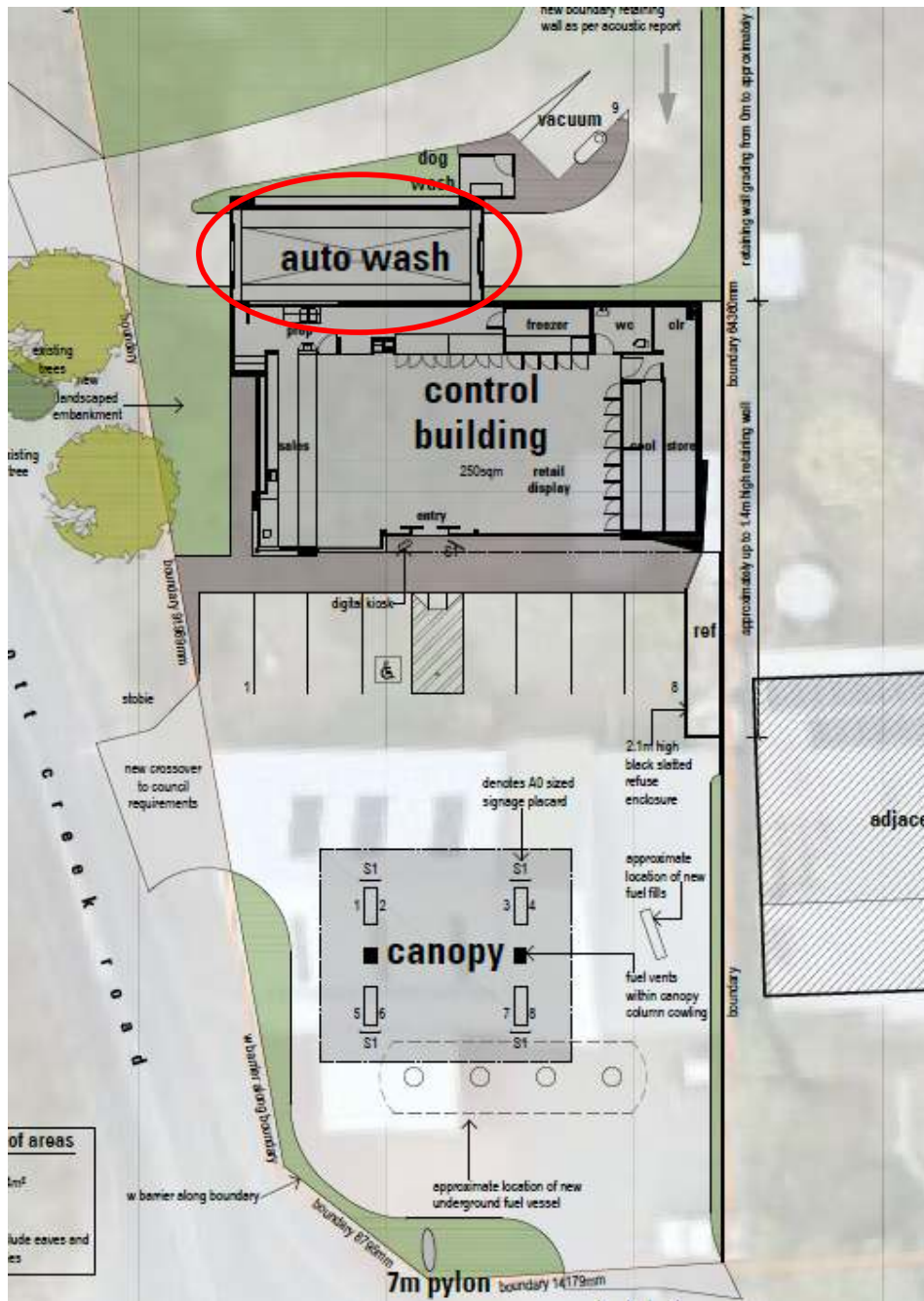


Relocated vacuum bay on compromise proposal

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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).

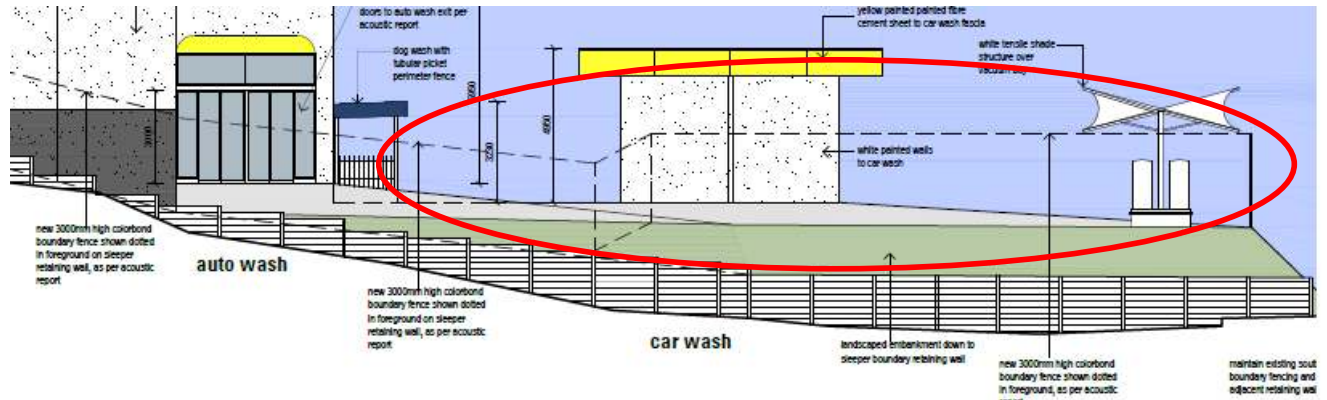


Area of acoustic fence which is proposed to be removed

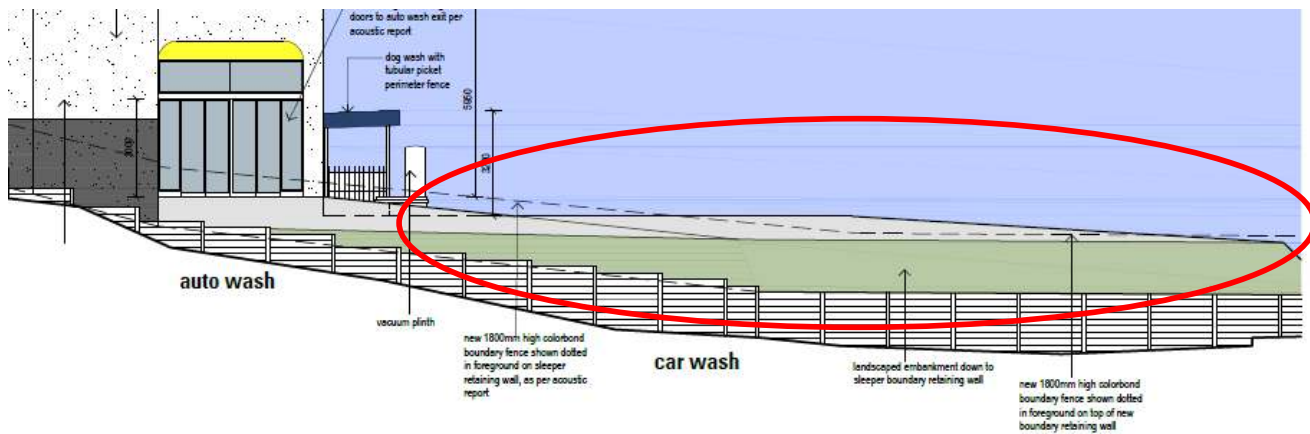
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- Reduction of the three metre high acoustic fence to 1.8m on the western boundary; except in the location forward of the control building where portion of the fence will transition in height from 3m to 1.8m on top of retaining walls.



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