

COUNCIL ASSESSMENT PANEL MEETING
12 December 2018
AGENDA – 8.1

Applicant: Critical Path Pty Ltd	Landowner: Cudlee Creek Property Pty Ltd
Agent: Adelaide Hills Development Services- Peter Meline	Originating Officer: Sam Clements
Development Application:	16/625/473
Application Description: Change of use from cold stores to light industry - micro-brewery (150kL per annum), micro-distillery (10kL per annum), & shop (sales & tasting outlet), including alterations & additions to the existing buildings, attached deck & screen (maximum height 2.4m) water storage tanks (5 x 24kL & 1 x 48kL), outbuilding (storage shed), verandah (gazebo), footbridge, masonry pillars (maximum height of 2.2m), gates (maximum height 2.4m), associated car park, landscaping, retaining walls (maximum height 1.6m) & earthworks (non-complying)	
Subject Land: Lot:19 Sec: P6119 FP:31343 CT:5329/403	General Location: 2329 Gorge Road Cudlee Creek Attachment – Locality Plan
Development Plan Consolidated : 28 April 2016 Map AdHi/3	Zone/Policy Area: Watershed (Primary Production) Zone
Form of Development: Non-complying	Site Area: 5913m ²
Public Notice Category: Category 3 Non Complying Notice published in The Advertiser on 29 June 2018	Representations Received: 5 Representations to be Heard: 3

1. EXECUTIVE SUMMARY

The purpose of this application is to change the use of a cold store building to a micro-brewery (150kL per annum) and micro-distillery (10kL per annum) with an associated shop (sales & tasting outlet), various alterations and additions to the existing buildings and construction of an outbuilding, car park and retaining walls.

The subject land is located within the Watershed (Primary Production) Zone and the proposal is a non-complying form of development. Five representations in opposition were received during the Category 3 public notification period. Of these, three have elected to be heard.

While the proposal seeks to develop a very sensitive site due to its proximity to the Torrens River, the design of the waste control and stormwater management systems ensures that the proposal will not increase water quality risk to the Mount Lofty Ranges Watershed. The proposal results in a number of improvements to the site, namely the appearance of the land and buildings, stormwater treatment, wastewater management, access arrangements, car parking and traffic safety. The industry (micro-brewery and distillery) proposed will support primary production and the development will further promote the region and the Council area as a tourist destination, and create additional employment opportunities. Whilst the proposal does result in the removal of two native trees, their removal allows for safer egress to be achieved and an effluent disposal

area that is appropriately setback from the watercourse. The proposal involves a number of measures to mitigate impact to adjacent residential properties from odour and noise.

As per the CAP delegations, the CAP is the relevant authority for applications where representors wish to be heard.

The main issues relating to the proposal are impact on native vegetation, water quality and amenity impacts. The primary amenity impacts of concern are odour and noise. The proposal includes a number of measures to ensure these issues are not detrimental to the amenity of the locality.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel (SCAP) be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Change of use from cold stores to light industry- micro-brewery (150kL per annum), micro-distillery (10kL per annum) and shop (sales & tasting outlet). This translates to an average of 1200L/day for the micro-brewery and 640L/day for the micro-distillery
- The combined maximum tonnage of barley malt to be processed per year is 50 tonnes (390kg per 1200L brew)
- The micro-brewery and distillery is to be located in the western building. The micro-brewery is proposed in the northern portion and the micro-distillery in the southern portion of this building. A laboratory and office is to be located in the enclosed lean-to on the southern side of the building
- The shop is proposed to have maximum capacity of 50 patrons and three staff at any one time. The main internal area of the shop is to have a floor area of 174.56m², with the total gross leasable area of the shop being 513m² including the deck, verandah, office, mezzanine and balcony areas.
- Alterations and additions to the existing buildings, namely:

Eastern building

- An 'eye lash' style verandah covering the upper level balcony (86m²) and covered area on the ground level (86m²) below the balcony
- A ground level deck (122m²)
- An upper mezzanine level within the eastern building. This upper level is to be used as an office of 22.8m² and an internal hallway (use not specifically detailed) of approximately 21m², which provides access to the upper level balcony
- The inclusion of various openings for windows and doors
- Inclusion of a red brick parapet to conceal the roof of the existing building
- Exterior upgrades, including cement render, red brick quoins, timber cladding and stone cladding

Western building

- The inclusion of new openings for doorways and additional windows
- Exterior upgrades, including cement render, red brick quoins, timber cladding and stone cladding
- A 60m² addition on the western side of the building for storage purposes and a 19m² verandah on the southern side of this addition

Canopy attached to the Western building

- Red brick pillars with a brick and stone clad archway on the southern elevation
- Wrought iron gates with a maximum height of 2.5m on the southern and eastern sides
- A number of water storage tanks, namely five 24,000L, one 48,000L and five 5000L tanks
- An outbuilding with canopy, to be used as a storage shed to store equipment to maintain the property/garden. The outbuilding is 42m² including the lean-to
- A freestanding verandah (gazebo)
- A footbridge that provides pedestrian access across the vegetated swale and bio-retention basin
- Masonry pillars with a maximum height of 2.2m located at the entrance and exit the site and associated with the fence around the southern and eastern ends of the breezeway
- Two sets of wrought iron gates with a maximum height 2.4m on the southern and eastern side of the breezeway
- Associated car park featuring 25 spaces, including one space for the use of persons with a disability. The car park area also includes a bicycle parking area.
- Associated landscaping including a terraced lawn and garden beds areas
- Retaining walls to a maximum height of 1.6m. These walls are associated with the terraced landscaped outdoor areas and the terraced areas to the south of the eastern building, namely a paved loading/unloading area, a paved area where the waste control systems are to be located and a wastewater surface irrigation area of 68m²
- Associated earthworks
- The hours of operation are:
 - Shop and ancillary office:
Wednesday and Thursday - 11am to 6pm
Thursday and Friday - 11am to 10pm
Saturday - 9am to 10pm
Sunday - 9am to 8pm
 - Micro-brewery and micro-distillery, and ancillary offices:
Monday to Friday - 7am to 6pm
 - Deliveries:
Monday to Friday - 7am to 12pm

- Acoustic treatments to the buildings, including a 2.4m high noise barrier on the western side of the deck and operational restrictions as recommended by the consultant Acoustic Engineer
- Twelve ancillary special events. These special events are to include events such as weddings and are to be held within the hours of operation and within the capacity restriction (50 persons)

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

3. BACKGROUND AND HISTORY

There have been no previous approvals on the land. There has only been a withdrawn application for a dwelling and a refused application (due to lack of supply of information) for a change of use to shop and demolition of the west facing lean-to and landing.

The original proposal lodged with Council was for:

Change of use to brewery & distillery, cellar door, function centre & restaurant, including alterations and additions to existing building & construction of four tourist accommodation units, carpark, water storage tanks, decks & associated earthworks (non-complying)

The Council administration advised the applicant that it was unlikely to proceed to an assessment and requested that the proposal be ‘scaled back’ considerably, specifically the wastewater generation on the site be reduced and the number of proposed land uses be reduced. Informal advice was also sought from the EPA and they ratified the Council administration concerns with the proposal.

The following amendments were then made to the proposal:

- The two bedroom tourist accommodation unit was removed (three one bedroom units remained as part of the proposal)
- The function centre (hosting of regular functions/events) and restaurant uses were removed
- The number of Rhizopods required was reduced and the waste treatment system was relocated to the western side of the site to achieve more than a 50m setback from the watercourse
- The wastewater load was reduced from a design level of 2000L/day to 1200L/day (40% reduction)
- Reduction in the maximum capacity of the cellar door from 75 to 50 persons

Despite the amendments, the Council administration still considered the proposal to be an overdevelopment of the site and that the development did not minimise the risk of pollution to the Watershed. The applicant was advised that Council was still not likely to resolve to proceed with an assessment of the amended proposal and a meeting with the Council administration, the applicant and the EPA was held. It was reiterated in this meeting that the

proposal should be scaled back to achieve wastewater generation similar to that of the historical land use (cold stores).

The following amendments were then made:

- All tourist accommodation was removed from the proposal
- Relocation of the septic tank and aerobic wastewater treatment system to the front of the property
- Introduction of a small surface wastewater irrigation area at the front of the property that is 50 metres from the watercourse.
- The reduced wastewater load enabled surface irrigation for general wastewater and for the Rhizopods to only be used for treatment of production waste
- The overall wastewater load per day was reduced from 1200L (2000L original proposal) to 400L/day (80% reduction). It is predicted that the cold stores when at its peak operation in the 1970s and 1980s has a peak design flow rate of 580L/day.

The Council administration agreed to proceed to assessment with the amended proposal.

4. REFERRAL RESPONSES

- **EPA**

Given the proposed uses are not activities of environmental significance (small-scale uses below the relevant thresholds), this referral response is for 'regard.'

In their first response the EPA requested additional information as summarized below:

- Confirm how the Rhizopod system would be installed and the total capacity of the water storage in this system
- Confirm the proposed capacity sought for approval of all the tanks in the wastewater system
- Provide clarification regarding the design volume of the system and input and output of the system
- Confirm how many pumps outs are expected in the first three years while the vegetated canopy develops
- Provide details of the average lifespan of the bamboo plantings and whether soil would require replacing after a certain duration
- Provide litres per day for cellar door staff
- Confirm that the two waste systems would be kept separate and the sewerage waste water design volumes
- Confirm the wastewater calculations accurately reflect all staffing levels and the disposal area required. Clearly show all the irrigation areas
- Indicate where soil sampling occurred on the site

The applicant responded to each of these points in detail and this was provided to the EPA.

The EPA response is very comprehensive and addresses water quality impacts from the proposed land uses from both stormwater and wastewater management perspectives.

At Council's request, the referral response also provides informal advice in relation to noise and odour.

The referral response concludes that provided the proposed development is undertaken in accordance with the submitted documents and recommended conditions, the brewery and distillery activity is unlikely to cause unacceptable impacts to water quality within the Mount Lofty Ranges Water Protection Area.

Six conditions and three notes have been recommended by the EPA (refer conditions 25-30 and note 4-6).

- **DPTI- Transport Assessment**

The department does not object in-principle to the proposed access arrangements and have recommended that the following matter be addressed in any approval granted:

- The access point should be sealed from the road edge to a point at least 10 metres from the edge of the sealed carriageway
- Signage and/or line marking should be utilised to reinforce the desired flow of traffic to, from and through the site
- Given the medium rigid vehicle (MRV) would need to manoeuvre with an area immediately adjacent the ingress, it is recommended that the access for this class of vehicle be permitted outside of peak operating times for the cellar door component of the development

Five conditions have been recommended by DPTI (refer conditions 3-6 and condition 8).

- **AHC EHU**

Council's Environmental Health Officer has granted pre-approval to install two waste water treatment systems (refer 18/W069/473).

- 1) **Production Waste**

The micro-distillery and micro-brewery waste is to be held within a brewing and distillation waste tank, which feeds into a dosing or neutralisation tank (5000L) and then onto a balance tank. The 3000L balance tank was approved by SA Health. The waste water flow from the balance tank is irrigated into the planted Rhizopods (minimum of 4 and up to 6 pods).

- 2) **Cellar Door Waste**

The cellar door waste is to be treated by an aerobic waste treatment system with a 58m² sub-surface disposal area.

The above responses are included as **Attachment – Referral Responses**.

5. **CONSULTATION**

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Five (5) representations in opposition to the proposal were received. Of these, three are requesting to be heard by the CAP. All were from nearby properties.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Ian and Susan Baines	6 Gould Place Cudlee Creek	Personally
William and Margaret Duggan	2323 Gorge Road Cudlee Creek	Personally
John Freeman	2302 Gorge Road Cudlee Creek	Personally

The applicant and his representative, Peter Meline, may be in attendance.

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

- Noise impacts from music, vehicle movements and patrons
- Wastewater odour
- Light pollution from the car park
- Land area detailed is incorrect
- Traffic safety issues due to intoxicated drivers leaving the venue
- Traffic congestion
- Ability to sell their property in the future (not a planning consideration)
- Increased stress and mental anguish
- The proposal is near the Cudlee Creek Conservation Nature Reserve. The development could impact on the environment and therefore the habitats of the fauna within this reserve
- There is already a pub and café within Cudlee Creek
- The hours of operation proposed
- Pollution to the Torrens River
- Confirmation that the waste control system proposed is suitable for the proposed capacity
- No functions should be allowed and music should only be allowed between the hours of 9am to 6pm
- The Rhizopod system will struggle in this heavily shaded area
- The effluent disposal area is a low lying area of the allotment

These issues are discussed in detail in the following sections of the report.

Copies of the submissions are included as **Attachment – Representations** and the response is provided in **Attachment – Applicant's Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

- The Site's Physical Characteristics
The subject land is located on the northern side of Gorge Road at Cudlee Creek, opposite the intersection with Cudlee Creek Road. The site has an area of 5913m² and contains the vacant Cold Store buildings with a covered breezeway separating the existing buildings. There was historically an access point into the canopy area between the buildings and there is also another crossover approximately 20m to the

east. There are still concrete pathways and aprons in the eastern front portion of the site. The River Torrens flows through the rear portion of the property and a section of the land is affected by the 1:100 year ARI flood zone. The site is relatively level due to historical modification of the land form, but slopes dramatically down to the river.

ii. The Surrounding Area

The surrounding locality comprises a number of rural living allotments to the south east of the subject land, along Gould Place, and directly to the west on adjacent land at 2323 Gorge Road. The closest dwelling is setback approximately 9 metres from the western boundary of the subject land. Freshford Nurseries are located on the south western corner of the Gorge Road and Cudlee Creek Road intersection, diagonally opposite the subject land. The Cudlee Creek Café is approximately 225m to the west of the subject land. On the northern side of the River Torrens is a large rural land holding, which is used for livestock grazing and there is a dwelling on the other side the ridgeline. The Cuddle Creek Conservation Reserve is 375m to the west of the subject land.

iii. Development Plan Policy considerations

a) *Zone Provisions*

The subject land lies within the Watershed (Primary Production) Zone and these provisions seek:

- The maintenance and enhancement of natural resources, amenity and landscape of the south Mount Lofty Ranges
- Enhancement of water quality in the Mount Lofty Ranges Watershed
- Development of a sustainable tourism industry

The following are considered to be the relevant Zone provisions:

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

PDCs: 1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 31, 32, 42, 44, 56, 57, 58, 59, 60, 61, 62, 67 & 68

Accordance with Zone

The proposal should enhance the natural features of Mount Lofty Ranges (MLR) Watershed as a region as the appearance of the site will be enhanced. Given the site is intended to be a tourist attraction the appearance of the grounds is of importance. The overgrown areas of the site will be cleaned up and the existing concrete aprons will be removed and replaced with a gravel car park and well landscaped grounds. The proposal is sufficiently consistent with Objective 1.

Whilst the proposal does result in the removal of two native trees and will likely result in some root zone impact to other native vegetation, the proposal minimises native vegetation clearance as it utilises existing buildings and cleared areas. The proposal is inconsistent with Objective 4.

The proposal will provide a tourist development that will allow visitors to appreciate the natural beauty of this locality and the upgraded site and therefore will enhance the amenity of the locality and the area for the enjoyment for visitors. Whilst there

will some amenity impacts to residents in this locality, which may impact on the enjoyment of this area as place to live, these impacts are not unreasonable. The proposal seeks to minimise these impacts, with modest hours of operation, acoustic treatments and odour control measures. The proposal will upgrade the site with new waste control and stormwater water quality treatment systems (filters within sumps, a grassed swale and bio-retention basin) that would be an improvement compared with the recommencement of cold storage operations on this site, with no upgrades. As confirmed by the EPA, the proposal will not increase water quality risk to the MLR Watershed. The proposal is sufficiently consistent with Objectives 2, 3, 5 and 6.

Form of Development

The proposal seeks to reuse cold storage buildings as a micro-brewery, micro-distillery and tasting outlet. The proposal involves significant upgrades to these buildings to enhance their appearance in the locality. The alterations and additions will add different materials to the external walls, articulation with the inclusion of additional openings, a parapet, verandah, deck and balcony. As the site has been unutilised for some time, the proposal will also enhance and soften the grounds around the buildings with landscaping. The existing buildings are not set well back from the road, and based on this, the minimal building setback of the additions is considered appropriate as they maintain a consistent building line. The existing buildings are not screened by vegetation, but the proposal includes landscaping in these front yard areas. The existing buildings are not low profile, but the external alterations will reduce their mass and bulky appearance. The state of the buildings currently detracts from the natural character of Zone. The proposed alterations will be not be obtrusive and they will improve the appearance of these buildings. The proposal is considered to be consistent with PDCs 1, 2 and 11.

The proposed waste control systems have been determined by the Environmental Health Team of Council and the EPA to be suitable. Therefore, these systems should safely and efficiently treat both production and general effluent on the site and not pollute the watercourse on the subject land (Torrens River). The proposal includes a number of water storage tanks for water re-use in the shop (tasting outlet). A water balance model has been provided due to the site's sole reliance on rainwater and to demonstrate that sufficient water supply for the uses has been carefully considered. The storage of refuse and bins is proposed to be located in a screened location on the site. The proposal accords with PDC 3.

The proposal will result in structures being located closer than 25 metres to a watercourse. The deck, the retaining walls associated with the terraced/landscaped areas and the gazebo structure are all within 25 metres of the watercourse. However, these structures are outside of the flood plain and therefore should not be at risk of being damaged from inundation. Provided these outdoor areas are appropriately managed these reduced setbacks should not significantly increase water quality risk. None of the fencing proposed as a perimeter between these outdoor areas, including the car park, is within the flood plain and this fencing is therefore not development. The proposal is partly inconsistent with PDC 4.

The proposed enclosed addition to the existing western building is located to the side of that building. The open additions, such as the balcony, verandah and deck are located on all sides of the eastern building, including the front. As these elements add

articulation and they are no further forward than the existing western building, this is not considered to be an issue. The proposal is considered to be mostly consistent with PDC 7.

The number of outbuildings is limited to one building to store the gardening and maintenance equipment. The proposal accords with PDC 8. The plant selection has not been detailed on the site plan, but this landscaping will soften the appearance of the car park and the buildings. Whilst not likely to be native plantings, the proposal is still considered to be sufficiently consistent with PDCs 10 and 11.

The proposed shop (tasting outlet) is not an ancillary element to the agricultural use of the land as the land is a former cold stores site and is not suitable for primary production use. Also, PDC 68 only envisages 'shops' that are for the tasting and retail of sale of wine. The intent of PDC 12 is to prevent the establishment of random shops that are not associated in any way and/or do not value add to primary production activities. The proposed shop will be associated with and located on the same site as the industry that produces beverages (beer and spirits), similar to the desire for cellar doors to be associated with wineries. The shop does have a significantly greater gross leasable area than 250m², but the proposal utilises large floor areas of existing buildings, the additions add building articulation and the capacity of the micro-brewery and distillery door has been restricted to 50 customers and meets the intent of PDC 67.

The proposed industry uses (alcoholic beverage production) are considered to be more akin with a winery than that of an agricultural industry (processing of primary produce). Irrespective, the industry (micro-brewery and distillery) proposed will support primary producers and will utilise local products (barley malt and hops) in the production process. Whilst the Adelaide Hills region is not a high producer of barley, the applicant has advised that it will mostly be sourced from farmers and/or suppliers within the Mount Lofty Ranges Region, but will also be sourced from other parts of the State. Whilst the proposal could suitably be located within an industrial area, the proposal does allow for utilisation of these existing buildings for a long standing use in a scenically attractive area. The proposal contributes to the development of a sustainable tourism industry with a focus on the beverage industry. Additionally, the proposal will not prejudice primary production activity and will not result in a loss of primary production land. The proposal will enhance the appearance of the site and will therefore not detrimentally impact on the rural character of the locality. The proposal is inconsistent with PDC 12, but sufficiently consistent with PDCs 13, 15, 16, 17, 42 and 44.

Conservation

As mentioned above, the land modification required to achieve the desired driveway and car parking gradients and the associated retaining walls will likely impact on the root zones of some native trees. Two native trees are required to be removed as a result of the proposal. One native tree is required to be removed to accommodate the new eastern crossover. This tree is in the south-eastern corner of the site and is approximately 5.5m from the boundary. This crossover has been placed in this location as there is an existing break in the guard rail and this is the most desirable location to achieve the best possible sightlines and distance from the intersection. The other native tree to be removed is approximately 6m to east of the existing

covered breezeway between the buildings. The tree is required to be removed to accommodate the area where the waste control system tanks are to be located. This tree is also directly adjacent the 58m² sub-surface disposal area. This is the only area on the site where effluent disposal area can be achieved (50m separation distance must be achieved), which is considerably more cost-effective than a Rhizopod system. The change of land use is not located within a significant area of native vegetation, but the proposal will affect some native trees and will result in the removal of at least two trees. However, given the proposal utilises existing buildings and the proposed car park and terraced areas will be located mostly in cleared areas, the proposal could be seen to reduce native vegetation clearance. The proposal does endeavour to cause minimal disturbance to native vegetation and is therefore considered to be partly inconsistent with PDCs 31 and 32.

Agricultural Industries/Wineries

The existing site is a former cold storage facility, which is a form of agricultural industry. Whilst the proposed light industry uses (micro-brewery and distillery) could also be considered in some circumstances to be a form of agricultural industry, the Development Plan does exclude wineries from the definition of such. Given an alcoholic beverage production facility is more aligned with a winery, the winery provisions have been deemed to be more applicable for assessment purposes than the agricultural industry provisions. Specifically, the provisions relating to wastewater management, bunding and odour control are more applicable.

The proposed uses will involve milling, brewing, distilling, bottling, packing and storage of the alcoholic beverages. The proposal also includes administration areas and a shop for the sale and promotion of the produced beverages. The proposed buildings are located within the one allotment and will predominantly process barley and hops sourced from the Mount Lofty Ranges Region. The combined maximum tonnage of barley malt to be processed per year by the micro-brewery and distillery is 50 tonnes. Given the scale of the operation, it is considered appropriate for the proposed use to be located closer than 300m to a number of dwellings. Whilst not a winery, the proposal is otherwise consistent with PDCs 50 and 55.

Similar to the desire for wineries to be located on a property with a vineyard, the proposed uses are not located on a site that has broad acre farming (barley crop), but will utilise existing buildings that have historically been used as a form of agricultural industry (PDC 51). The site is located in Watershed Area 2 and therefore the extent of processing (50 tonne) is considered appropriate. Whilst not a winery, the proposal is consistent with PDC 54.

All the structures involving the making of beer and spirits are housed within enclosed buildings that are to be bunded. The areas that have mechanical plant and that involve brewery and distillery activities are to be attenuated to minimise noise impacts to nearby properties. Whilst not a winery, the proposal is consistent with PDC 56.

The proposed micro-brewery and distillery is not sited 300m from a watercourse, it is approximately 30m from a high order watercourse (Torrens River). However, the proposal does include a spill retention system which is considered to be consistent with the desire for spill retention basins in these circumstances. The wastewater tanks, batch treatment and balance tanks are fitted with high level alarms and the

waste pre-treatment area, Rhizopod Treatment area, micro-brewery and distillery are all to be bunded to meet the EPA guidelines. None of these areas are subject to inundation and they have a mild slope. The bunds will contain well in excess of the minimum 120 percent wastewater or liquid spill requirement. As mentioned, the production waste will be managed by the Rhizopod system and therefore should be fully contained, but has also been bunded. This wastewater system has been deemed to be suitable by Environmental Health and the EPA to treat this wastewater. Whilst not a winery, the proposal is considered to accord with PDCs 57, 58, 59 and 60.

The proposal includes the construction of an all weather car park suitable for staff and visitors and utilises existing buildings on the site. The proposed sealed stormwater system and car park drainage system has been designed to ensure stormwater does not enter the effluent disposal areas. The proposal includes a grassed swale and bio-retention swale to treat the stormwater runoff from the car park areas. The majority of the roof stormwater will be re-used. The Rhizopod system is a closed system where wastewater is dosed at subsurface levels to mitigate any odours. The proposal is consistent with PDC 61.

As confirmed by DPTI- Transport Assessment, the proposal will not generate traffic beyond the capacity of Gorge Road or the connected local roads. The proposal is small-scale and will not generate significant traffic noise, especially in consideration of the historical use of the land. The noise impacts are assessed in a later section of this report. The proposal accords with PDC 62.

b) Council Wide provisions

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

- *Orderly and economic development*
- *Safe and efficient movement of people and goods*

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

Form of Development

Objectives: 1 & 8

PDCs: 1, 2, 3, 7, 9, 12, 13, 15, 19, 20, 21, 22, 23, 24 & 25

The proposal is considered to be orderly and economic as it will utilise existing buildings that have not been utilised for some time. The proposal will not demand increased services, it will be self-sufficient from a water supply and waste control perspective and will utilise the existing road network without need for any upgrades. As discussed above, whilst these uses would also be appropriate in an industry zone/area, they are considered to be appropriate for a rural locality given they have some relationship to primary production. The proposal is therefore not considered to be at odds with the Adelaide Hills Structure Plan. The proposal is consistent with Objective 1 and PDCs 1, 2 and 3.

The proposal includes excavation and filling of land required to create suitable areas for car parking, landscaping/recreation (outdoor sampling), effluent disposal and driveway gradients. These earthworks are considered to be appropriate and therefore the proposal is considered to accord with PDC 7.

The proposal should not interfere with the effective use of other land. As mentioned, the proposal may impact on the amenity of the nearby properties as would the continuation of the cold store use of the land, but measures have been put in place to minimise these impacts. Noise and odour have been carefully considered in the assessment of the proposal. As the car park will only feature low level lighting for safety, and lighting will be shielded and directed away from residential properties, this is not considered to be an issue.

Noise

A detailed Acoustic Engineer's report has been provided that assesses noise impact from all noise generating activities, namely from patron, car park activity, loading dock activity, new mechanical plant, brewery and distillery activities, rubbish collection and music. This report details a significant number of measures to ensure noise levels are not detrimental to the amenity of nearby residential properties. As the whole locality is located within the Watershed (Primary Production) Zone the noise level restrictions within the EPA Protection (Noise) Policy for a 'Rural Industry' have been applied. The expert report concludes that the *EPA Protection (Noise) Policy 2007* and the *Environment Protection Authority Guidelines 'Music noise from indoor venue and the South Australian Planning System'* will be achieved. It is considered that the noise generated by the proposed development will not detrimentally affect the amenity of this locality.

Odour

The odour from the Rhizopod system has already been addressed. A comprehensive odour assessment of the micro-brewery and distillery operations has been provided. The wastewater stored from these operations will be held in closed balance tanks that will be aerated to mitigate the risk of odours. In addition, three vent streams have been identified in the odour report to potentially emit odour. These venting streams will have activated carbon filters installed to further control odour. Given the small-scale nature of the proposal and based on the measures detailed in the odour control report, the risk of detrimental odours to the amenity of this locality is considered to be low.

The proposal is considered to be consistent with PDCs 9 and 13.

Construction work on the site has the potential to cause significant erosion and water quality impacts. A soil, erosion and drainage management plan (SEDMP) and construction management plan are considered necessary for this development to comply with PDC 15. The operation and management of the development should accord with the requirements of PDC 15. A condition requiring a SEDMP is recommended (refer recommended condition 32).

Waste control measures have been addressed. The proposal is considered to be consistent with PDCs 19, 20 and 21.

The setbacks of the proposed additions have been addressed in the Zone assessment. The proposal does not accord with PDCs 23 and 24, but the additions are no further forward than the existing buildings. The side and rear setbacks are appropriate and the proposal accords with PDC 24.

The commercial proposal will create increased employment opportunities in the region. The application states that up to 5 persons (3 within the shop) will be employed by the proposed uses/business. The proposal accords with Objective 8.

Transportation (Movement of People and Goods) & Car Parking

Objectives: 20 & 21

PDCs: 43, 44, 45, 46, 50, 53, 54, 56, 58, 59 & 60

The shop has floor area of the 391m², excluding the deck area which is not covered. The industry component of the proposal has a floor area of 585m². Therefore the industry use requires 6 car parking spaces and the shop requires 22 car parking spaces, providing a total of 28 car parking spaces. The proposed car parking area of 25 spaces is deemed to be appropriate as the micro-brewery/distillery door has a substantial floor area for its capacity, which is to be restricted to 50 persons due to waste control and environmental impact. Also, it is noted that the industry component is likely to only have two workers/employees. The car park has been designed to provide safe and convenient off-street parking that will not inter with traffic safety on the adjacent roads and will meet the Australian Standard for parking facilities. The proposal sufficiently accords with PDCs 44, 58, 59 and 60.

DPTI have reviewed the proposal and has considered the proposal to be appropriate from a traffic safety perspective. The proposal improves the access arrangements on the site noting the current access to the breezeway is to be closed off and an entry and exit only arrangement is to be created. The proposal moves the exiting vehicles from the site as far as practical from the intersection of Gorge and Cudlee Creek Roads. The new eastern access improve sightlines and therefore traffic safety, particularly for right turn movements performed by heavy vehicles exiting the site. The proposal should not cause interference with the free flow of the traffic on adjoining roads. The proposal is considered to be consistent with PDCs 43, 45, 46, 54 and 56.

Service vehicles will be restricted to entering the site in the morning (7am to 12pm) outside of peak times for the shop. As mentioned, the proposal dramatically increases traffic safety in comparison to heavy vehicles previously reversing into this central breezeway or exiting from this access point. All service vehicles will enter and exit the site in a forward direction. The proposal accords with PDCs 50 and 53.

Industrial Development

Objectives: 57

PDCs: 153, 154, 156, 158, 159 & 160

As discussed above, this industrial development involves the processing of agricultural produce and is therefore considered suitable for a rural area. Whilst the produce will not be exclusively sourced from the Mount Lofty Ranges Region, the applicant has indicated that there is an endeavour for the majority of the barley and hops to be sourced locally. The width of roads in the locality is suitable for this proposed development. As mentioned, the production waste generated should be fully contained within the Rhizopod system. The EPA have deemed the risk the risk to the Watershed to be negligible. Provided the odour is managed as detail in the

application documents the proposed should not have significant effect on the amenity of the landscape. The proposal should not result in a deterioration of health and living standard for the local community. The proposal is considered to accord with Objective 57 and PDCs 153, 154, 156, 158, 159 and 160.

Rural Development

Objectives: 61, 63, 64 & 65

PDCs: 174

As discussed above, the proposed industry will process some produce sources from the Mount Lofty Region. Whether light industry that is similar to a small-scale agricultural industry or light industry more similar to a winery, it is considered that the proposal is envisaged and appropriate within a rural area. The proposal does extend the economic base of the Region in an environmentally sensitive manner. As mentioned, the proposal will not increase water quality risk to the site and will increase employment that is supporting primary production. It is known that the growth of beer consumption has resulted in expansion of malt barley production to supply breweries. As mentioned, the subject land is not suitable for primary production. The proposal makes use of the large buildings that have been underutilised for some time and puts them to an appropriate use. The proposal sufficiently accords with Objectives 61, 63, 64 and 65 and PDC 174.

Conservation

Objectives: 68, 69, 70, 71, 72, 75, 76, 77 & 78

PDCs: 202, 203, 205, 209, 213, 214, 216 & 217

As mentioned, whilst the proposal does result in the clearance of two native trees, the proposal utilises existing buildings and cleared areas on the site. Whilst at odds with a number of the provisions, these trees are required to be removed for practical purposes, being waste control and for traffic safety. These two individual trees are not considered to be a significant stand of native vegetation. The proposal is not consistent with Objectives 70, 72 and 73, and PDCs 203, 209, 213 and 214, but it is considered to be sufficiently consistent with Objectives 68, 71 and 76. The planting selections have not been detailed on the site plans and therefore compliance with Objective 75 cannot be determined.

The proposal will upgrade the appearance of the site with building alterations and additions and substantial landscaping. The development will not detrimentally affect the scenic amenity of the locality, the Torrens River and/or the Gorge Scenic Route. It is considered that the proposal will enhance it. The proposal accords with Objective 77 and PDCs 202, 205 and 217.

As mentioned, the proposal will not increase water quality risk to the watercourse that flows through the subject land and the MLR Watershed overall. The proposal is consistent with PDC 215.

Appearance of Land and Buildings

Objectives: 87, 88 & 90

PDCs: 227, 228, 229, 230, 231, 232, 233, 234, 235, 240, 241, 244, 245, 248 & 249

As mentioned, the proposal will enhance the appearance of the subject land and the existing buildings. The proposal whilst within 100m of a scenic road, will not in any way be detrimental to aesthetic appearance of or natural beauty of the Gorge Scenic Route. The colour and material selections are deemed to be appropriate. The development has largely been restricted to the less undulating areas of the site. Any alteration to the land form is for practical purposes to achieve desirable driveway grades, levelled areas for effluent disposal, loading of goods and for recreation areas. The alterations to the subject buildings will not be obtrusive or out of character in the landscape and locality. Whilst the proposal is inconsistent with PDCs 240 and 244 as two of the large native trees on the site cannot be retained, the proposal is sufficiently consistent with all other relevant Objectives and PDCs within this Council-wide section.

Watershed Protection

Objectives: 103, 104 & 105

PDCs: 296, 297, 298 & 299

As mentioned, the EPA is satisfied that the proposal will not increase risk to the MLR Watershed. The proposal is consistent with Objectives 103 to 105 and PDCs 296 and 299. As mentioned, whilst the development does produce strong wastes, the proposal is small scale and involves processes that have a link back to primary production. The subject site is not suitable for primary production activities. The proposal is not considered to be at odds with PDCs 297 and 298.

Catchment Water Management

Objectives: 119, 120, 121, 122, 123, 124, 127, 128 & 129

PDCs: 350, 351, 359, 366, 367, 368, 369, 370, 371, 372, 373, 374, 374, 376, 377, 378, 379

The removal of two native trees is not likely to result in erosion issues on the site or displace native fauna or threatened species. The proposal is not at odds with PDC 366.

The storage of chemicals or other materials will be in undercover and bunded areas consistent with PDC 382.

As mentioned above, wastewater systems for the production and the general waste have been supported by Council's Environmental Health team and the EPA. The production wastewater will be treated in a contained system and the general wastewater system will achieve the 50m separation distance from the watercourse. The proposal significantly upgrades stormwater management on the site. The stormwater collected from the roof areas will be re-used, consistent with Water Sensitive Urban Design principles. The proposal also includes a stormwater treatment drain that involves natural filtration measures, namely a grassed swale and bio-retention basin. A water quality model has been undertaken that proves that the targets within the Environment Protection (Water Quality) Policy are achieved. The

proposal is sufficiently consistent with the remaining Objectives and PDCs as detailed above.

7. SUMMARY & CONCLUSION

Whilst the proposal is on a very sensitive site, the design of the waste control and stormwater management systems ensures that the proposal will not increase water quality risk to the Mount Lofty Ranges Watershed. The proposal upgrades the appearance of the site, with landscaping and building upgrades. The proposal is considered to be orderly and economic, in that it utilises existing infrastructure and puts unutilised buildings to a suitable use. The proposal is also self-sufficient from a waste control and water supply perspective. The industry (micro-brewery and distillery) proposed will support primary production, namely the production of barley and hops in the Mount Lofty Ranges Region and in South Australia. The development will further promote the region and the Council area as a tourist destination and create additional employment opportunities. Whilst the proposal does result in the removal of two native trees, the removal allows for a safer egress to be achieved and an effluent disposal area that is appropriately setback from the watercourse.

The proposal results in a number of improvements on the site, specifically stormwater treatment, wastewater management, access arrangements, car parking and traffic safety. The main concerns relating to amenity impacts to adjacent residential properties are from odour and noise. The proposal includes numerous measures to ensure these issues are not detrimental to the amenity of the locality.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent to Development Application 16/625/473 by Critical Path Pty Ltd for Change of use from cold stores to light industry - micro-brewery (150kL per annum), micro-distillery (10kL per annum), & shop (sales & tasting outlet), including alterations & additions to the existing buildings, attached deck & screen (maximum height 2.4m) water storage tanks (5 x 24kL & 1 x 48kL), outbuilding (storage shed), verandah (gazebo), footbridge, masonry pillars (maximum height of 2.2m), gates (maximum height 2.4m), associated car park, landscaping, retaining walls (maximum height 1.6m) & earthworks (non-complying) at 2329 Gorge Road Cudlee Creek subject to the following conditions:

(1) **Development In Accordance With The Plans**

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Architectural Drawings prepared by Critical Path Pty Ltd
 - Locality Plan (DA.01, Rev 3) received 13 Feb 2018
 - Existing Site and Survey Plan (DA.02, REV 4) received 13 Feb 2018
 - Amended Site Plan (DA03, REV 9) received 30 Nov 2018
 - Front streetscape elevations (DA. 04, REV 7) received 13 Feb 2018
 - Micro-brewery floor plan (DA. 05, REV 7) received 13 Feb 2018
 - Micro-Distillery floor plan (DA.06, REV 6) received 13 Feb 2018
 - Shop floor plan (DA.07, REV 6) received 13 Feb 2018
 - Elevations (DA.08, REV 6) received 13 Feb 2018
 - Elevations (DA.09, REV 6) received 13 Feb 2018
 - Waste Treatment Schematic (DA.14, REV 7) received 13 Feb 2018
 - Waste Treatment Layout (DA.15, REV 4) received 13 Feb 2018
 - Brewing Process (DA.16) received 13 Feb 2018
 - Distilling Process (DA.17) received 13 Feb 2018
 - Plan & Elevations Garden Shed (DA.18) received 30 Nov 2018
 - Plan & Elevations Gazebo & Bridge (DA.19) received 30 Nov 2018
- Siteworks & Drainage Plan (CV01) prepared by Critical Path Pty Ltd received by Council 29 May 2018
- Civil Plan (CV02) prepared by Critical Path Pty Ltd received by Council 29 May 2018
- Drainage Plan (CV03) prepared by Critical Path Pty Ltd received by Council 29 May 2018

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

Access and DPTI Requirements

(2) Piped or Spoon Drain Rural Crossover - SD24

The vehicle access point(s) and cross over shall be constructed in accordance with Adelaide Hills Council standard engineering detail SD24 – piped entrance or with a concrete spoon drain as depicted on the approved plans prior to occupation/use of the development.

REASON: For safe and convenient movement of vehicles.

(3) DPTI Requirement - Largest Vehicle

The largest vehicle permitted on-site shall be a Medium-Rigid Vehicle (MRV) as defined in the AS2890.2.2002. Access for this class of vehicle shall only be permitted outside of peak times of operation of the shop component of the development.

REASON: For safe and convenient movement of vehicles.

(4) DPTI Requirement - Sealing Of Vehicle Access/Egress Points

The vehicle and cross-over shall be sealed in Hotmix bitumen, concrete or similar material, from the edge of the sealed carriageway of Gorge Road to a point at least 10 metres from the existing edge of the sealed carriageway.

NOTE: The access shall be constructed to ensure no construction materials are deposited onto the carriageway of Gorge Road.

REASON: To maintain safe and convenient movement of vehicles.

(5) DPTI Requirement - Car Parking & Traffic Flow Directional Signage

Directional signs indicating the location of car parking spaces and the desired flow of the traffic to, from and through the site shall be provided on the subject land and maintained in a clear and legible condition at all times.

REASON: To identify the location of off-street parking and ensure the free flow of traffic.

(6) DPTI Requirement - Crossovers

The site shall be restricted to two vehicular access points - an ingress-only access located approximately 40 metres east of the Gorge Road and Cudlee Creek Road junction and an egress-only access location approximately 90 metres from the Gorge and Cudlee Creek Road Junction.

REASON: To provide adequate, safe and efficient access to the development.

(7) Removal Of Redundant Crossovers

Any existing crossing places not providing vehicle access shall be considered redundant and shall be closed off.

REASON: To reduce interference with the free flow of traffic on adjoining roads.

(8) DPTI Requirement - Vehicle Movements

The paved turning and loading area adjacent to the shop and breezeway shall be constructed prior to the operation of the approved uses. All vehicles shall enter and exit the site in a forward direction.

REASON: To maintain safe and convenient movement of vehicles.

Lighting

(9) External Lighting

All external lighting shall be directed away from residential development, and shielded if necessary to prevent light spill causing nuisance to the occupiers of those residential properties.

REASON: Lighting shall not detrimentally affect the residential amenity of the locality.

(10) Car Park Lighting

Car parking lighting shall be restricted to low level lighting that is necessary for security and safety purposes only. The lighting shall not cause nuisance to adjacent properties to the reasonable satisfaction of Council.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

(11) Hours of Use – Car park lighting

The lights herein approved shall not operate between 10pm and 7am the following day.

REASON: To ensure the residential amenity of the area is maintained.

Odour

(12) Odour Control

Carbon vent filters shall be installed on any flue or vent at the time of installation, namely:

- “Hot Side” Venting including Kettle Boiling, Mash Tun and Lauter Tun
- Fermentation Vent Stream
- Waste Treatment Aerated Tank Vents

These filters shall utilise a combination of zeolites, oxidising agents and micro-porous, impregnated pelletised activated carbon media or similar to treat the vapour, odorous air or fumes to the satisfaction of Council.

REASON: To minimise amenity impacts (vapour, fumes or odour) to adjacent residential properties.

Noise Control

(13) Noise Control - Construction Requirements

Prior to operation of the approved development the following acoustic attenuation measures shall be completed:

a) Shop and Deck

- A barrier which is a minimum of 2.4m high shall be constructed for the extent shown as green in Appendix B of the Acoustic Report along the western side of the deck. The barrier can be constructed from 6mm thick fibre cement sheet or a material with the same or greater surface density. The barrier should seal airtight at all junctions, including at the ground
- All doors and openable windows to the outside, including the breezeway, shall incorporate acoustic seals that seal airtight when closed;
- All external glazing, including the breezeway, is to be a minimum 6.38mm thick laminated glass

b) New Mechanical Plant

- Ensure the new plantroom walls are constructed from 0.42mm BMT sheet metal, such as Colorbond, or material with the same or greater surface density. An airtight seal should be achieved at all junctions, including at the ground and existing structure
- Any ventilation openings shall be on the eastern wall of the plant room

c) Brewery & Distillery Areas/Buildings

- All gaps and penetrations in the existing building are sealed airtight
- All doors to the breezeway shall incorporate acoustic seals that seal airtight when closed
- All glazing to the breezeway shall be constructed from a minimum 6.38mm thick laminated glass
- The new storage addition that adjoins the proposed micro-distillery shall be constructed from 0.42mm BMT sheet metal, such as Colorbond, or material with the same or greater surface density. An airtight seal should be achieved at all junctions, including at the ground and at the connection to the existing building

REASON: Buildings should be designed and altered to ensure noise impacts to adjoining properties is minimised.

(14) Noise Control- Operational Restrictions

The following operational restrictions shall be adhered to:

- There shall be no amplification of voices provided outside of the buildings
- All deliveries shall occur between the hours of 7am and 12pm (noon)
- All rubbish collection shall be restricted to between the hours of 9am and 7pm on a Sunday or public holiday and 7am to 7pm any other day
- The noise levels generated by the approved uses shall not exceed 47dB(A) between 7:00am and 10:00pm within the nearby dwellings

REASON: The business operations of the approved development are undertaken in accordance with the requirements of the approved Acoustic Report to ensure the amenity of the locality is maintained by minimising noise impacts.

(15) Noise Control- Music

- No music shall be played outside. Music shall only be played inside the shop building and in accordance with the following restrictions:
- When “background music” is played, it should be at a level such that patrons are able to readily talk over the music without raising voices
- When amplified live acoustic music is played, all doors and openable windows to outside should remain normally closed
- Speakers should only be located inside the building
- Music noise generated from within the approved shop shall not exceed 47dB(A) between 7:00am and 10:00pm within the nearby dwellings

REASON: The business operations of the approved development are undertaken in accordance with the requirements of the approved Acoustic Report to ensure the amenity of the locality is maintained by minimising noise impacts.

Appearance of Buildings

(16) External Finishes

The external finishes to the building herein approved shall be as follows:

Shop, Micro-brewery, micro-distillery and attached structures

WALLS: Red brick quoins and pillars or similar
Boral cultured stone cladding or similar
Natural timber with protective clear coat or similar
Existing besser block walls rendered in a natural tone

ROOF: Colorbond Windspray or similar

Tanks: Colorbond Windspray or similar

Gazebo

ROOF: Colorbond Windspray or similar

Fence Pillars: Red brick or similar

Outbuilding

WALLS: Boral cultured stone cladding or similar
ROOF: Colorbond Windspray or similar

REASON: The external materials of buildings should have surfaces which are of a low light-reflective nature and blend with the natural rural landscape and minimise visual intrusion.

Car park

(17) Gravel car parking Designed In Accordance With Australian Standard AS 2890.1:2004.

All car parking spaces, driveways and manoeuvring areas shall be designed, constructed, and delineated in accordance with Australian Standard AS 2890.1:2004. Delineation and directional signage or arrows shall be clearly visible and maintained in good condition at all times. Driveways, vehicle manoeuvring and parking areas shall be constructed of compacted gravel prior to the occupation of the approved uses and maintained in good condition at all times to the reasonable satisfaction of the Council

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

(18) Landscaping Protection In Car parks

All landscaped areas and structures adjacent to driveways and parking areas shall be separated by a wheel stop device or similar prior to the occupation of the development. Such devices shall not impede the free movement of people with disabilities.

REASON: To protect the landscaping and adjacent structures from vehicular damage.

General Operational Restrictions

(19) Unloading And Storage Of Materials And Goods

All materials and goods shall at all times be loaded and unloaded within the confines of the paved area to the south of the shop and the adjacent breezeway area. Materials and goods shall not be stored on the land in areas delineated for use as car parking.

REASON: To provide safe and efficient movement of people and goods.

(20) Restriction On Display/Sale of Non-Beverage/Non-Food Items In Shop

A maximum area of 25m² shall be used for the display and sale of any non-beverage or non-food item within the shop (tasting outlet).

REASON: To ensure the tasting of beer and spirits and the retail sale of such are the predominant activities within the shop.

(21) Overall Capacity

At any one time, the overall capacity of the shop (tasting outlet) and associated licensed outdoor area shall be limited to a maximum of 50 persons. The overall premises shall have a maximum of 6 staff at any one time.

REASON: To ensure that the proposed development is undertaken in accordance with the approved plans, neighbouring properties are not impacted on negatively by this development and the waste control system is adequate.

(22) Ancillary food

Meals may only be provided at pre-booked special events. Individual meals may not be offered to patrons at other times, with the exception of light snacks, pizza and/or tasting platters to accompany a beverage.

REASON: To ensure the development is consistent with the hereby approved application documents.

(23) Restriction On Number Of Special Events

The number of special events in a calendar year shall not exceed twelve (12). Such special events shall have a maximum capacity of 50 persons. Any increase in the number of special events, or the capacity, will require a separate development approval.

REASON: To ensure the proposed development is undertaken in accordance with the approved plans, that the special events are an ancillary activity and the waste control system is adequate

(24) Hours Of Operation

The opening hours of the approved uses and activities shall be restricted to the following:

Shop and ancillary office:

Wednesday and Thursday - 11am to 6pm

Thursday and Friday - 11am to 10pm

Saturday - 9am to 10pm

Sunday - 9am to 8pm

Micro-brewery and micro-distillery, and ancillary offices:

Monday to Friday - 7am to 6pm

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

Water Quality and EPA Requirements

(25) Installation of Wastewater Systems

The wastewater systems for both the production and general waste shall be installed prior to operation of the approved uses to the satisfaction of Council.

REASON: Development should minimise the risk of pollution of water catchment areas.

(26) Sludge Removal

Any sludge must be removed by an EPA licensed waste transporter and transported to a licensed waste depot.

REASON: Development should minimise the risk of pollution of water catchment areas.

(27) Wastewater Surplus

Any wastewater surplus to the needs of the brewery and distillery operations must be removed by an EPA licensed waste transporter and transported to a licensed waste depot.

REASON: Development should minimise the risk of pollution of water catchment areas.

(28) Bunding of Micro Distillery, Micro-Brewery & Rhizopod Area

Prior to operation of the micro-brewery and micro-distillery a bund shall be constructed around the perimeter of these areas as well as the Rhizopod treatment area. These areas shall be banded with an impervious material and have a total storage capacity equivalent to at least 120% of the largest vessel or pod within the banded area.

Note: Refer to the EPA's Guideline of Bunding and Spill Management for further guidance http://www.epa.sa.gov.au/files/47717_guide_bunding.pdf

REASON: Development should minimise the risk of pollution of water catchment areas.

(29) Substances To Be Stored Within Bunded Area

Any substances that, by their nature or amount, have the potential to cause environmental harm (including but not limited to the waste pre-treatment tanks and Rhizopods) must be stored or located within an impervious bunded area.

REASON: Development should minimise the risk of pollution of water catchment areas.

(30) Visual And Audible Alarms

Visual and audible alarms shall be installed on the production wastewater treatment system, namely the wastewater, batch, treatment and balance tanks to provide warning against any overflow. Such alarms shall be set to activate simultaneously at the wastewater tanks and inside the micro-brewery and micro-distillery office.

REASON: Development should minimise the risk of pollution of water catchment areas.

Erosion Control

(31) Soil Erosion Control

Prior to construction of the approved development straw bales (or other soil erosion control methods as approved by Council) shall be placed and secured below areas of excavation and fill to prevent soil moving off the site during periods of rainfall.

REASON: Development should prevent erosion and stormwater pollution before, during and after construction.

Prior to Building Rules Consent

(32) Prior to Building Rules Consent Being Granted - Requirement for Soil Erosion And Drainage Management Plan (SEDMP)

Prior to Building Rules Consent being granted the applicant shall prepare and submit to Council a Soil Erosion and Drainage Management Plan (SEDMP) for the site for Council's approval. The SEDMP shall comprise:

- a major drainage plan
- a site plan
- supporting report
- calculations
- design sketches that detail erosion control methods and installation of sediment collection devices that will prevent:
 - a) soil moving off the site during periods of rainfall;
 - b) erosion and deposition of soil moving into the remaining native vegetation below the house site;
 - c) soil moving into watercourses during periods of rainfall; and
 - d) soil transfer onto roadways by vehicles and machinery.

The works contained in the approved SEDMP shall be implemented prior to construction commencing and maintained to the reasonable satisfaction of Council during the construction period.

REASON: Development should prevent erosion and stormwater pollution before, during and after construction.

- (33) **Prior to Building Rules Consent Being Granted - Requirement For Landscaping Plan**
Prior to Building Rules Consent being granted, a detailed landscaping plan of all proposed landscaped areas including the vegetated swale and bio-retention basin, shall be prepared by a suitably qualified professional to Council's satisfaction. Landscaping detailed in the plan shall be of suitable endemic species to the locality and suitable for a swale and basin. The landscaping shall be planted prior to occupation of the approved uses and maintained in good health and condition at all times. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased, in the next planting season.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated and ensure the survival and maintenance of the vegetation.

Stormwater

- (34) **Stormwater Management**
All stormwater and car park water runoff is to be managed in accordance with approved drainage area plan (CV03). All roof water shall be directed to the water storage tanks and the overall stormwater management and water quality treatment system, including sumps, vegetated swale and bio-retention basin, shall be installed within three (3) months of commencement of operations of the approved uses.

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

- (35) **Stormwater Water Quality**
Upon installation all the sumps shall be fitted with a removable strainer to capture and retain pollutants. The vegetated swale and bio-retention basin shall be suitably planted in accordance with the approved landscape plan within three (3) months of commencement of operations of the approved uses.

REASON: Development should minimise the risk of pollution of water catchment areas.

Solid Waste

- (36) **Removal Of Solid Waste**
All solid waste including food, leaves, papers, cartons, boxes and scrap material of any kind shall be stored in a closed container or bin that has a close fitting lid. The containers/bins shall be stored in a screened area so that they are not visible to Gorge Road.

REASON: To maintain the amenity of the locality.

(37) Regular Removal Of Solid Waste From The Site

All waste shall be removed from the subject land at least once weekly. Collection of waste shall be carried out only between hours of 9am and 7pm on a Sunday or public holiday and 7am to 7pm any other day.

REASON: To maintain the amenity of the locality.

Fencing

(38) Requirement For Gates Or Doors To Be Within Boundary

Gates or doors shall not open beyond the boundary of the subject property.

REASON: To maintain pedestrian and vehicle safety.

NOTES

(1) Development Plan Consent

This Development Plan Consent is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced, the date on which the appeal is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the Development Plan Consent, or a fresh development application will be required. The twelve (12) month period may be further extended by written request to, and approval by, Council. Application for an extension is subject to payment of the relevant fee.

(2) Signage Requires Separate Development Application

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

(3) Erosion Control During Construction

Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

(4) Detailed Design Of Bio-Retention System

The applicant is reminded that the detailed design for the bio-retention basin should be undertaken in accordance with the Cooperative Research Centre for Water Sensitive Cities Adoption guidelines for stormwater bio-filtration systems (which can be found here at https://watersensitivecities.org.au/wp-content/uploads/2016/09/Adoption_Guidelines_for_Stormwater_Biofiltration_Systems.pdf) and that plants used in the swale and bio-retention basin are consistent with the recommendations in the Water Sensitive SA Raingarden Plant Guideline (which can be found here at https://www.watersensitivesa.com/wp-content/uploads/Raingarden-Plant-Fact-Sheet-v5_FINAL-Dec16.pdf)

(5) **EPA Information Sheets**

Any information sheets, guideline documents, codes of practice, technical bulletins, are referenced in this decision and can be accessed on the following web site:<http://www.epa.sa.gov.au/pub.html>

(6) **EPA Environmental Duty**

The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes, or may cause, environmental harm.

(7) **Department of Environment and Water (DEW) – Native Vegetation Council Note**

The applicant is advised that any proposal to clear, remove limbs or trim native vegetation on the land, unless the proposed clearance is subject to an exemption under the Regulations of the Native Vegetation Act 1991, requires the approval of the Native Vegetation Council. The clearance of native vegetation includes the flooding of land, or any other act or activity that causes the killing or destruction of native vegetation, the severing of branches or any other substantial damage to native vegetation. For further information visit:

www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation

Any queries regarding the clearance of native vegetation should be directed to the Native Vegetation Council Secretariat on 8303 9777. This must be sought prior to Full Development Approval being granted by Council.

(8) **Vegetation Removal**

Vegetation shall not be removed from the site until the start of the building works is imminent and only the two trees indicated on the approved site plans.

(9) **Surveyed Boundaries**

The onus of ensuring that any wall or fence or pillars are located in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a boundary survey being undertaken by a licensed land surveyor prior to the work commencing and when the wall is complete.

9. ATTACHMENTS

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

Respectfully submitted

Concurrence

Sam Clements
Team Leader Statutory Planning

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
12 December 2018
AGENDA – 8.2

Applicant: Neil Page	Landowner: N W Page & R L Page
Agent: N/A	Originating Officer: Melanie Scott
Development Application:	18/401/473 and 18/D23/473
Application Description: Land division (1 into 2) (non-complying)	
Subject Land: Lot:501 Sec: P81 DP:23576 CT:5094/149	General Location: 25 Fern Hill Road, Bridgewater
	Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/31 & 75	Zone/Policy Area: Watershed (Primary Production) Zone - Rural Landscape Policy Area, Country Living Zone - Country Living (Bridgewater) Policy Area
Form of Development: Non-complying	Site Area: 1.4 Hectares (14089m ²)
Public Notice Category: Category 3 Non-complying - Land Division Notice published in The Advertiser on 19 October 2018	Representations Received: 3 Representations to be Heard: 1

1. EXECUTIVE SUMMARY

The purpose of this application is to create an additional residential allotment from a parcel of land which is currently in two zones. The application is non-complying regardless of the location within the two zones. The part of the land that was in the Country Living zone was too small to create a merit proposal (being 4m² under the non-complying trigger). Council staff considered proposed lot 391 has more development potential with the addition of some Watershed Primary Production land and with due consideration given to the natural environment. Namely, the land is large enough to ensure the retention of native vegetation, has a connection to mains sewer and water and offers a suitable transition between the Country Living and the Watershed Primary Production Zones.

The subject land is located within the Watershed (Primary Production) Zone - Rural Landscape Policy Area and the Country Living Zone - Country Living (Bridgewater) Policy Area and the proposal is a Category 3 non-complying form of development. Three representations in opposition to the proposal were received during the Category 3 public notification period.

As per the CAP delegations, the CAP is the relevant authority for non-complying land divisions. In addition, the proposal requires a variation to the Land Management Agreement registered over the subject land, which Council delegated to the CAP for consideration.

The main issues relating to the proposal are protection of native vegetation and residential amenity along with management of bushfire risk.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

- The creation of on additional allotment of 1769m² in area and retention of the existing dwelling and associated structures on a reduced allotment of 1.232 Hectares.
- The extinguishing of a Land Management Agreement (LMA) which required the applicant not to make any application for land division.

Existing Allotments

Allotment	Area (ha)	Currently containing
501	1.4 Hectares	A dwelling, tennis court, an outbuilding

Proposed Allotments

Allotment	Area (ha)	Containing
392	1.232 Hectares	A dwelling, tennis court, an outbuilding
391	1769m ²	Vacant land

The plan of division includes:

- The creation of one additional allotment

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

The Land Management Agreement registered over the land is included as **Attachment – Land Management Agreement**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
14 April 2010	09/1032/473	Tennis court fencing (maximum height 3m) and earthworks in association with tennis court
10 October 2005	05/897/473	Verandah to replace existing
6 May 2003	03/219/473	Addition to detached dwelling
11 April 1997	97/108/330	Outbuilding 36m ²
13 May 1993	93/290/330	Additions to detached dwelling (verandah to rumpus room)
19 August 1993	93/458/330	Addition to detached dwelling – covered walkway and carport
27 February 1992	92/112/330	Alteration to existing detached dwelling
2 November 1989	89/535/330	Dwelling
14 September 1987	87/18/330	Land Division with LMA
27 February 1985	84/992/330	Land division

11 January 1983	82/195/330	Land Division: Allotment 1 to be transferred to the D.C.Stirling
-----------------	------------	--

The proposal was originally merit as it proposed to divide off that portion of the land (966m²) which was in the Country Living Zone. Because of the proposed allotment size being under 1000m² this proposal was also non-complying development. After consultation between the applicant, their planning consultant and Council an amended plan was submitted including an additional 803m² making proposed allotment 391 a total of 1769m². This is non-complying development as the additional 803m² is in the Watershed Primary Production Zone and the proposal creates a new part allotment in the Zone. From a land management perspective the amended proposal presents better options for a building envelope to minimise impact on trees on the land and ongoing management of bushfire risk.

The amended proposal presented to CAP for a decision with proposed Lot 391 at 1769m² is the proposal that was publically notified.

An LMA dated 24 April 1988 is registered over the subject land which relates to not permitting any application to further divide the land. The applicant has requested approval to extinguish the LMA. The delegation to extinguish an LMA rests with the CEO if the CAP resolves to grant Development Plan Consent.

Amongst other obligations, the LMA requires that:

(a) The Owner will not make any further applications to divide the two allotments to be created unless and until the zoning of the land is altered by reason of an amendment of the provisions of the Development Plan (District Council of Stirling) as they apply to the land.

Whilst this LMA was entered into under a repealed Act, the transitional provisions that accompanied the introduction of the Development Act 1993 ensured that any LMA under the repealed Act would be taken as an Agreement under the new Act. In other words, this agreement is still legally enforceable under the current Act. Refer to discussion under the LMA section in the report.

4. REFERRAL RESPONSES

- **EPA**
The application was not referred to the EPA in accordance with the Development Regulations 2008 Schedule 8 Clause 10 (a) (ii) as a mains sewer connection is available
- **SA WATER**
Responded with a standard planning conditions (refer SCAP condition 1)
- **AHC ENGINEERING DEPARTMENT**
Council's Engineering Department have no issues with the proposal but note when a crossover is proposed there is SA Water infrastructure to consider
- **AHC RATES DEPARTMENT**
Proposed Lot 391 - 34 Fern Hill Road

Proposed Lot 392 - remains 25 Fern Hill Road

The above responses are included as **Attachment – Referral Responses**.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Three (3) representations were received. Of these all are opposing the proposal. All were from adjacent and nearby properties.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Darrell Stanbridge	32 Fern Hill Road Bridgewater	Self
Nicola Barnes & Paul Angas	23 Fern Hill Road Bridgewater	Not indicated
Timothy Wallis	30 Fern Hill Road Bridgewater	Not indicated

The applicant or his representative – Peter Meline (Adelaide Hills Development Services) may be in attendance.

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

- Preservation of views
- Preservation of trees
- Loss of native vegetation
- Potential development rights

These issues are discussed in detail in the following sections of the report.

A copy of the submissions is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant's Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject land is 1.4 hectares in area and is an irregular circular shape fronting both Fern Hill and Wattle Tree Roads. There is a house, tennis court and outbuilding on the land. The land is high where it meets the two roads and slopes away downhill in an easterly direction. There are a number of large native trees on the land and extensive gardens. The portion to be divided off is in the north west of the site and fronts Fern Hill Road. The division of the land will not interfere with existing access arrangements for the existing dwelling. The portion proposed to be divided is an awkward shape in what can be described as a "cranny" on the land and is

problematic to manage. It does have cleared areas and some trees (native vegetation).

ii. The Surrounding Area

To the west of the subject land is Bridgewater with 1000m² rectangular allotments with varying slopes and zoned Country Living. To the north, east and south the locality is more steeply sloped and more heavily vegetated. This area tends to have larger parcels of land and is zoned as Watershed (Primary Production).

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Watershed (Primary Production) Zone - Rural Landscape Policy Area and the Country Living Zone - Country Living (Bridgewater) Policy Area and these provisions seek:

Rural Landscape Policy Area

1. A Policy Area primarily for Primary Production with rural living in localities where the allotments are small.
2. Retention of low density rural and rural living activities and exclusion of land uses which would create nuisance to surrounding properties.
3. A scenically attractive rural character.
4. A pleasant rural character derived from the retention of existing flora and fauna, including significant stands of vegetation.
5. Protection of water, air and land resources from pollution.
6. Minimization of fire risk.

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

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

PDCs: 1, 2, 5

The proposed land is currently used for rural living and is too small for primary production. The proposal does not change the primary production potential of the land in accordance with PDC1.

The use of land for residential purposes, where it cannot be used for primary production purposes is envisaged by PDC2. The proposed allotment is larger than the average in the area by nearly 70% and it can be demonstrated the proposal will minimise the potential for creating nuisance for neighbouring allotments in terms of land use conflicts, potential amenity impacts and vegetation alteration and removal.

As the proposed new allotment is some 1769m² any future application for a dwelling on the land will minimise the potential for a detrimental effect on the bushland in the area, as being larger ensures a choice of building locations and the mains sewer connection will ensure the conservation of water quality in accordance with PDC 5.

Watershed Primary Production Zone

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

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2, 4, 5

PDCs: 18, 19, 21, 22

As a mains sewer connection is available the proposal meets the requirements of Table 5 and PDC 18 of the Zone. Further the sewer connection ensures minimal pollution of water resources as envisaged in PDC 19. The proposal does not increase the primary production viability of the land however minimal opportunity for primary production exists currently, so the status quo is maintained and the intent of PDCs 19 & 21 is complied with.

Proposed allotment 391 is approximately 70% larger than those to its west, north and south, however significantly smaller than those to the east. The proposed size is considered in accordance with PDC 22 as it offers a transitional size allotment capable of conserving native vegetation between the Country Township Zone and the Watershed Primary Production Zone, and offering a development opportunity with more options than the portion of the land in the Country Living Zone.

Country Living (Bridgewater) Policy Area

Objectives

Development that contributes to the desired character of the policy area.

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

Objectives: 1

PDCs: 1, 3, 4

As proposed at 1769m² proposed allotment 391 offers a balance between the approximate 1000m² allotments to the west and the larger irregular shaped allotments to the east in the Watershed Primary Production Zone. The larger allotment also offers the opportunity for varied set-backs and vegetation preservation and is considered consistent with the desired character for the policy area (PDC 1).

The proposal is greater than 1000m² as it includes the land in the Watershed Primary Production Zone. The original proposal to divide only the land in the Country Living Zone was less than 1000m². The amended proposal offers multiple sites for a building envelope that does not compromise vegetation on the site and has a slope of less than 1 in 5. The proposed allotment can connect to SA Water for sewer and water and a future application will consider stormwater management and access to the road, which can be achieved without removing any trees. For these reasons the proposal is considered in accordance with PDC 3.

As the adjacent road reserve is irregular in shape it has consequentially caused the new allotment to be irregular, however it is close to rectangular within the restraint caused by the road and is considered in accordance with PDC 4.

Country Living Zone

Objectives

1. A residential zone primarily comprising of detached dwellings at very low densities, including affordable housing.
2. Residential development sensitive to the particular topography of the area and which has minimal visual and environmental impacts.
3. Development that contributes to the desired character of the zone.

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2,3

PDCs: 1, 2, 14

The proposal is to create an allotment for residential purposes, a land use envisaged by PDC 1.

Whilst the proposal is non-complying it is not considered inappropriate as described in PDC 2 given the surrounding land uses and allotment sizes. The most compelling arguments to support the proposal are the availability of SA Water sewer connection and the larger size allowing future tree preservation.

The proposal is greater than 1000m² as it includes the land in the Watershed Primary Production Zone. The original proposal to divide only the land in the Country Living Zone was less than 1000m². The proposal offers multiple sites for a building envelope that does not compromise vegetation on the site and has a slope of less than 1 in 5. The proposed allotment can connect to SA Water for sewer and water and a future application will consider stormwater management and access to the road, which can be achieved without removing any trees. For these reasons the proposal is considered in accordance with PDC 14.

b) Council Wide provisions

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

Land Division

1. Land division that occurs in an orderly sequence allowing efficient provision of new infrastructure and facilities and making optimum use of existing underutilised infrastructure and facilities.
2. Land division that creates allotments appropriate for the intended use.
3. Land division layout that is optimal for energy efficient building orientation.
4. Land division that is integrated with site features, including landscape and environmental features, adjacent land uses, the existing transport network and the availability of infrastructure.
5. Land division restricted in rural areas to ensure the efficient use of rural land for primary production and avoidance of uneconomic infrastructure provision.
6. Development of compact extensions to existing built-up areas.

The following are considered to be the relevant provisions:

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

PDCs 1, 2, 5, 7, 11, 21, 22, 23

Any development on proposed allotment 391 will be able to connect to street stormwater, SA Water mains sewer and water and achieve a satisfactory new access point to Fern Hill Road meeting the expectations of PDC 1.

The proposed new allotment will straddle two zones as the existing allotment does, however as already discussed this must be balanced by the larger allotment enabling a more easily developed allotment which meets all the other elements of PDC 2. On balance the proposal is considered to be in agreement with the criteria of PDC 2 as its size and shape is reasonably regular and it can achieve its own access to the local road. The subject land is no more steeply sloped than others in the locality which have been developed and it has a mains sewer connection available.

The proposed larger new allotment has been designed to ensure the vegetation, in particular trees, can be retained when a future development is proposed as envisaged by PDCs 5, 7, 11 & 23.

As discussed elsewhere in this report the proposal does not inhibit the primary production potential of adjacent W(PP) zoned land, nor does it fragment W(PP) zoned land any more than it currently is in the locality (PDCs 21 & 22). Rather the proposal offers a transition between intensive residential use in the Country Living zone and the more rural residential uses in the adjacent W(PP) zone.

Natural Resources

Objectives: 8, 9, 13, 14,

PDCs: 1, 2

As a land division it is difficult to accurately assess the impact of any future development on the natural environment, however the proposed allotment is 70% larger than the average in the locality and the proposed allotment does demonstrate the potential for future development of the site to be sensitive to the natural environment, given many existing allotments in the locality are smaller and arguably

do not impact on the natural environment. Further the proposed additional allotment will not be visible from scenically attractive areas. For these reasons the proposal is considered in accordance with PDCs 1 & 2.

Orderly and Sustainable Development

Objectives: 1, 3, 4, 6, 7,

PDC: 1, 9

Given the proposed larger size of the new allotment on balance it will create a safe and pleasant environment to live with options for better bushfire management and preservation of native vegetation on the larger new allotment when a future development application is considered as envisaged by PDC 1. The larger new allotment will contain into one relatively regular sized lot a “corner” of an existing parcel which currently is not easily managed. Similarly given the nature and history of surrounding land uses the proposed new allotment is considered suitable for residential development in accordance with PDC 9.

Regulated Trees

Objectives: 1, 2

PDCs: 1, 2

The applicant has identified 5 regulated eucalyptus trees on the site and identified a building envelope and access which should have minimal access on those trees. The applicant has also identified an additional regulated tree which is in poor health. This tree is also outside any proposed building envelope. As the majority of the trees are within 20metres of existing dwellings they are not technically protected. Their long term future will be assessed in consultation with the Native Vegetation Council when and if a dwelling application is lodged. The proposal is on balance in accordance with PDCs 1 and 2.

Residential Development

Objectives: 1,

PDCs: 1, 2

The larger size of proposed allotment 391 will ensure any future development on the site will be able to maximise solar orientation, accommodate construction of a dwelling and will encourage housing diversity in accordance with PDCs 1 & 2.

Significant Trees

Objectives: 1, 2

PDCs: 1, 2, 5

The applicant has identified 1 regulated eucalyptus tree on the site which is near the western boundary and is multi trunked. This tree is outside any building envelope proposed for the site and adjacent to a regulated tree. It should be noted both these trees are currently exempt from development assessment as they are within 20 metres of a neighbouring dwelling in a bushfire prone area. The PDCs consequently

have no work in this proposal, however it is worth noting the proposal does meet the intent of PDCs 1, 2, and 5.

iv. Land Management Agreement

There was an agreement (6756212) made under the repealed *Planning Act 1982*, which is registered on the subject title for the land, relating to a previous land division proposal at Lots 500 and 501 Fern Hill Road Bridgewater. The LMA details that this proposal sought to create two allotments. Given that a major portion of the land was located within the Rural Landscape Zone, with the remainder in the Country Living Zone, the Council sought to prevent any further division of the land.

Amongst other obligations, the LMA requires that:

(b) The Owners will not make any application to divide either allotment 500 or allotment 501.

Whilst this LMA was entered into under a repealed Act, the transitional provisions that accompanied the introduction of the *Development Act 1993* ensured that any LMA under the repealed Act would be taken as an Agreement under the new Act. In other words, this agreement is legally enforceable under the current Act as mentioned earlier in the report. Based on this, the Council or community members had the right to take enforcement action under the Act when the subject development application was lodged within a prescribed period or as otherwise detailed in the legislation.

Under Section 57, Clause 12 of the *Development Act 1993* it details: '*the existence of an agreement under this section may be taken into account when assessing an application for development authorisation under this Act.*' However, whilst the Agreement is a legal agreement under the Act and can be assessed in conjunction with the Development Plan when considering the merits of the proposal, the Courts have determined that such a clause preventing any further application from being made is invalid. In *Zweck v Town Gawler* the Supreme Court held that part of the clause within a LMA that detailed no further division of land could occur was valid, but the second part of the clause preventing an application being made for further division was invalid. Essentially, this clause is invalid as it is a statutory right to lodge a development application for assessment by the relevant authority.

As discussed elsewhere in this report, staff consider the LMA has no legal value in this instance given case law and recommend its rescission should the recommendation to approve the land division be supported firstly by CAP and secondly by the SCAP. All costs in rescinding the LMA will be borne by the applicant.

7. SUMMARY & CONCLUSION

The proposed new allotment is adjacent to many smaller allotments in the Country Living Zone. Mains water and sewer are available and road access is achievable. The amended proposal will result in better management of the land in a portion of the existing allotment which is isolated by its current irregular shape through attaching that portion to a residential allotment. Whilst the proposal does enable expansion of urban development into the W(PP) Zone, on balance the benefit in the potential for better tree outcomes and a transitional allotment in terms of size between the Country Living zone and the larger W(PP) zone allotments is considered to have merit and better development outcome than the original 996m² proposal.

It is considered that the proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

- A. That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the **CONCURRENCE** of the State Commission Assessment Panel to **GRANT** Development Plan Consent and Land Division Consent to Development Application 18/401/473 (18/D23/473) by Neil Page for Land division (1 into 2) (non-complying) at 25 Fern Hill Road, Bridgewater SA 5155 subject to the following conditions:

Planning Conditions

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Amended plans from Alexander Symonds Surveying Ref A023618.0000 Drawing number A023618PROP(B) Revision B
- Tree and building envelope plan by Owner date stamped by Council 22 November 2018

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

COUNCIL NOTES

(1) Land Division Development Approval

This development approval is valid for a period of three (3) years from the date of the decision notification. This time period may be further extended beyond the 3 year period by written request to, and approval by, Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee. Please note that in all circumstances a fresh development application will be required if the above conditions cannot be met within the respective time frames.

(2) Council Rubbish Collection

The applicant is advised that Council rubbish and recycling trucks will not enter the subject land. All collections will be from the kerbside. The onus is therefore on future landowners/occupiers to ensure that refuse bins are placed in suitable locations on the road verge so as to not obstruct motorists or pedestrians.

(3) Property Identifiers

The property identifiers for this property are now:

Proposed Lot 391 – Fern Hill Road

Proposed Lot 392 – Fern Hill Road

Council Land Division Statement of Requirements

(1) Prior to Section 51 Clearance – Design of Crossover

Prior to Section 51 Clearance the applicant shall submit to Council and have approved a crossover design which achieves a gradient less than 1 in 4.

REASON: To maintain safe and convenient movement of vehicles.

(2) Prior to Section 51 Clearance – Construction of Crossover

The crossover approved in the previous condition should be constructed and shall be sealed in Hotmix bitumen, concrete, brick paving or similar material, from the edge of the sealed carriageway of Fern Hill Road to the property boundary and maintained to the satisfaction of Council at all times.

NOTE: The access shall be constructed to ensure no construction materials are deposited onto the carriageway of Fern Hill Road.

REASON: To maintain safe and convenient movement of vehicles.

Council Land Division Notes

(1) Nil

SCAP Land Division Statement of Requirements

(1) The financial requirements of the SA Water Corporation shall be met for the provision of water supply and sewerage services (SA Water H0071861).

The internal drains shall be altered to the satisfaction of the SA Water Corporation.

REASON: Statutory requirement in accordance with Section 51 of the Development Act 1993.

(2) A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the State Planning Commission for Land Division Certificate purposes.

On approval of the application, all internal water piping that crosses the allotment boundaries must be severed or redirected at the developers/owners cost to ensure that the pipework relating to each allotment is contained within its boundaries.

REASON: Statutory requirement in accordance with Section 51 of the Development Act 1993.

- (3) Payment of \$6830 into the Planning and Development Fund (1 allotment/s @ \$6830/allotment). Payment may be made by credit card via the internet at www.edala.sa.gov.au or by phone (7109 7018), by cheque payable to the State Planning Commission marked "Not Negotiable" and sent to GPO Box 1815, Adelaide 5001 or in person, by cheque or credit card, at Level 5, 50 Flinders Street, Adelaide.

REASON: Statutory requirement in accordance with Section 51 of the Development Act 1993.

SCAP Land Division Notes

- (1) NIL

- B. That the CAP agrees to the preparation of a note of rescission of the Land Management Agreement 6756212 being prepared to rescind the LMA from Certificate of Title 5094/149 known as 25 Fern Hill Road, Bridgewater, and that all costs associated with this rescission are borne by the applicant.

9. ATTACHMENTS

Locality Plan
Original Proposal Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Land Management Agreement
Referral Responses
Representations
Applicant's response to representations

Respectfully submitted

Concurrence

Melanie Scott
Senior Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
12 December 2018
AGENDA – 8.3

Applicant: Fitness Life Studios Pty Ltd	Landowner: Hills Auto Electrical Pty Ltd
Agent: Planning Chambers	Originating Officer: Doug Samardzija
Development Application:	18/207/473
Application Description: Change of use from motor repair station to indoor recreation centre (fitness studio) and associated outdoor activity & car parking	
Subject Land: Lot:4 Sec: P86 SP:5793 CT:5983/909	General Location: 4/539 Mount Barker Road Bridgewater <i>Attachment – Locality Plan</i>
Development Plan Consolidated : 24 October 2017 Map AdHi/1, 31 & 75	Zone/Policy Area: Duel zone site located in Country Living Zone and Commercial Zone Country Living (Bridgewater) Policy Area
Form of Development: Merit	Site Area: 2727m ²
Public Notice Category: Category 3 Merit Notice published in The Advertiser on 18 May 2018	Representations Received: 5 Representations to be Heard: 1

1. EXECUTIVE SUMMARY

The purpose of this application is for a change of use from motor repair station to indoor recreation centre (fitness studio) and associated outdoor activity and additional car parking.

The subject land is a duel zone site within the Country Living Zone and Commercial Zone and the Country Living (Bridgewater) Policy Area. The proposal is classified as a merit form of development. Three representations in opposition and two representations in support of the proposal were received during the Category 3 public notification period.

As per the CAP delegations, the CAP is the relevant authority for Category 3 applications where representors wish to be heard.

The main issues relating to the proposal are noise, car parking and the interface between the non-residential land use and residential use and the appropriateness of the proposal.

Whilst the development is retrospective, it should be noted that the commencement of work without development approval first being obtained is not a relevant consideration in the assessment of a proposal and therefore it is not a contributing factor in reaching a decision on the proposal.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Change of the use of the existing motor repair station into a fitness studio
- Utilisation of part of the outdoor area for fitness activities
- Establishment of additional car parking spaces along the eastern boundary of the site
- Hours of operation of the premises 6am to 9pm Monday to Friday and 7am to 5pm on Saturday

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information**

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
26/05/2003	00/359/473	Council approved alterations and additions to existing moto repair station (auto electrical) with an associated vehicle storage area and car park
24/05/2005	05/S20/473	Council approved Land Division (Strata title - amendment to Strata Plan 5793)
26/08/1983	83/423	Council approved a workshop, office, showroom and associated car parking & landscaping

4. REFERRAL RESPONSES

• AHC EHU

The Application was referred to Council's Environmental Health Officer to review the acoustic report as part of the regulatory role under The Local Nuisance and Litter Control Act 2016. Following response was provided:

“The results of the measurements of L10 dB(A) for both attended and unattended measurements suggest levels of compliance for a commercial area- and consideration has been given to the neighbouring properties. The report mentioned no shouting observed during assessment. Because any noise will be caused by people or the music system- if the development becomes a problem- such as attracting complaints or misuse of the venue, current legislation means it will become a police issue due to the foreseeable source of the noise. For this reason jurisdiction is not with Health. The report concludes the roller doors will need to be shut, the music source speakers inside, and music turned down if the doors are open. The report mentions the roller doors can be upgraded to 'Rw 30 or equivalent doors' along with the walls should there be issues. Noise levels will need to achieve <55 dB(A) prior to 7am for the commercial zone.

*I recommend consideration of the above as conditions with the Planning assessment.”
(refer recommended condition 6).*

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Five (5) representations were received during the public notification, and of these three (3) representations are opposing the proposal, and two (2) are in support of the proposal. All were from adjacent and nearby properties.

The following representor wishes to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Margaret Parker	36 Wattle Tree Road, Bridgewater	Margaret Parker

The applicant or their representative – Tim Beazley from Planning Chambers may be in attendance.

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

- Noise from the music, noise from the instructor yelling and from participants
- Car parking
- Appropriateness of the proposal on the site

These issues are discussed in detail in the following sections of the report.

A copy of the submissions is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant's Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject land is an irregular shaped allotment comprised of a number of smaller allotments for each of the on-site tenancies formed as part of the strata title subdivision. Current site improvements include three large commercial sheds which are all independently operated, bituminized car parking and shared access points. The allotment is located on the lower side of Mount Barker Road and slopes from west to east. The building nominated for the use as a fitness studio is two storeys in nature and is located on the lower side of the allotment in the northeast corner. However only the first level which is approximately 135m as well as the outdoor area of 126m immediately east of the building is proposed to be utilised as a fitness studio whilst the upstairs area will remain as part of tenancy 3

ii. The Surrounding Area

The locality is predominantly defined by residential development on allotments of similar shape and size. A small portion of the locality is within the Commercial Zone however not all of the allotments within the zone are utilised for commercial purposes. To the west of the subject site is the Country Living (Bridgewater) Policy Area and immediately to the east are rural allotments and the Settlement of Verdun.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land is a dual zone site within the Country Living Zone and the Commercial Zone as identified in the Development Plan Zone Map AdHi/31 and also within the Country Living (Bridgewater) Policy Area as identified by Development Plan Policy Area Map AdHi/75.

The main objectives of the Policy Area and the two Zones seek (in summary):

- *Development that contributes to the desired character of the policy area*
- *A zone accommodating a range of commercial and business land uses*
- *Development that minimises any adverse impacts upon the amenity of the locality within the zone*
- *Development that contributes to the desired character of the zone*
- *A residential zone primarily comprising of detached dwellings at very low densities*

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

Objectives: 1

PDCs: 1

The following are considered to be the relevant Country Living Zone provisions:

Objectives: 1 & 3

PDCs: 1, 2, 3, 4 & 6

The following are considered to be the relevant Commercial Zone provisions:

Objectives: 1, 2 & 3

PDCs: 1, 2 & 5

The following are considered to be most relevant issues:

Accordance with Policy Area and Zone

As mentioned earlier in the report the subject land consists of an unusual setup in that the area of the proposed development is located within two different zones as well as the Country Living (Bridgewater) Policy Area. In addition to that the two zones are completely at odds in terms of what they envisage as an appropriate use of land.

The majority of the proposed activity is located along the eastern side of the building which is within the Country Living (Bridgewater) Policy Area in the Country Living Zone as shown in the image below (pink line illustrates the zone and policy boundary).



The desired character statement of the Policy Area envisages that the predominant use of land is for residential purposes whilst the zone character statement allows for some level of non-residential use provided it is small scale and scattered throughout the zone where their impacts on the character of the locality in terms of noise, traffic movement and appearance is minimal. As such it is considered that the proposal is not consistent with the PDC 1 and the Desired Character of the Bridgewater Policy Area. However, the proposal is considered to be of low scale and therefore consistent with the Desired Character Statement and PDC 6 of the Country Living Zone when considering the following:

- the size of the proposed fitness studio,
- the proposed maximum numbers of participants per class,
- the existing use of land, and
- the applicant's proposals to minimise noise impacts (e.g. keeping the roller door closed during the times the music is played, not having any outdoor classes before 7am and after 8pm).

These matters will be the subject of condition 1 in order to ensure the amenity impacts are managed accordingly.

The proposal does however fail to satisfy PDC 4 of the Country Living Zone which seeks that non-residential development in the form of shops, offices, small scale tourist accommodation and consulting rooms, and similar low-impact forms of

development, should be ancillary to and in association with a dwelling. Given that the site is commercial nature and does not contain a dwelling, the proposal is not able to accord with this PDC.

The western side of the building as well as a big portion of the car parking area falls within the Commercial Zone as depicted in the image above. The Desired Character for the Commercial Zone envisages a range of commercial activities which serve the local community and visitors of the region. The proposal is considered to be consistent with the Desired Character and Objective 1 and 3 of the Zone.

PDC 1 of Country Living Zone and Commercial Zone list forms of development envisaged for the zone whilst PDC 2 states that developments which are listed as non-complying are generally not appropriate. Neither of the PDCs list indoor recreation centre as envisaged and the proposal therefore is inconsistent with PDC 1. However, neither of the zones list indoor recreation centres as a non-complying form of development and therefore the proposal does meet PDC 2 for both of the zones. Having said that, the existing use of the site as a motor repair station is listed as a non-complying use within the Country Living Zone. As such it is considered on balance that the proposal is seeking to establish a use which is more desirable than what is currently approved

Appropriateness of Proposal in Locality

Whilst the Country Living (Bridgewater) Policy Area remains silent on non-residential development apart from community related activities, such as schools and churches, Country Living Zone PDC 3 seeks that non-residential development are of nature and scale that serve the local community, are consistent with the locality and does not impact the on the amenity of nearby residents. This is also further reinforced by the Desired Character of Commercial Zone which seeks that development adjoining residential areas will include measures to minimise the transfer of noise and other impacts. Noise impacts were also one of the key concerns raised by neighbours in their submissions. In an attempt to address the issue of noise the applicant has engaged the services of an acoustic consultant who assessed the noise impacts and put forward recommendations which would ensure compliance with the EPA Noise Policy as well as the specific requirements as stipulated in the Council Wide Interface Between Land Uses section of Development Plan for noise generating activities (refer discussion below). In the response to representation, the applicant has confirmed that they are willing to comply with one of the recommendations and ensure that the roller doors are kept shut during the times that music is played and that the sound system will be electronically limited ensuring that the noise levels never exceed the allowable limit. Additionally, after further discussions with the applicant, he has agreed that the early morning sessions and the later evening sessions will only be limited to the inside of the building and will not occur in the outside area (refer to recommended condition 5). This will further contribute to limiting the noise impacts and minimise the potential detrimental impact on the amenity of the neighbouring residential properties. The proposal is therefore considered to generally accord with PDC 3 of Country Living Zone and Desired Character of Commercial Zone.

b) Council Wide provisions

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

- *Orderly and economic development*
- *Development located and designed to minimise adverse impact and conflict between land uses*

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

Interface Between Land Uses

Objectives: 1, 2, & 3

PDCs: 1, 6, 7, 8 & 10

Orderly and Sustainable Development

Objectives: 1, 2, 3, 6 & 11

PDCs: 1, 9, 16 & 17

Transportation and Access

Objectives: 2

PDCs: 8, 16, 26, 28, 30, 34

Appropriateness of Proposal in Locality

As stated earlier in the report, the locality in context of this proposal is somewhat unusual for a number of reasons. Firstly, the development site is a dual zone allotment as depicted in the image above, and the other unusual aspect of this locality is the small pocket of commercial zone land surrounded by a Country Living Zone which in effect is a form of a residential zone, with the surrounding uses predominantly being of residential nature. The image below illustrates the boundary of the commercial zone outlined in red in the context of the wider area.



Given the above circumstances, the interface between the two conflicting land uses and zones in terms of noise, traffic impacts and orderliness of the development can potentially become significant issues. The neighbours in the immediate locality have also identified their key concerns as being the impacts of noise, parking and the fact that the proposed development is not an appropriate use for the site.

The interface between land uses section of the Development Plan has Objectives and PDCs which seek to protect the amenity of the locality. Objectives 1, 2 and 3 seek development to be located in manner that will protect the amenity of the area by minimising the impact of the conflicting land uses and to protect desired land uses from incompatible development. This is further reinforced by PDC 1 which seeks that developments do not detrimentally affect the amenity of the locality through noise generation, whilst PDC 7 states that development should include noise attenuation measures compliant with the Environment Protection (Noise) Policy. At the same time the Development Plan seeks development which will be orderly and sustainable in Objectives 1, 2, and 3 which states that development that creates safe, convenient and pleasant environment in which to live is sought, and development which will not jeopardise the continuance of adjoining authorised land uses. This is also reinforced by PDCs 1, 9, 16 and 17 which seeks development on land which is suitable for intended use and commercial development near residential land areas which will not impair the amenity of the residential area.

As part of the assessment and as result of the concerns raised by the neighbours relating to noise impacts, the applicant has obtained an acoustic report measuring the noise impacts to the closest noise sensitive receptors (neighbouring residential properties). The acoustic report identifies the music associated with the fitness studio as the dominating source of noise from the development. However, other noise sources as identified in the representation such as voices and the equipment use were not audible or were not considered significant relative to the amplified music noise, whilst shouting by instructors was not observed during the attended measuring occasions. The report concluded the following:

Modelling predicts that opening the doors with music amplified will expose nearest receivers to noise levels in excess of the music noise criteria. By reducing the internal noise level to $L_{10, 15\text{min}}$ 64 dB(A), continuous levels at the nearest noise sensitive receiver are predicted to be within the music noise criteria. This would represent a level of music at 'background' levels or less.

Where the use of amplified music is desired, door upgrades to R_w 30 doors are predicted to provide transmission loss so that music criteria is met. This would require removal of existing roller doors, and replacement with 40mm solid core hinged doors and wall sections to match existing construction. Alternatively an acoustic roller door certified by the manufacturer to achieve minimum R_w 30 may be used.

An internal noise level of $L_{10, 15\text{min}}$ 82 dB(A) is the maximum allowable continuous noise level assuming the above upgrades are able to be implemented.

The permitted indoor spectra can be seen in Table 6, for both doors open and closed scenarios.

Table 6 Permitted indoor noise levels

Music noise criteria, L ₁₀	Noise level, dB(Lin)							Total, dB(A)
	Octave band centre frequency, Hz							
	63	125	250	500	1000	2000	4000	
Doors closed	90	87	84	94	93	85	95	82
Doors open	78	74	66	64	63	57	53	64

Predicted music noise levels at the nearest neighbouring receivers are shown in Table 7 below.

Table 7 Predicted noise impacts of different scenarios

Location	Average Equivalent Noise Level, L_{10} , dB(A),	Music noise criteria, dB(A) L_{10}
Doors open, background music only		
36 Wattle Tree Road	30	41
42 Wattle Tree Road	34	
543 Mount Barker Road	41	
6 Otranto Street	20	
R_w 30 doors closed		
36 Wattle Tree Road	30	41
42 Wattle Tree Road	34	
543 Mount Barker Road	41	
6 Otranto Street	23	

To ensure that other noise sources do not exceed the relevant Noise EPP criteria, we recommend that doors are open during daytime hours (7am to 10pm) only, and that voices are restricted to normal speaking level when doors are open. Care should be taken when dropping free-weights or other equipment, particularly when doors are open.

We expect that with appropriate measures adopted to manage (non-music) noise, compliance with the Noise EPP criteria of 45 dB(A) during the night time and 52 dB(A) during the daytime can be readily achieved.

In the formal response to the representations received, the applicant has advised that they are willing to keep the doors closed whenever the music is being played and that that the sound system will also be electronically limited to ensure that the internal noise levels do not exceed 64dB(A). A Condition to ensure that the doors are closed and that the sound system is fitted with noise monitoring device is recommended (refer recommended condition 6). Council has additionally requested that fitness classes before 7am and after 7pm are restricted to indoor classes only which the

applicant is willing to accept and this has also been enforced by a condition (refer to recommended condition 5). Whilst there might be some noise impacts from outdoor activities, they are considered to be acceptable given that are generally voice generated noise and during normal day time hours.

Given the recommendations put forward in the acoustic report and with the applicant willing to implement the measures stipulated above it is considered that the proposal sufficiently addresses the issues generally associated with the conflicting land uses which in this case happens to be noise generation and ensures that the impacts are adequately mitigated to be within the requirements stipulated in the Development Plan as well as the EPA Noise Policy. The proposal is therefore in accordance with the relevant Objectives and PDCs as stipulated in the Interface Between Land Use section of the Development Plan.

The Development Plan seeks development which will be orderly and sustainable and in the case of commercial development wishes to ensure that it is appropriate for the site and that it does not impact the amenity of the locality. Given the existing commercial nature of the existing land use, not only for the building associated with this proposal but also with the remaining buildings on site, it is considered that the proposed fitness studio is an appropriate form of development. The main issues of noise and the impacts on the amenity of the locality have been addressed as discussed in the report above and the applicant is willing to adopt some of the measures recommended in the acoustic report and by Council staff. As such the proposal is considered to accord with Objective 11 and PDCs 16 and 17 in the Orderly and Sustainable Development section of the Development Plan. The development is not located within close proximity to businesses or shopping centres. The site is close to transport facilities with bus stop located near the car yard immediately next to the subject site and as such it is considered to be generally consistent with Objective 12. However, failure to meet this PDC is not considered detrimental to the proposal given that the site is located in an established commercial zone despite it being in an usual located surrounded by residential development.

Transportation, Access and Parking

Objective 2 and PDCs 8, 26, 28 and 30 seek that developments provide safe and efficient movement for all transport modes. The subject land is currently being utilised for workshops through a number of different tenancies access points, the western crossover which is used for access and the eastern crossover which is used as an exist point. These two access points serve all of the businesses currently operating on the land and it is not considered necessary to make any changes to these crossovers as a result of the proposed development, nor is it possible to relocate them given the restraints on the site. As such it is considered that the proposal sufficiently satisfies Objective 2 and PDCs 8, 26, 28 and 30. Transportation and Access PDC 16 seeks that development does not generate significant increases in traffic in adjacent residential areas. Based on the information provided by the applicant about the hours, days of operation and average attendance it is considered that the proposed fitness studio is not going to significantly alter the nature and the amount of traffic movement to and from the site. The maximum number of participants per class is proposed to be capped at 15. However, the table which was provided

showing an average attendances levels indicated that some of the classes are much smaller. The hours of operation will extend beyond the normal trading hours, however this this will not generate significant increase in traffic movements when considering the maximum capacity of the fitness classes. The proposal is therefore considered to be consistent with PDC 16.

One of the neighbours in his representation has expressed concerns about clients of the fitness studio parking in the street. Currently the site has 6 car parking spaces allocated for unit 4. Table AdHi/4 in the Development Plan does not have specific car parking requirements for recreation centres. In this instance Council has applied the car parking requirements for non-residential developments (other than listed in table) which anticipates that 4 car parking spaces as minimum and 6 car parking spaces as maximum be provided per 100m². Total floor area of the building is 135m² and the outdoor exercises area is 126m² which based on the car parking requirements applied would mean that a minimum of 10 and maximum of 15 car parking spaces are needed. The Applicant has provided an amended site plan which shows an additional three (3) car parking spaces along the eastern boundary which brings the total number of spaces to nine (9). Given the small scale of the fitness studio and the fact that the biggest classes are normally outside the normal trading hours of the adjoining businesses, allowing shared use of the other car parking spaces on site, it was considered appropriate to apply the smaller car parking ratio requirements. Based on this requirement the proposal still has a shortfall of one car parking space. However, the shortfall is not considered to be significant and the proposal is therefore considered to be relatively consistent with PDCs 34 and 35.

7. SUMMARY & CONCLUSION

The proposal for a change of land use from a motor repair station to recreation centre (fitness studio) is considered to generally conform with the relevant provisions of the Development Plan. Neighbours have raised concerns relating to noise impacts from the activity and as a result the applicant has sought professional advice from an acoustic consultant to determine if the noise generated from the premises is in accordance with Adelaide Hills Council Development Plan and the EPA Noise Policy. The report recommended a number of measures which could be implemented to ensure compliance with the noise policies. The applicant is willing to keep the fitness studio doors closed during the times amplified music is played and some additional measures recommended by Council.

Car parking was also identified as a concerns and it was determined that the proposal sufficiently satisfies the car parking requirement despite there being a shortfall of one space which was deemed to be minor given the scale of the proposed activity and the anticipated participant numbers.

The proposal is considered to be sufficiently consistent with the relevant provisions of the Development Plan, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 18/207/473 by Fitness Life Studios Pty Ltd for Change of use from motor repair station to indoor recreation centre (fitness studio) and associated outdoor activity & car parking at 4 539 Mount Barker Road Bridgewater subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Amended planning assessment report prepared by Tim Beazley from Planning Chambers dated 2 May 2018 and date stamped 02/05/2018 by Council
- Amended site plan prepared by Planning Chambers dated 30 April 2018 and date stamped by Council 02/05/2018
- Amended floor plan prepared by Planning Chambers dated 30 April 2018 and date stamped by Council 02/05/2018
- E-mail correspondence from Tim Beazley dated 26 November 2018

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

(2) Commercial Lighting

Flood lighting shall be restricted to that necessary for security purposes only and shall be directed and shielded in such a manner as to not cause nuisance to adjacent properties.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

(3) Car Parking Designed In Accordance With Australian Standard AS 2890.1:2004.

All car parking spaces, driveways and manoeuvring areas shall be designed, constructed and line-marked in accordance with Australian Standard AS 2890.1:2004. Line marking and directional arrows shall be clearly visible and maintained in good condition at all times. Driveways, vehicle manoeuvring and parking areas shall be constructed within 3 months of Development Approval and maintained in good condition at all times to the reasonable satisfaction of the Council.

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

(4) Opening Hours

The opening hours of the recreation centre (fitness studio) shall be 6am to 9pm Monday to Friday and 7am to 5pm on Saturday.

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

(5) Outdoor Activities

No use of the outdoor activity area for training activities shall occur before 7am or after 7pm and any fitness class commencing before 7am and after 7pm shall be limited to indoor classes only.

REASON: To maintain the amenity of the locality.

(6) Fitness Class Capacity

At any one time, the maximum capacity of a fitness class shall not exceed 15 persons.

REASON: To ensure the proposed development is undertaken in accordance with the approved plans and to ensure neighbouring properties are not impacted on negatively by this development.

(7) Noise Levels

- (a) No amplified music shall be played or microphones used for outdoor training activities.
- (b) Amplified music shall only be used indoors, at which times the roller doors of the fitness studio shall be closed and the noise from the music shall not exceed 64dB(A).
- (c) Additional sound limiting devices shall be installed to ensure music output does not exceed 64dB(A) when measured internally. The sound limiting device shall be installed within one (1) month of Development Approval.

REASON: To ensure the amenity of the locality is maintained by minimising noise impacts.

NOTES

(1) Development Plan Consent Expiry

This Development Plan consent (DPC) is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced the date on which it is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the DPC, or a fresh development application will be required. The twelve (12) month time period may be further extended by Council agreement following written request and payment of the relevant fee.

9. ATTACHMENTS

Locality Plan
Application Information
Representation
Applicant's response to representations

Respectfully submitted

Concurrence

Doug Samardzija
Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
12 December 2018
AGENDA – 8.4

Applicant: Frost Protection Australia Pty Ltd	Landowner: Casella Management Pty Ltd
Agent: N/A	Originating Officer: Marie Molinaro
Development Application:	18/499/473
Application Description: Two frost fans (maximum height 13.3m)	
Subject Land: Lot:18 Sec: P4215 DP:45947 CT:5432/754	General Location: 33 Harben Lane, Balhannah
	Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Maps AdHi/3 & 42	Zone/Policy Area: Watershed (Primary Production) Zone - Onkaparinga Valley Policy Area
Form of Development: Merit	Site Area: 44.25 hectares
Public Notice Category: Category 3	Representations Received: Two
Notice published in The Advertiser on 17 August 2018	Representations to be Heard: One

1. EXECUTIVE SUMMARY

The purpose of this application is to construct two frost fans associated with an existing lawful vineyard. The fans are intended as protection for the vineyard from damage during frost events. The frost fans work by drawing down warm air from above and mixing it with cold air, which lifts temperatures at crop levels and prevents frost damage.

The subject land is located within the Onkaparinga Valley Policy Area of the Watershed (Primary Production) Zone .

The proposal is a category 3, merit form of development. Two opposing representations were received during the category 3 public notification period.

As per the CAP delegations, the CAP is the relevant authority as one of the representors wishes to be heard.

The main issues relating to the proposal are noise impact on residential amenity when the fans are in operation, and potential impact on visual amenity.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Construction of two frost fans.
- The frost fans are both the C59 model with identical 5 blade propeller design.
- The fan blade propeller is supported by a 10.38m high monopole.
- The combined height of the monopole and fan blades is 13.3m.
- The diesel engine controlling the fan operation is located in an enclosed cabinet located at the base of the monopole.
- The monopole and engine cabinet are finished in grey galvanised steel.
- The fan blades are finished in a grey, composite material.
- The frost fans are centrally located on the land, spaced approximately 300m apart.
- Fan F1 is located towards the east of the site and is 170m from the nearest boundary.
- Fan 2 is located towards the west of the site and is 190m from the nearest boundary.

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Applicant’s Professional Report**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
16 February 2004	03/422/473	Change in the use of land from horticulture (potato growing) to viticulture and the construction of a horticultural outbuilding (pump shed)
13 December 1991	563/5-379/91	Dwelling extensions
23 June 1980	6-245	Storage shed

4. REFERRAL RESPONSES

No referrals were required for this application.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Two opposing representations were received from adjacent property owners/occupiers.

The following representor wishes to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Mark Penney	206 Mattners Road, Balhannah	Karen Penney

Peter Bird, of Casella Wines or his representative may be in attendance for the applicant.

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

- Impact on residential amenity as a result of noise and vibration generated by the fans.
- The noise assessment report provided by the applicant is flawed as it does not report on the noise levels of both fans operating simultaneously, and data forming the basis of the report was not taken in a comparable locality in terms of topography.
- The fans will have a negative visual impact.
- The frost fans will not be effective in their aim of limiting frost damage.
- There are other alternative methods available to limit frost damage, which will result in no noise or visual amenity impacts.
- More information needs to be provided about noise, impact on wildlife and the spread of fumes or chemical.

These issues are discussed in detail in the following sections of the report.

Copies of the submissions are included as **Attachment – Representations** and the response is provided in **Attachment – Applicant's Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject land is 44 hectares in area and contains a vineyard, dwelling, outbuildings and a dam.

The land has a primary street frontage to Harben Lane to the south, and this is where access to the dwelling is gained from, with secondary street frontages to Mattners Road to the north and Daniels Road to the west.

The vineyard covers the majority of the site, with the dwelling and outbuildings clustered near the western side of the land.

The site is undulating, but generally slopes down from the south and the north, punctuated by a valley (low point) towards the centre of the land.

A defined watercourse flows through the low point, connecting to a dam on the adjoining SA Water site to the east.

Two pockets of scattered native vegetation are limited to the south and north of the site.

Access to the vineyard areas is by existing internal gravel tracks.

Three easements exist on the land – two in favour of SA Power Networks, and the other in favour of the Minister for Infrastructure (SA Water). The proposed fans do not encroach upon these easements.

ii. The Surrounding Area

The locality is predominantly comprised of large irregular shaped allotments, used generally for horticulture and grazing.

Within the locality there are also examples of rural living allotments, but these are generally clustered together and contained on the southern side of the subject land.

The exception to this is the representor Mark Penney's property which is a small rural living allotment adjoining the subject site, and located on the southern side of Mattners Road.

The frost fans are generally in the order of 400m from the nearest dwelling not on the subject land. The exception to this is frost fan F1 which is 340m from the representor Mark Penney's dwelling.

Notable noise sources in the locality are the freight train route and arterial roadway of Junction Road which are approximately 400m south-west of the subject land at the nearest point.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

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

Onkaparinga Valley Policy Area

- *The retention of the existing rural character by ensuring the continuation of farming and horticultural activities and excluding rural living or other uses which would require division of land into smaller holdings.*

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

Objective: 1

PDCs: Nil

The proposal is considered to be consistent with Objective 1.

The frost fans will assist in protecting an existing lawful vineyard (horticulture) from damage during frost events.

Protecting the vineyard from damage will assist in ensuring the continuation/retention of horticultural activity on the land.

The following are considered to be the relevant Zone provisions:

Watershed (Primary Production) Zone

- *The maintenance and enhancement of the natural resources of the south Mount Lofty Ranges.*
- *The enhancement of the Mount Lofty Ranges Watershed as a source of high quality water.*
- *The long-term sustainability of rural production in the south Mount Lofty Ranges.*
- *The enhancement of the amenity and landscape of the south Mount Lofty Ranges for the enjoyment of residents and visitors.*

Objectives: 1, 2, 3, 4, 5

PDCs: 1, 11, 14, 15, 16, 17, 39, 41, 42, 43, 70

Form of Development

Principle of Development Control (PDC) 1 provides guidance as to how buildings (including structures) can maintain the natural rural character by being sited in unobtrusive locations.

In particular, buildings should:

- a) *Be located well below the ridge line;*
Both of the proposed fans are located below the ridge line.
- b) *Be located within valleys or behind spurs;*
The proposed fans are located within a valley.
- c) *Be located not to be visible against the skyline when viewed from public roads and especially from the Mount Lofty Ranges Scenic Road;*
The subject land is not near the Mount Lofty Ranges Scenic Road, and despite their height, the fans are not expected to skyline above the ridge given their position at the low point of the land, with the highpoint of the land behind.
- d) *Be set well back from public roads, particularly when the allotment is on the high side of the road*
Both of the proposed fans are considered to be well setback from the adjoining public roads, with a minimum setback distance of 190m provided to the nearest public road.
- e) *Be sited on an excavated rather than a filled site to reduce the vertical profile of the building;*
The frost fans need to be at a certain height above ground level to be effective, so it is not technically feasible to set the fans at a lower level to reduce their height.

- f) Where possible, structures to be screened by existing native vegetation when viewed from public roads and especially from the Mount Lofty Ranges Scenic Road; and*

The subject land is mostly clear of native vegetation, except for two separate pockets of native vegetation located towards the north (Mattners Road) and south (Harben Lane).

Fan 1 (F1) is located directly south of the native vegetation near Mattners Road, which will offer some screening.

Native vegetation on adjoining allotments to the west will also offer some screening.

In any event, views of the frost fans from public roads are considered to be minimised by their siting in a valley, which is well setback from the site boundaries.

- g) Maximise the retention of existing native vegetation and the protection and retention of watercourses in their natural state.*

The siting of the frost fans will not result in any native vegetation removal.

The proposal is therefore considered to be consistent with PDC 1.

As the proposal is consistent with the design guidance criteria of PDC 1, it is also considered that the proposal is consistent with PDC 14 which calls for development to not detract from the natural and rural landscape character of the region.

PDCs 11 and 39 are identical, both stating that buildings should not impair the character of rural areas by reason of their scale or siting. If necessary, buildings should be screened by trees or shrubs.

In reference to these PDCs it is noted that the height scale of the frost fans is not consistent with those PDCs of the Zone which seek the profile of buildings to be low.

However, the height of the frost fans is standard and is required to ensure that they operate effectively.

The bulk and scale of the fans is however reduced by their slender design and minimal footprint on the land.

The fans are sited at the low point of the land, and the construction does not require any native vegetation removal.

The proposal is considered to be sufficiently consistent with PDCs 11 and 39 on this basis.

PDC 70 is the non-complying development trigger in the Zone, with all development not listed in PDC 70 being non-complying.

Frost fans are listed in PDC 70, so the proposal has been assessed as a merit form of development.

The inclusion of frost fans in PDC 70 signals that they are an expected form of development in the Zone, subject to full assessment against the relevant provisions of the Development Plan.

Rural Development

Objective 3 seeks the long-term sustainability of rural production, and is supported by PDC 42 which seeks rural areas to be retained for primary production purposes, and other uses compatible with maintaining rural productivity.

Objective 3 and PDC 42 are very similar to Objective 1 of the Onkaparinga Policy Area.

As discussed previously, the proposal is considered to assist in ensuring the continuation of primary production, in this circumstance horticulture, by protecting the vineyard crops from frost damage.

b) Council Wide provisions

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

- *The retention of rural areas primarily for forestry, primary production and conservation purposes and the maintenance of the natural character and rural beauty of such areas.*
- *Protect community health and amenity from adverse impacts of development.*
- *Protect desired land uses from the encroachment of incompatible development.*
- *Protection of the scenic qualities of natural and rural landscapes.*
- *Protection of productive primary production land from conversion to non-productive or incompatible uses, and encouragement of full-time farming of rural land.*

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

Animal Keeping and Rural Development

Objective: 1

PDCs: 1 & 4

Objective 1 and PDC 1 are the same as Objective 1 of the Onkaparinga Policy Area and Objective 3 and PDC 42 of the Watershed (Primary Production) Zone, which have been discussed above in the report.

PDC 4 states that the planning, design and undertaking of horticulture should minimize impacts that ensure acceptable outcomes relating to amongst other matters the emission of dust, noise, odour or spray drift.

Dust, odour or spray drift will not result from the fans, but the spinning blades and engine operation of the fans will generate noise.

Further discussion on noise impact is included later in the report – refer to section Interface Between Land Uses.

The applicant has advised in their response to the representations that the following alternative frost crop protection methods have been considered, but are not viable:

- Frost irrigation system
This would place a great demand on water resources.
- Chemical sprays
The use of sprays require very accurate frost forecasting for application, and are yet to be proven to be effective.
- Helicopters
Provide the same protection as a frost fan, but are noisier.

Interface Between Land Uses

Objectives: 1, 2 & 3

PDCs: 1, 7 & 14

PDC 1 states that amongst other matters, development should not detrimentally affect the amenity of the locality by vibrations.

Vibration impact associated with the operation of the fans was raised as a concern by representors during the public notification period.

In the matter of *Frost Protection Australia Pty Ltd v The Barossa Council* [2017] expert advice from an acoustic engineer with experience in vibration impacts was that “ground borne vibration was not likely to be perceptible at distances of greater than five metres from the base of the fans, and cause no impact at surrounding residences.”

Using the advice from this matter as a guide, the proposal is considered to be consistent with PDC 1.

PDC 7 is directly applicable to noise generating activities and states that development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant *Environment Protection (Noise) Policy* criteria when assessed at the nearest existing noise sensitive premises.

No typical noise attenuation methods such as acoustic walls or insulation can be incorporated into the design of the frost fans.

However, the applicant has provided an environmental noise assessment report from Sonus, an Adelaide based acoustic consulting firm. The report (included in **Attachment Applicant’s Professional Report**) concludes that regardless of noise attenuation methods, the fans when in operation will achieve the Environment

Protection (Noise) Policy criteria level at the closest non-associated dwellings, the sensitive premises.

The Environment Protection (Noise) Policy 2007 an Environment Protection Authority (EPA) document sets out specifically the noise control provisions applicable to frost fans – refer ***Attachment Environment Protection (Noise) Policy 2007***.

Additionally, the EPA document Evaluation Distances for Effective Air Quality and Noise Management guideline provides advice on separation distances. It recommends a distance of 2000m for frost fans from sensitive uses – refer ***Attachment Evaluation Distances for Effective Air Quality and Noise Management 2016***

It is recognised that the proposed frost fans will have a significantly lesser separation distance at 340m from the closest dwelling (sensitive use), than the EPA recommended separation distance.

However, compliance with the Environment Protection (Noise) Policy 2007 is considered to negate a reduced separation distance between land uses noting that the Evaluation Distances for Effective Air Quality and Noise Management 2016 document is a guide only, including a mechanism for a developer to demonstrate that a separation distance, other than the recommended distance is appropriate. Consequently, the distances quoted in the document should not be adopted as absolute criteria, but rather as indicative distances that may be adjusted having regard to specific site circumstances.

For the purpose of determining the relevant allowable noise level for noise-affected premises, the land use in this circumstance is rural industry. The rural industry land use category of the Policy allows a higher noise threshold for rural industry land uses compared to the other rural living land use category.

The EPA have confirmed that the use of the rural industry land use category for assessing compliance with the Policy in this circumstance is correct.

The rural industry land use category allowable noise level for noise affected premises is 55 decibel (dB(A)) outside the noise affected premises.

The Sonus report concludes that at a point outside of the nearest non-associated dwelling (representor, Mark Penney's dwelling) the predicted level of noise is 52 dB(A).

The Sonus report author confirmed that the report is based on the operation of both fans at the same time. Staff were also advised that the Hegley Field Test results are a base for the report, but adjustments are made for specific sites.

Staff have no reason to doubt the prediction of the report, and it is common for planning authorities to rely on expert reports (arborist reports, traffic reports etc.) provided by development proponents in their decision making.

Based on the report the proposal is considered to achieve the Environment Protection (Noise) Policy criteria and is therefore consistent with PDC 7.

PDC 14 is directly applicable to the proposal and states that frost fans associated with primary production should not lead to unreasonable impact on adjacent land uses.

As discussed above, it has been demonstrated via the Sonus environmental noise assessment report that the proposal will achieve the noise criteria set out in the EPA document Environment Protection (Noise) Policy 2007.

With regard to the Noise Policy threshold, staff have been advised by the EPA that noise at a certain level such as 50 dB(A) will sound quite loud if the background level of noise is low such as at night in a rural area where noise can often be between 30-35 dB(A).

However, this threshold has been set in recognition that frost fans typically operate occasionally throughout each year, and usually in the cooler months when non-associated dwelling are closed up – e.g. doors and windows closed.

In regards to the anticipated operation of the fans, the applicant has provided advice in their response to the representations that the fans are expected to operate infrequently from September to November but recognising that frost and cold air events can occur at any time. However, usage will be restricted to nights when the ambient temperature reaches a critically low level of around 1.0 degree Celsius.

To minimise the operation of the frost fans, the fans have been designed to switch off automatically when the temperature at the affected crop position reaches 2 degrees Celsius or more and when there is wind.

Recommended condition 2 reinforces the requirement for the fans to switch off when a temperature of 2 degrees Celsius is achieved – see recommended condition 2.

It is also recognised that the C59 fan design has been selected for this proposal. It is understood that the C59 design is quieter than the alternate C49 design, comprising four fan blades as it operates at a lower rpm.

Further to this, applicant has also noted that the fan operation will be monitored remotely and by vineyard management on known frost risk nights, and that a monthly maintenance schedule will be deployed to ensure the fans operate as they are intended to do.

Using compliance with the Noise Policy as a guide for what would be a reasonable noise impact, and considering all of the above the proposal is sufficiently consistent with PDC 14.

Orderly And Sustainable Development

Objectives: 10

PDCs: 1

Objective 10 seeks the protection of productive primary production land from conversion to non-productive or incompatible uses, and the encouragement of full-time farming of rural land.

As discussed earlier in the report, the proposal is considered to be a mechanism for the protection of an existing lawful primary production (horticulture) use.

The retention and encouragement of primary production uses are a fundamental objective in the Watershed (Primary Production Zone in which the subject land is situated).

The proposal is consistent with Objective 10 and PDC 1.

7. SUMMARY & CONCLUSION

The proposal is for the construction of two frost fans on a lawfully existing vineyard that is located in the Watershed (Primary Production) Zone.

The siting and design of the frost fans is considered to limit their visual impact to an acceptable level, in accordance with the qualitative visual amenity provisions of the Zone.

The applicant has demonstrated through expert advice that the anticipated noise level of the frost fans when in operation will not exceed the quantitative noise levels for nearby non-associated dwellings as set out in the Environment Protection Authority (EPA) document the Environment Protection (Noise) Policy 2007.

Compliance with the Environment Protection (Noise) Policy Criteria is considered to sufficiently demonstrate that the level of noise will not unreasonably impact on adjacent residential land uses, despite the reduced setback distance to sensitive receptors as set out in the EPA document Evaluation Distances for Effective Air Quality and Noise Management 2016

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, and it is considered that the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 18/499/473 by Frost Protection Australia Pty Ltd for two frost fans (maximum height 13.3m) at 33 Harben Lane Balhannah subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- **Site plans, received by Council 19 June 2018**

- Elevation plan (sheet S.01), dated 19 July 2010 by Design Phase Ltd Consulting Engineers
- Foundation & baseplate details and hold down bolts plan (sheet S.02), dated 19 July 2010 by Design Phase Ltd Consulting Engineers
- Environmental Noise Assessment (ref. S4390C94), dated June 2018 by Sonus Consulting

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

(2) Frost Fan Operation

The frost fans shall be set with a fan 'start' temperature of 1 degree Celsius and a fan 'stop' temperature of 2 degrees Celsius.

REASON: To ensure the proposed development operation is limited to that which is necessary for efficient operation.

NOTES

(1) Development Plan Consent Expiry

This Development Plan consent (DPC) is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced the date on which it is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the DPC, or a fresh development application will be required. The twelve (12) month time period may be further extended by Council agreement following written request and payment of the relevant fee.

(2) EPA Environmental Duty

The land owner is reminded of their duty, that the operation of the frost fans shall be in accordance with the provisions of the Environment Protection (Noise) Policy 2007 relating to frost fans.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Representations
Applicant's response to representations

Respectfully submitted

Concurrence

Marie Molinaro
Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
12 December 2018
AGENDA – 8.5

Applicant: KeyInvest Ltd	Landowner: Key Invest Ltd
Agent: Jensen Plus- David Barone	Originating Officer: Sam Clements
Development Application:	18/715/473
Application Description: Variation to development authorisation 473/649/17- to vary roadway location & various amendments to approved dwellings (dwellings numbered 26-40), including a combined fence & retaining walls (maximum height 3.1m) associated with dwelling 27 & two dwellings amended from single to two storey (dwellings 34 & 35)	
Subject Land: Lot:100 Sec: P5029 DP:58144 CT:6007/536	General Location: 18 Tolmer Road Woodside <i>Attachment – Locality Plan</i>
Development Plan Consolidated : 24 October 2017 Map AdHi/57	Zone/Policy Area: Township Zone - Township (Woodside) Policy Area
Form of Development: Merit	Site Area: portion of 4.3Ha allotment (site approximately 1 Ha)
Public Notice Category: Category 2 Merit	Representations Received: 2 Representations to be Heard: 2

1. EXECUTIVE SUMMARY

The purpose of this application is to vary the previous development authorisation 473/649/17 for stage 4 of the Woodside Lodge Village, which consisted of an additional 15 independent living units for senior community members. This application seeks to vary the internal roadway alignment and is also for various amendments to the proposed dwellings within this stage (dwellings numbered 26 to 40). The major amendments include a complete design change to dwellings 26 and 27, a new combined fence and retaining wall (maximum height 3.1m) structure associated with dwelling 27, and dwellings 34 and 35 amended from single to two storey.

The subject land is located within the Country Township (Woodside) Zone and Residential Policy Area and is a merit form of development. Two (2) representations in opposition were received during the Category 2 public notification period. Both representors have requested to be heard.

The purpose of the proposed variations is largely to reduce the impact of the development on the significant trees to be retained. The encroachments into the tree protection zones of the three significant trees (trees numbered 1, 2 and 27) have been notably reduced due to re-alignment of the road and the variations to the design of dwellings 26 and 27. The varied dwelling designs, setbacks and floor level changes will not increase amenity impacts to adjacent property owners outside of the retirement village. Specifically, no overlooking or overshadowing will be created as a result of the proposed variations. The increase to the number of two storey dwellings is supported as these dwellings (34 and 35) integrate better with natural topography of the land and minimise the earthworks.

As per the CAP delegations, the CAP is the relevant authority for variations to previous authorisations that were determined by CAP that are not deemed minor. The original application was presented to CAP due to the number of units proposed and the overall construction value. In addition, representations were received on the variation application and the CAP is the relevant authority when representors wish to be heard.

The main issues relating to the proposal are significant tree impact and the potential for overlooking.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The original proposal was described as *'Expansion of existing retirement village (Stage 4), including the construction of 15 dwellings (6 two storey & 9 single storey), associated retaining walls (maximum height 2.1m), internal driveway & removal of 1 regulated tree (Eucalyptus camaldulensis) and 1 significant tree (Eucalyptus camaldulensis) and associated earthworks.'*

An expanded description of the original proposal in comparison with the variation proposal is detailed below:

473/694/17	473/715/18
<p>Construction of 15 dwellings (6 two storey & 9 single storey)</p> <p>Two storey- dwellings numbered 28 to 33</p> <p>Single storey- dwellings numbered 26 and 27 and 34 to 40</p>	<p>No change to the number of overall dwellings and the number of occupants per dwelling (2 per dwelling).</p> <p>The number of two storey dwellings is proposed to be increase to 8. Consequently, the number of single storey dwellings is reduced. Dwellings 34 and 35 are now proposed to be two storeys. These dwellings designs are the same as the other two storey dwellings within this stage, but there are two different façade treatments for the two storey dwellings.</p> <p>The design of dwellings 26 and 27 has been varied significantly. These dwellings now have been designed with partly a raft slab and also a suspended floor, instead of substantial fill and retaining walls. Previously only the deck area was a suspended floor that was open underneath, which was to reduce the impact to the significant trees. These dwellings have been completely redesigned (different shape and configuration) to minimise the extent of encroachment into the tree protection zones of trees numbered 1 and 2 (in the Arborist report submitted with the original application)</p>

<p>Associated retaining walls (maximum height 2.1m). The highest walls were associated with dwellings 26 and 27.</p>	<p>The maximum height of retaining walls is now reduced to 1.75m.</p> <p>The stepped walls at the rear of the dwellings 34 to 37 have been replaced with a single wall up to 1.75m in height.</p> <p>The section of wall on the southern boundary behind dwellings 36 to 40 has been removed. The retaining wall behind these dwellings is now offset from the rear boundary.</p> <p>The rear yards of dwellings 28-32 were previously to be excavated with a battered slope up to the natural ground level. The levelled areas in the rear yards are to be increased and these excavated areas are to be retained with retaining walls up to 1.5m in height.</p> <p>The proposal now includes a combined fence and retaining wall structure on the western side of dwelling 27. This is to retain a levelled courtyard area to the side of this dwelling.</p>
<p>Internal driveway</p>	<p>The internal driveway extension (Titled Road A) in front of proposed dwellings 34 to 40 has been re-aligned to be located further to the south.</p> <p>These dwellings have also been pushed further back, closer to the rear boundary.</p> <p>These amendments have been undertaken to reduce the extent of encroachment into the tree protection zone of the significant tree with this vicinity (tree numbered 27)</p> <p>The encroachment into the tree protection zones of regulated trees numbered 10 and 11 appears to be largely the same.</p>
<p>Removal of 1 regulated tree (<i>Eucalyptus camaldulensis</i>) and 1 significant tree (<i>Eucalyptus camaldulensis</i>)</p>	<p>No change to the number of regulated trees to be removed (trees numbered 7 and 9)</p>
<p>Associated earthworks</p>	<p>Excluding dwellings 36 to 40, the retaining walls have been pushed back further to increase the levelled area (private open space) to the rear of each dwelling.</p> <p>The extensive retaining and filling for dwellings 26 and 27 is significantly reduced. These dwellings now partly have raft slab and partly a suspended floor. There is a filled and retained area to the west of dwelling 27 to provide a levelled courtyard area. This area requires filling up to 1.4m.</p> <p>It is also noted that the benched and finished floor</p>

	levels of the dwellings have all been amended slightly. Note that the BL is 200mm below the FFL
Dwelling 26- FFL 382.40	Dwelling 26- FFL 382.35
Dwelling 27- FFL 382.40	Dwelling 27- FFL 382.35
Dwelling 28- Lower FFL 382.95, Upper FFL 386.00	Dwelling 28- Lower FFL 383.10, Upper FFL 386.15
Dwelling 29- Lower FFL 382.95, Upper FFL 386.00	Dwelling 29- Lower FFL 383.10, Upper FFL 386.15
Dwelling 30- Lower FFL 383.55, Upper FFL 386.60	Dwelling 30- Lower FFL 383.30, Upper FFL 386.35
Dwelling 31- Lower FFL 383.55, Upper FFL 386.60	Dwelling 31- Lower FFL 383.30, Upper FFL 386.35
Dwelling 32- Lower FFL 381.80, Upper FFL 384.85	Dwelling 32- Lower FFL 381.80, Upper FFL 384.85
Dwelling 33- Lower FFL 381.80, Upper FFL 384.85	Dwelling 33- Lower FFL 381.80, Upper FFL 384.85
Dwelling 34- FFL 381.40	Dwelling 34- Lower FFL 381.30, Upper FFL 384.35
Dwelling 35- FFL 381.40	Dwelling 35- Lower FFL 381.30, Upper FFL 384.35
Dwelling 36- FFL 381.15 (Regulation 47A update)	Dwelling 36- FFL 381.15
Dwelling 37- FFL 381.15 (Regulation 47A update)	Dwelling 37- FFL 381.15
Dwelling 38- FFL 380.85 (Regulation 47A update)	Dwelling 38- FFL 381.15
Dwelling 39- 380.85 (Regulation 47A update)	Dwelling 39- 380.85
Dwelling 40- FFL 380.85 (Regulation 47A update)	Dwelling 40- FFL 380.85

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

3. BACKGROUND AND HISTORY

July 16, 2001	01/D39/473 Council approved a land division to create one additional allotment. Land was part of a larger parcel to south which was in Watershed Primary Production and had the part divided off that was zoned Country Township Woodside
February 3, 2003	02/D21/473 Council granted DPC for a land division for 37 allotments. No building rules application submitted. Application lapsed
June 16, 2004	04/179/473 Council granted DPC for construction of a retirement village - 87 units & associated residential community centre, and the removal of six significant trees
July 13, 2006	06/139/473 amendment of DA 473/179/04; reduction of number of residential units from 87 to 83; alteration to landscaping plan retaining five (5) additional trees and removing one (1) significant gum tree, granted DPC

January 10, 2007	06/1131/473 advertising signage - 1 (one) sign (measuring 3.6m x 1.6m with 3m overall height)
March 19, 2008	08/74/473 erection of a fence (combination mini-orb with timber posts and tubular steel) extending full length of front property boundary of existing retirement village (south of main entrance only)
December 16, 2009	09/1026/473 masonry wall (measuring 2.65m height) enclosing service area
January 20, 2010	09/293/473 for variation to development authorisation 04/179/473 to remove two dwelling sites within stage 2, alter roadways and to establish a screened caravan parking area in association with an existing retirement village
June 7, 2011	11/235/473 removal of 2 x significant trees (Eucalyptus leucoxylon) and pruning of 10 significant trees
August 5, 2011	10/823/473 Variation to 473/179/2004 - to vary Stage 2a, layout of units & roadways, retaining walls (maximum height 1m) and associated earthworks
January 19, 2012	11/1111/473 variation to development authorisation 473/823/10 to vary layout of units 24 & 25
July 13, 2012	12/502/473 community use outbuilding 6.2m x 9.2m x 3.0m.
November 23, 2012	12/785/473 Verandah (8.3m x 3m x 2.5m)
October 15, 2015	13/920/473 Construction of 32 dwellings in association with retirement village, removal of 3 regulated trees & associated earthworks to be constructed in four stages; Stage 2B ten dwellings, Stage 3A eight dwellings, Stage 3B six dwellings and Stage 3C eight dwellings to be completed in five years.
October 15, 2015	14/622/473 Variation to development authorisation 13/920/473 to stage development - to vary the stage described as 2B (ten dwellings) to Stage 2B four dwellings and stage 2C six dwellings. Stage 2B (4 Dwellings Only) Approved 22/7/2014. Stage 2C (6 Dwellings - houses 55, 56, 78, 79, 80, 81) approved 15/10/2015. Stage 3A (8 dwellings - houses 63, 64, 65, 66, 67, 68, 69, 70) approved 17/11/2016

August 13, 2016	15/499/473 Regulated tree removal (<i>Eucalyptus camaldulensis</i>)
January 10, 2018	17/649/473- CAP granted DPC for the expansion of existing retirement village (Stage 4), including the construction of 15 dwellings (6 two storey & 9 single storey), associated retaining walls (maximum height 2.1m), internal driveway & removal of 1 regulated tree (<i>Eucalyptus camaldulensis</i>) and 1 significant tree (<i>Eucalyptus camaldulensis</i>) and associated earthworks

The original application for the site was the subject of intense public scrutiny. In response to the global economic situation a number of extensions of time were granted to the original application and a number of minor variations approved. Early in 2013 an approach was made to Council regarding an additional tree removal to enable the relocation and reorientation of one cluster of dwellings. Council and the applicant agreed it was time to reassess the application, including an opportunity for public comment and provide some clarity around the likely completion date. There were no representations at that time. This application for stage four, the final fifteen residences was foreshadowed in 2013.

4. REFERRAL RESPONSES

- **AHC Engineering**
Council's Engineering department have no issues with the proposal. Their only comment was that there should be no obstruction allowed at the junction of the new internal road with the existing roadway to maintain sight distances.
- **AHC EHU**
EHU requested that updated sanitary drainage (underfloor plumbing layouts) details be provided. The Environment Health Officer has no concerns with this matter being addressed via condition.

The above responses are included as **Attachment – Referral Responses**.

5. CONSULTATION

The application was categorised as a Category 2 form of development in accordance with Section 38(2)(a) of the *Development Act (1993)* and the Zone 'Procedural Matters' as the variation proposal included a new combined fence and retaining wall structure over 2.1m in height and additional decks (balconies) greater than 1m in height above natural ground level. Two (2) representations were received that are opposing the proposal. Both were from adjacent properties.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Daniel Becker	38 South Ridge Road Woodside	Did not indicate
Linde Herde	11 Gale Street Woodside	Did not indicate

The applicant(s) and their representative, David Barone from Jensen Plus will be in attendance.

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

- Two storey nature of the dwellings
- Overlooking
- Land use conflicts- dwellings should be designed to ensure no noise complaints from residents within the village in relation to rural activities on adjacent land
- Impact on rural lifestyle
- The proposed fencing along the western side boundary being on top of an existing retaining wall

These issues are discussed in detail in the following sections of the report.

A copy of the submissions is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

- i. The Site’s Physical Characteristics
The subject allotment is 4.3 hectares in area and is partially developed as a retirement village. The land slopes upwards from the north western corner to its highest point in the south eastern corner. Completed development is concentrated in the western half of the site. Stage 3 along the eastern boundary is nearing completion. The subject site of this application is the final stage (stage 4). This site is approximately 1 hectare and is located in the southern portion of the site. This portion of the allotment adjacent the southern boundary contains a number of large native trees.
- ii. The Surrounding Area
The site is on the edge of the Woodside Township Zone with Watershed Primary Production zoned land directly to the south and east. The northern and western boundaries adjoin residential properties in Woodside with an average lot size of around 900m².
- iii. Development Plan Policy considerations
 - a) *Policy Area/Zone Provisions*
The subject land lies within the Township Zone and the Township (Woodside) Policy Area and these provisions seek:

Township (Woodside Policy Area)
 - *Development of the Policy Area for generally low density residential use*
 - *Development that contributes to the desired character*
 - *Provision of a range of allotment sizes and some medium density development*
 - *Development primarily accommodating residential uses and service facilities to serve the needs of the regional community*

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

Objectives: 1, 2, 3, & 4

PDCs: 1

The variation proposal will not change the density of development on the overall retirement village site. The Desired Character statement envisages residential development to remain a mixture of single storey and two storey dwellings with exposed brick or rendered walls, colour treated metal hip roofs as well verandahs and eaves. The varied dwelling designs are consistent with these statements. The proposal is for a form of residential use (supported accommodation). The variation proposal is consistent with Objectives 1, 2, 3 and 4 and PDC 1.

Township Zone

- *A zone primarily accommodating residential development*
- *Increased mix in the range of dwellings available*
- *Development that contributes to the desired character*

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2, 3, 4 & 5

PDCs: 1, 3, 4, 5, 6 & 9

The variation proposal does not change that the proposal is for the final stage of the existing retirement village (supported accommodation). This is an envisaged use in the Zone. The proposal is clearly consistent with Objective 3 and PDC 1. As mentioned, the proposal will not change the overall density of development on the site and will only change the appearance of the site in that the number of two storey dwellings to be constructed is to be increased by two. The dwellings are at the rear of the retirement village site and are unlikely to be highly visible from Tolmer Road and will not be visible from the main road through Woodside (Onkaparinga Valley Road). The proposed dwellings to be varied will feature stone, rendered and brick walls, pitched roofs, eaves, balconies and garages under the main roof. The character of the varied dwellings will be consistent with the existing dwellings within the village and the dwelling style envisaged in townships. The varied dwellings are consistent with the Desired Character of the Zone. The proposal is consistent with Objectives 1, 2, 4 and 5 and PDCs 3, 4 and 9.

The rear setbacks of a number of the dwellings has been reduced, but these rear setbacks still meet the requirement of a 4m setback for single storey and 8m for two storey dwellings. Dwelling number 27 is approximately 7m closer to the western boundary than originally proposed, but this dwelling is still setback well in excess of 1m (setback approximately 5.6m). The change to the configuration of dwelling 27 is also seen as positive as the extent of encroachment into the tree protection zone of the significant tree (tree 2) has been reduced. The maximum building height of the varied dwellings is two storeys. Each of the dwellings is provided with two car parking spaces, one of which is covered. The variation proposal is in accord with PDC 5.

The existing dwellings within the retirement village are single storey. Whilst the two storey dwellings do not maintain the present scale of existing buildings, these dwellings were considered to be more appropriate in the original assessment and are still considered more appropriate design to work with the slope of the land. The increase to the number of two storey dwellings will maintain the scale of these authorised dwellings at the rear of the retirement village. The dwellings are orientated north so there is not issue with solar access, and overlooking and overshadowing has been sufficiently addressed. Screens have been included to parts of the deck areas of dwellings 26 and 27, and the raised courtyard area to the side of dwelling 27. The screens will mitigate any unreasonable overlooking. Dwellings numbered 34 and 35 that are proposed to be amended to two storeys are in the middle of the row of proposed dwellings in stage 4, and are therefore well away from adjacent township allotments. The proposal is sufficiently consistent with PDC 6.

b) Council Wide provisions

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

- *Orderly and economic development*
- *Development to achieve a high standard of design*
- *Provision of well-designed supported accommodation*
- *Facilitate appropriate development in balance with preserving significant trees*

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

Design and Appearance

Objectives: 1

PDCs: 1, 2, 3, 5, 7, 17, 18, 19, 21 & 27

The proposed dwellings are considered to be a typical dwelling design in a country township or residential environment. The varied dwellings are sufficiently articulated, have pitched roofs, balconies, decks, eaves and a mixture of materials. The proposal is considered to be sufficiently consistent with Objective 1 and PDC 1. Dwellings 34 and 35 have been designed as semi-detached dwellings (two dwellings under the one roof with a party wall). This design reduces the overshadowing impact that would result if all of these two storey dwellings were detached. As mentioned, the dwellings have their living and balcony areas orientated to the north. Dwellings 26 and 27 are single storey, but have also been designed as semi-detached dwellings. The proposal is consistent with PDC 2.

The varied dwellings are to have pre-colour treated steel roofing, consistent with PDC 3. The balconies on dwelling 34 and 35 have been integrated into the dwelling design and are sheltered by the main roof of the dwelling. The proposal is consistent with PDC 5.

The proposal results in dwelling 27 being located closer to the western side boundary. Whilst this dwelling is elevated above the natural ground level, it is single storey and is setback approximately 5.6m from the boundary. The proposal will not cause loss of sunlight or any other adverse conditions. The character of the area will not be

significantly altered by the varied dwelling proposals. The proposal is consistent with PDCs 7 and 17.

As mentioned, fixed screens have been provided to the decks and the raised courtyard area associated with dwellings 26 and 27. The proposal is consistent with PDCs 18 and 19.

The proposed dwellings are considered to have a coordinated appearance that maintains the visual appearance of the site. Bin storage will be screened from the internal road. The site is located at the rear of the retirement village and therefore the varied dwellings are unlikely to be visible or highly visible from the public realm, namely Tolmer Road. The proposal is consistent with PDC 27.

Interface Between Land Uses

Objectives: 1, 2 & 3

PDCs: 1, 2, 4, 5, 16 & 17

The variation does not change that the proposal is for fifteen new dwellings within an existing retirement village in close proximity to the boundary of the Woodside Township. This final stage of the village would not be possible if a substantial vegetated buffer zone was to be provided. As the adjacent land to the north is used for rural residential and livestock grazing purposes, land use conflicts are not likely to be created. Also, given this is variation proposal this is not considered to be new urban or town development. The proposal will not cause unreasonable interference or impact to existing adjacent land uses. The proposal is sufficiently consistent with Objectives 1, 2 and 3, and PDCs 1, 2, 4, 5, 16 and 17.

Landscaping Fences and Walls

Objectives: 1 & 2

PDCs: 1, 2, 3 & 4

The original proposal includes a landscaping concept which detailed how the private open space and curtilage areas of the dwellings and the areas adjacent the internal roadway were to be landscaped. This landscaping concept includes the replacement trees for the two regulated trees to be removed and can be easily updated to be consistent with the varied proposal (see **recommended condition 3**). The landscaping will enhance the appearance of the site and met a number of the matters detailed in the PDCs 1, 2 and 3.

Only the combined fence and retaining wall for the courtyard area to the west of the dwelling 27 and the fencing at the top of the existing retaining wall on the western boundary requires development approval. This slat fence and Colorbond fence should result in minimal damage to adjacent trees. Whilst the fence will be within the tree protection zone of tree 2, it will be outside of the structural root zone and the footings for a fence aren't substantial. Whilst the fence may result in some loss of sunlight to the adjacent property to the west, this is considered necessary to maintain privacy. The proposal mostly meets the requirements set out in PDC 4.

Orderly and Sustainable Development

Objectives: 1, 2, 3, 4, 6, 7, 8, 9 & 13

PDCs: 1, 4, 5, 7 & 9

The varied proposal does not alter the previous consideration that the proposal is orderly and economic development. The proposal utilises existing infrastructure, namely electricity, telecommunications, water and wastewater, and is for the final stage of this existing retirement village. The site is within the defined boundaries of the township and does not result in the encroachment of urban development into rural land. The proposal is consistent with all the above mentioned Objectives and PDCs within this Council-wide section.

Residential Development

Objectives: 1, 2, 3, 4 & 5

PDCs: 3, 4, 5, 7, 8, 9, 10, 17, 18, 19, 20, 21, 24, 27 & 30

As mentioned, the variation proposal does not change the number of dwellings proposed, nor the number of occupants per dwelling. Irrespective, the proposal will not exceed the capacity of existing infrastructure. The proposal incorporates landscaping in communal areas, adjacent the internal roadways and surrounding the dwellings. The proposal is consistent with Objectives 1, 2, 3, 4, and 5, and PDCs 3, 4, 5 and 7.

The varied dwellings will all have windows orientated to the internal private roadway therefore providing passive surveillance. These dwellings also have an external outlook and the entries are clearly indefinable from the private access way. The proposal is consistent with PDCs 8, 9 and 10.

The varied dwellings do not significantly alter the site coverage per dwelling. Each of the varied dwellings has sufficient space for domestic storage, clothes drying, rainwater tanks, private open space and waste storage. The stairs down the side of dwellings 34 and 35 may not be convenient for moving bins (if stored in the rear yard), but this design is consistent with the other two storey approved dwellings. Each of the dwellings will be provided with sufficient private open space which will be directly accessible from an internal living area at ground level. Aside from dwellings 26 and 27, all of the dwellings will have at least 60m² of levelled area at the rear of the dwelling. The deck area for dwelling 26 will provide approximately 60m² of private open space and dwelling 27 will have around 50m² combining the deck area and the levelled area to the side of the dwelling. The proposal is sufficiently consistent with PDCs 17 to 21. It is also noted that this stage also includes passive landscape space that could be considered communal open space, albeit that it is not screened from the public areas of the development (PDC 24).

The upper level windows of the two storey dwelling will be required to have frosted glazing to ensure privacy between dwellings 33 and 34, and dwellings 35 and 36. Slatted screens are incorporated to the deck areas of dwellings 26 and 27. The proposal is consistent with PDC 27.

It is noted that mail box facilities have been grouped in the existing parts of the site so this will likely occur in this final stage. However, household waste is held in the yard of each of the dwellings. It is not known if bicycle parking is provided for on the site (PDC 30).

Significant Trees

Objectives: 1 & 2

PDCs: 2 & 4

As detailed above, it has been indicated that one of the main reasons for this variation proposal is to further reduce the impact of the development on the significant trees. As mentioned, dwellings 26 and 27 have been completely reconfigured and designed to reduce the extent of the encroachment into the tree protection zones of these significant trees (trees numbered 1 and 2). Also, the internal roadway has been re-aligned further to the south to reduce the extent of encroachment into the tree protection zone of another significant tree (tree 27). The variation proposal is considered to achieve greater consistency than the original proposal with Objectives 1 and 2, and PDCs 2 and 4.

Sloping Land

Objectives: 1

PDCs: 1, 5 & 6

As mentioned, dwellings 26 and 27 are partly a raft or barrier beam footing design and partly suspended slab with stilts. Dwellings 34 and 35 have been designed with the slope of the land, with the upper levels opening out to the higher lying land at the rear of the dwellings. It is considered that these design amendments have reduced the extent of cut and fill required. The variation proposal is consistent with PDC 1.

The excavated and filled areas are to be retained, and in areas where the difference in ground levels exceed 1m, the earthworks will be engineered. The development site should not be at risk of land slip. Stormwater drainage infrastructure will need to be provided in order to divert water away from the retaining walls and the rear of the dwellings down the private road network (PDCs 5 and 6).

Supported Accommodation, Housing for Aged Persons and People with Disabilities

Objectives: 1, 2 & 3

PDCs: 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10

As mentioned above, the proposed variations do not change that the proposal is for the final stage of an existing retirement village. The retirement village is located within walking distance of all the services available within the town centre of Woodside. The retirement village allows residents to be part of the Woodside community. This stage of the overall development includes communal or passive recreation areas and each of the dwellings has sufficient private open space. The varied dwellings are considered to provide safe, secure, attractive and convenient living conditions. The proposal is sufficiently consistent with Objectives 1, 2 and 3, and PDCs 1, 2, 8 and 9.

The re-aligned access road will not have a steep gradient and will provide convenient access for emergency vehicles, visitors and residents. A ramp and pathway has been provided on the northern side of the re-aligned private roadway extension. The proposal is considered to accord with PDC 3. As mentioned, each of the dwellings will be provided with two car parking spaces, one of which will be covered and therefore secure. The driveway areas for a visitor space have been designed with very minor gradients and will be paved or similar, consistent with the rest of the village. The proposal accords with PDCs 4, 6 and 7.

Whilst the stairs providing external access to the rear yards of the two storey dwellings is not ideal for aged persons, all these dwellings have been provided with a lift. The balconies and deck areas provide for an interesting and attractive outlook, and the dwellings with double garages will have sufficient storage for mobility scooters, vehicles or other essential items. The proposal is sufficiently consistent with PDC 5.

The site areas provided for each of the dwellings is considered to be appropriate. Wastewater and stormwater management has been addressed in the previous applications. Common access driveways have been provided throughout the site. As mentioned, the site is within walking distance of all the services within the Town Centre of Woodside. The site is approximately 500m from the main street of Woodside. The proposal is sufficiently consistent with PDC 10.

7. SUMMARY & CONCLUSION

These variations proposed are largely to reduce the impact of the development on the significant trees to be retained. The encroachments into the tree protection zones of three significant trees (trees numbered 1, 2 and 27) have been notably reduced due to re-alignment of the road and varied setbacks of the dwellings in this vicinity, and the variations to the design of dwellings 26 and 27.

The varied dwellings are well designed with eaves, a mixture of materials and have some articulation, namely balconies, porches and decks. The dwellings are considered to be suitable for aged accommodation with open floor plans and with lifts provided in the two storey dwellings. Sufficient car parking has been provided for each of the dwellings and driveway gradients are minimal.

The varied dwelling designs, setbacks and finished floor level changes will not increase amenity impacts to adjacent property owners outside of the retirement village. Specifically, no overlooking or overshadowing will be created as a result of the proposed variations. Also, the reduced setbacks to side and rear boundaries should not increase land use conflicts. The increase to the number of two storey dwellings is supported as these dwellings (34 and 35) integrate better with the natural topography of the land and minimise the extent of earthworks. A near level private open space area (deck or levelled area) has been provided for each of the varied dwellings.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 18/715/473 by Key Invest Ltd for Variation to development authorisation 473/649/17- to vary roadway location & various amendments to approved dwellings (dwellings numbered 26-40), including a combined fence & retaining walls (maximum height 3.1m) associated with dwelling 27 & two dwellings amended from single to two storey (dwellings 34 & 35) at 18 Tolmer Road Woodside subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Planning report (4 pages) prepared by David Barone of Jensen Plus received by Council 31 Aug 2018
- Amended Roadworks & Drainage Plan (C401), Sewer & Water Layout Plans (C402), Road Sections (C403), Sewer Long sections (C405), Civil Details (C406) and Earthworks Plan (C407) prepared by FMG Engineering received by Council 25 Oct 2018
- Amended overall site plan (SK100, REV C) prepared by Walterbrooke received by Council 25 Oct 2018
- Amended site plan and elevations (SK101, REV D) prepared by Walterbrooke received by Council 25 Oct 2018
- Amended floor plans and elevations (SK102, REV D) prepared by Walterbrooke received by Council 25 Oct 2018
- Amended floor plans and elevations (SK103, REV B) prepared by Walterbrooke received by Council 25 Oct 2018
- Amended floor plans and elevations (SK104, REV C) prepared by Walterbrooke received by Council 25 Oct 2018
- Part plan (SK105, REV A) prepared by Walterbrooke received by Council 25 Oct 2018

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

(2) Previous Plans & Details Still Apply

Except where varied by this authorisation, all other conditions, plans and details relating to Development Authorisation 473/649/17 continue to apply to this amended authorisation.

REASON: To ensure all valid conditions are complied with.

- (3) **Prior to Building Rules Consent Being Granted - Requirement For Landscaping Plan**
Prior to Building Rules Consent being granted, an updated landscaping plan prepared by a suitably qualified professional, shall be prepared to Council's satisfaction. Landscaping detailed in the plan shall be of suitable endemic species to the locality and shall be planted in the planting season following occupation and maintained in good health and condition at all times. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased in the next planting season.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated and ensure the survival and maintenance of the vegetation. To ensure replacement planting for the regulated trees to be removed occurs.

- (4) **Prior to Building Rules Consent Being Granted - Requirement To Update Underfloor Plumbing Layouts**
Prior to Building Rules Consent being granted, updated underfloor plumbing layouts shall be provided for the varied dwellings. The information provided on these plans shall be to the satisfaction of the Council's Environmental Health Unit.

REASON: To ensure the underfloor plumbing works undertaken for each of the dwellings is authorised and for Council's records.

- (5) **Decking & Courtyard Screening**
The decks and courtyard area of dwellings numbered 26 and 27 shall be fitted with fixed screening in the locations depicted on the side and rear elevations for units 26 and 27, Drawing SK104, Rev C prepared by Walterbrooke dated 25 Oct 2018, to a minimum height of 1.5 metres above the deck floor level and finished ground level for the courtyard area. The screening shall be maintained in good condition at all times.

REASON: Buildings should be designed to not cause potential for overlooking of adjoining properties.

- (6) **Obscure Glazing To Windows**
The upper level windows of the two storey dwellings (western and eastern side elevations only) shall be glazed with fixed obscure glass to a minimum height of 1.5 metres above finished floor level. The glazing in these windows shall be maintained in good condition at all times.

REASON: Buildings should be designed to not cause potential for overlooking of adjoining properties.

- (7) **External Materials And Finishes**
All external materials and finishes shall be of subdued colours which blend with the natural features of the landscape and are of a low-light reflective nature.

NOTE: Browns, greys, greens and beige are suitable and galvanised iron and zincalume are not suitable.

REASON: The external materials of buildings should have surfaces which are of a low light-reflective nature and blend with the natural rural landscape and minimise visual intrusion.

NOTES

(1) Expiry Date Of Variation

This development authorisation to vary the original authorisation is valid for a period not exceeding that of the original authorisation (10 January 2019). This time period may be further extended by written request to, and approval by, Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee and will be required to be paid for both the original authorisation and the variation authorisation.

(2) Erosion Control During Construction

Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

(3) Works On Boundary

The development herein approved involves work on the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a survey being carried out by a licensed land surveyor prior to the work commencing.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Representations
Applicant's response to representations

Respectfully submitted

Concurrence

Sam Clements
Team Leader Statutory Planning

Deryn Atkinson
Manager Development Services