

## COUNCIL ASSESSMENT PANEL MEETING

10 March 2021

### AGENDA – 9.1

<b>Applicant:</b> John Nitschke	<b>Landowner:</b> John Nitschke Nominees Pty Ltd & J V Nitschke & L A Nitschke
<b>Agent:</b> Adelaide Hills Development Service and Botten Levinson Lawyers	<b>Originating Officer:</b> Melanie Scott
<b>Development Application:</b>	19/210/473
<b>Application Description:</b> Change of use from store to include light industry (manufacturing) and building alterations & additions to create 7 separate tenancies, associated car parking, landscaping & earthworks and 3 x 144,000 litre water tanks in addition to the existing farming use (non-complying)	
<b>Subject Land:</b> Lot:16 Sec: P5240 FP:156551 CT:5439/561	<b>General Location:</b> 359 Nairne Road Woodside <b>Attachment – Locality Plan</b>
<b>Development Plan Consolidated :</b> 24 October 2017 <b>Map AdHi/3</b>	<b>Zone/Policy Area:</b> Watershed (Primary Production) Zone - Onkaparinga Valley Policy Area
<b>Form of Development:</b> Non-complying	<b>Site Area:</b> 8.08 hectares
<b>Public Notice Category:</b> Category 3 Non Complying Notice published in The Advertiser on 29 May 2020	<b>Representations Received:</b> 3 <b>Representations to be Heard:</b> 2

#### 1. EXECUTIVE SUMMARY

The purpose of this application is to change the use of the large building on the land to include light industry and create tenancies in the existing storage and office space associated in addition to the existing farming use. There is also an addition to the building and some new external openings proposed to the existing building, an associated new hardstand area, 3 x 144,000 litre water tanks, car parking, landscaping and earthworks.

The subject land is located within the Watershed (Primary Production) Zone - Onkaparinga Valley Policy Area Zone and the proposal is a non-complying form of development. Two representations in opposition and one representation 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 non-complying development where representors wish to be heard.

The large building was constructed in stages by Langseeds in the late 1970s and 1980s and the subject site has had a contentious history since the cessation of the Langseeds operation on the site. Most notably was compliance action with a former owner and former occupier for an unauthorised change of use to warehouse and manufacturing without development approval.

Subsequently Mount Barker Rural applied to use the site as a service trade premise in 2011 and this application was eventually lapsed with the passing of time and failure to provide additional information. It is considered that on balance, formalising certainty of use for the building will be a positive outcome for both Council and the current owner.

This application is retrospective and there is an appeal against an Enforcement Notice currently in the ERD Court concerning the site.

Council considers the changes made on-site an intensification of the use of the land, and the building alterations building work. Council has agreed that there are existing use rights for the parking of four trucks on site as part of the owners' farming operations.

The main issues relating to the proposal are rural amenity, stormwater and appropriateness of the proposal.

The proposal is considered a sensible reuse of an existing building and the impacts on the northern elevation have been mitigated with the addition of landscaping and the location of water tanks in consideration of the existing use of the adjacent northern land.

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 to include an area of 1,152m<sup>2</sup> as light industry as 1 tenancy
- Retention of existing office associated with storage
- Retention of existing area of storage (3,844m<sup>2</sup>) as 6 tenancies
- Additions to existing building (345m<sup>2</sup>)
- New openings to the northern elevation of the existing building
- Hardstand area of approximately 4,500m<sup>2</sup> including associated earthworks
- 34 car parks and landscaping
- Opening hours 8.00am to 6.00pm 7 days per week

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

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
19 December 1986	86/314/473	Carport
17 January 1986	86/010/473	Hay Shed
23 April 1983	83/119/473	Office/Storeroom
22 September 1980	83/361/473	Seed storage shed extension
24 September 1979	4-169	Seed storage shed
17 December 1979	4-197	Sign
26 November 1979	4-186	Install air conditioning in dwelling
23 July 1979	4-145	Dwelling
25 June 1979	4-137	Car shed

In addition an application was lodged 27 July 2006 for of a change of use from warehouse to 75% warehouse and 25% manufacturing applicant by a company called AgFloat. The application was refused due to non-supply of information in May 2007 which resulted in a section 84 notice and subsequent vacation of the site.

It is unclear how long the unauthorised uses have been on the land. The hardstand was installed sometime between June 2016 and January 2017. Sometime between 2012 and the current day a number of sliding doors were installed on the northern elevation of the existing building. These two actions have changed the way the site operates by enabling all weather vehicle access to the northern and eastern elevations of the building and Council considers both these acts an intensification of use of the site.

The plans have been amended in response to representations and discussion with Council administration with detail on areas of each space, stormwater management, relocation of car parking, survey details of actual land levels in relation to the hardstand and landscaping proposed on the northern boundary. The statement of effect has also been amended to refer to the updated plans. It is considered that the changes made do not alter the essential nature of the development in accordance with Section 39(4) of the *Development Act 1993*.

#### 4. REFERRAL RESPONSES

##### EPA

The EPA is satisfied provided the development is undertaken in accordance with the plans and specifications submitted with the application, that the proposal will have neutral or beneficial impact on water quality within the Mount Lofty Ranges Water Protection Area. The EPA have recommended one condition and a note (refer condition 8, note 4).

##### AHC EHO

Council's Environmental Health Officer has granted approval to install a waste water treatment system (refer 20/W208/473).

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 as a result of the public notification. Of these, two representations are opposing the proposal, and one is in support of 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
Shane & Bronwyn Skinner	25 Wuttke Road Woodside	Self
James Price & Dee-Anne Hunt	353 Nairne Road Woodside	Masterplan – Greg Vincent

The applicant and/or their representatives – Adelaide Hills Development Services and Botten Levinson Lawyers may be in attendance.

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

- Amenity of the locality
- Creation of a hardstand
- Increased vehicle movement
- Intensification of use
- Hours of operation
- Car parking

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

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**. A copy of the plans which were provided for notification are included as **Attachment – Publically Notified Plans**

## 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 8.08 hectares in area and a rectangular shape. The land slopes gently up from a low point at Nairne Road (western boundary) to higher by some 8 metres over its 360 metres at the eastern boundary. The subject land contains a house, associated outbuildings and a large building (approximately 5,000m<sup>2</sup>) historically used as a seed store. There is limited vegetation on the site most of appears to have been planted since the 1980s. Some of the vegetation is on the eastern and southern boundary. DEWNR mapping indicates two bores on the subject land. The balance of the land has historically been used for pasture.

ii. The Surrounding Area

To the west of the subject land is the Crest Land Division and the nearby Department of Defence lands. The allotments to the north and south of the subject land are similar in size and could best be described as rural living. The eastern allotments vary more in size with some smaller rural residential lots and a large landholding which is used for horticulture.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

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

**Policy Area**

- Retention of the existing rural character by ensuring the continuation of farming and horticultural activities

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

*Objectives: 1*

*PDCs: N/A*

The Policy Area provisions of development control do not have a significant contribution to make to the assessment of this proposal. However, the sole objective of the Policy Area seeks the retention of the existing open rural character by continuing farming and ensuring buildings blend with the existing landscape. The hardstand that has been installed is approximately 3,900m<sup>2</sup> of pasture that has been converted to assist in a reuse of the existing large building on the site. In the context of the site, the hardstand is a small percentage area.

The proposed addition to the building is within the existing footprint of the building and is sited away from the public realm. The screen of existing mature trees to the east is considered to assist with the blending of the building with the existing landscape. Given the existence of the large building on site on balance the proposal is considered to not prevent the continuation of farming and horticultural activities in accordance with the Policy Area's intention.

### **Zone**

The subject land lies within the Watershed (Primary Production) Zone. The Zone provisions seek the following:

- *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 preservation and restoration of remnant native vegetation 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*

The following are considered to be the relevant Zone provisions:

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

*PDCs: 1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 42, 44*

The building is existing and the proposed extension is behind the existing building, and the works proposed do not have any impact on native vegetation or watercourses. On balance the proposed extension is considered in accordance with PDCs 1, 2, 7 & 8. The onsite waste system has been upgraded as an adjunct to this application ensuring the proposal is in accordance with PDC 3.

PDC 9 sets expectations for driveway and access tracks. Arguably the hardstand adjacent the northern elevation is part of an access track. With the exception of the portion of the hardstand adjacent the north eastern portion of the buildings little earthworks have been conducted to facilitate access. The proposed addition to the building has access openings to the east and arguably would not be readily accessible without the filling that has occurred to a depth of between 3 and 4 metres at its extremity. Generally the fill is an average of 1 metre in depth. On balance the proposal is considered in be in accordance with PDC 9.

Originally no landscaping was proposed as part of the proposal. Through negotiation amended plans have been submitted proposing landscaping adjacent the northern boundary and the proposed car parking area. The proposal is considered to be in accordance with PDC 10.

The building exists on site and the proposed extension is to the rear of the building. Glimpses of the existing building is seen when driving along Nairne Road with the building being set back approximately 300 metres from the road.

The neighbours to the north have questioned the proximity of the extension to their property boundary. However it is considered that the addition blends with the existing building and at approximately 50 metres from the shared boundary on balance the proposal is considered in accordance with PDC 11.

PDC 13 sets parameters for the establishment of industry in the zone. Of note the industry portion of the proposed use of the building is approximately 1,152m<sup>2</sup> (23%) of the total of 4,996m<sup>2</sup> available building area. Additionally it is acknowledged the amended proposal locates the car parking associated with the light industry on the hardstand (11 spaces). The proposed sheet metal industry is not associated with the processing of local primary produce and arguably would be more appropriate in an industrial area. The proposed light industry does support primary producers with the production of various feed products, for example hay feeders, free range chicken huts and grain feeders for stock. Whilst the proposal is finely balanced against this PDC, the scale of the industrial use in relation to the total built form and consideration that it does produce products used in primary production add weight to the proposal being appropriate if the impacts of the use are managed. The impacts on primary production are considered in the discussion below.

As previously argued the proposal does not detract from the natural and landscape character of the region as the building has existed since 1980 and arguably is a part of the landscape as expected in PDC 14. It is considered important the building is reused as falling into disrepair could impact the landscape to a greater degree.

PDC 15 goes further to discuss intensification of uses and rural character. The industrial portion of the proposal is in the centre of the building and the applicant did provide an acoustic assessment which indicated the industrial use of the site will generate noise to acceptable levels.

The acoustic assessment provided by the applicant noted that if vehicle movements were removed from any noise assessment on site the noise readings on site were well within EPA noise limits. The northern side of the building is proposed for storage use facilitated by the new access doors and the adjacent hardstand. The storage use itself is considered appropriate however the activity associated with storage, being vehicle access and the hardstand to facilitate that is finely balanced. The activities on the northern side of the building are not in accordance with PDC 15, however they can be mitigated. It is considered the amendments to the plans, including landscaping, along with conditions in relation to hours of operation and container storage will adequately mitigate the representors' concerns.

As mentioned previously in this report the light industrial proposal is considered on balance an appropriate intensification and reuse of portion of the building on site. However the hardstand to the north of the subject building and the uses proposed on that side of the building are more finely balanced when considered against PDCs 15, 16 & 17 with regards to primary production capacity. The hardstand has removed a portion of the land available for primary production with approximately 4,500m<sup>2</sup> of land no longer available for pasture. In the context of the site and the area available for pasture the loss of this portion of the land to hardstand will have a negligible effect on the land available for primary production. However, the hardstand's removal of 4,500m<sup>2</sup> of available agricultural land is in direct conflict with PDCs 16, 17, 42 & 44.

It appears the introduction of the new doors on the northern side of the building and the introduction of the various storage tenancies has required the hardstand to facilitate access and car parking and in particular, all weather access to both the northern and eastern elevations. Also the proposed extension creates multiple new access points to the building on the eastern elevation. It is considered the use of the hardstand by the land owner for access to his own agricultural storage areas and storage of his agricultural machinery will counter balance the loss of the land to primary production somewhat.

*b) Council Wide provisions*

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

- orderly and economic development

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

*Animal Keeping and Rural Development*

*Objectives: 1, 2, 3 & 5*

*PDCs: 1 & 4*

The majority of the subject site will be used as it is now for storage purposes in accordance with PDC 1. The proposal has been amended to include a plan for management of stormwater from the handstand via an easement to a neighbouring allotment. Noise has been addressed with the provision of an acoustic assessment with regards to light industry. The amended plans propose landscaping to the north of the hardstand. The proposed landscaping along with conditions regarding hours of operation and the length of time shipping containers can be on site are considered on balance to address representor concerns. The activities proposed on site are not generally waste generating activities, however a condition is recommended to manage this (refer recommended condition 9). On balance the proposal is considered to be in accordance with PDC 4.

*Bulk Handling and Storage Facilities*

*Objectives: 1*

*PDCs: 1, 2, 4*

PDC 1 does suggest facilities for handling, storage and dispatch of commodities in bulk should be located in a primary production zone as well as industry zones and be sited and designed to minimise impacts on the environment and nearby sensitive land uses.

On balance given the landscaping proposed adjacent the hardstand the proposal is considered to be in accordance with PDC 1.

PDC 2 sets design standards for storage facilities. The proposal does include areas for manoeuvring of vehicles and the surface of the hardstand does appear to be a material which minimises dust. Aside from access, all vehicle movements are on site. Landscaping is currently proposed adjacent the northern property boundary but not security fencing. The latter would affect the amenity of the site and is not viewed as essential. Although the neighbouring allotment to the north is currently screened by their own landscaping and a building, there is considered to be some benefit to additional landscaping in managing amenity issues with noise and dust. The proposal does increase the intensity of use of the site for storage as it has multiple tenants and the focus of the storage activities is on the northern portion of the site which previously was only pasture. Given the proposal is for reuse of an existing building and the proposed landscaping, on balance the proposal is considered in accordance with this PDC.

Site access is existing and is in accordance with PDC 4.

#### Design and Appearance

Objectives: 1, 2

PDCs: 1, 3, 8, 9, 18, 27

The buildings are in place so in context of the existing built form the addition is considered in accordance with PDC 1. The extension is a modest addition of 345m<sup>2</sup> in the shadow of the existing building and is not expected to alter the exterior appearance of the building greatly, other than access being created on the eastern elevation. On balance the proposal is considered to be in accordance with PDC 1. It is noted the existing building is light in colour, some portions appear to have been painted a cream/pale eucalypt colour and some are galvanised. The proposed addition will be finished in the same materials as the existing building. On balance the proposal is considered to be in accordance with PDC 3 which requires non reflective materials.

#### Hazards

Objectives: 1, 4, 7

PDCs: 2, 3, 22

The applicant has proposed a solution for stormwater from the hardstand which includes an easement over neighbouring land. The building has been in place for 40 years and no flooding has been reported. On balance the proposal is considered to be in accordance with PDCs 2 & 3.

A representor has raised the issue of the nature of the fill in the north eastern portion of the site being contaminated. The applicant's agent has stated "There is no evidence the fill on the land comprises recycled bitumen or indeed any other contaminant. Our client instructs us that the fill does not comprise recycled bitumen nor any other contaminants. Further, the fill on the land does not form part of this application therefore it is not appropriate to raise this issue in a representation. In any event, we note that if any part of the land were found to be contaminated this would be an issue

for the Environment Protection Authority (EPA) and would be properly dealt with by the EPA pursuant to the *Environment Protection Act 1993*."

It is recommended that a note regarding site contamination be included in any approval granted (refer note 5). On balance the proposal is considered to be in accordance with PDC 22.

Industrial Development

Objectives: 1, 4, 6

PDCs: 1, 3, 4, 6, 9

The proposal is not an agricultural industry, but in part the proposal is to change 1152m<sup>2</sup> of the building which has existing use rights as a bulk handling and storage facility for agricultural products to light industry. The existing use and associated office is considered to be in accordance with PDC 1 with regards to being located centrally location on the site and access. The other uses on the site do not propose offices or permanent office staff.

Forward entry and exit to the site in accordance with PDC 2 is available. The buildings are set back approximately 300 metres from the road and the contours of the land ensure the proposal is in accordance with PDC 4 in terms of impact on visual amenity from the road.

The industrial portion of this proposal is located centrally on the site and is greater than 100 metres from adjacent sensitive receptors. An acoustic assessment provided with the application suggests the industrial portion of the proposal is in accordance with PDC 6 as it will cause minimal disruption to the amenity of the area.

Parking is off street and has been provided in accordance with PDC 9 and table 4 with regards to Industry, store and warehouse. The plan would require 48 car parks and this was proposed in the publically notified documents. The amended proposal has 34 carparks proposed and 14 have been relocated from the eastern boundary to the northern hardstand. It is unlikely 34 carparks will be required, so the short fall is considered acceptable. The car parking calculations are shown in the table below:

DP requirements	Proposal area	Parks required	Parks proposed
3.3 per 100 metres total floor area of the office component	42 m <sup>2</sup>	1.3	
Plus for the non-office component 2 per 100 square metres up to 200 square metres	200m <sup>2</sup>	4	
1.33 per 100 square meters between 200 and 2000 square metres	1800m <sup>2</sup>	23.4	
.67 per 100 square metres over 2000 square metres	3000m <sup>2</sup>	20	48

*Interface Between Land Uses*

Objectives: 1, 2, 3

PDCs: 1, 2, 7, 8

The proposal has adequately addressed the amenity issues identified in PDC 1 particularly with the addition of landscaping on the northern boundary. It is recommended that conditions are imposed to reinforce the hours of operation, delivery, collection and waste vehicles and the placement of shipping containers on the land to further minimise potential amenity impacts.

As the proposal is for the reuse of portion of an existing large building it is considered to be in accordance with PDC 2 as it is already on the land and evidence has been provided to suggest the other amenity impacts can be managed. The nearest dwelling is some 172 metres from the building and associated hardstand. The dwelling on the subject land is the nearest dwelling to the building and the neighbouring land to the north does not currently contain a dwelling. The northern elevation has been somewhat ameliorated by proposed landscaping and any future dwelling will be a minimum of 71 metres from the building and a minimum of 45 metres from the hardstand. The northern land has a large shed in proximity to the boundary with the subject land and a significant existing screen of vegetation on their own land.

As previously discussed an acoustic assessment was provided with the application. Council note this report indicates no sensitive receptors to the north of the subject building, records hours of operation to be 8am – 6pm seven days a week with up to 13 small vehicle and 4 larger vehicle movements per day with the exception of the harvest periods between February and April each year. The acoustic assessment noted “the dominant noise source controlling the predicted environmental noise levels at all receiver locations are the vehicle movements”. Finally the acoustic assessment concluded the predicted noise levels meet the relevant noise limit at the nearest existing noise affected premises without the need for additional acoustic treatment. A representor did raise a concern that the acoustic assessment use of EPA standards for agricultural industry may have been inappropriate. However, it is noted the noise level for agricultural industry is less than general industry and the acoustic assessment concludes the noise breakout from the light manufacturing tenancy are well below the allowable level. Council is generally satisfied the proposal is in accordance with PDCs 7 & 8.

*Natural Resources*

Objectives: 1, 2, 3, 6, 7, 10

PDCs: 1, 2, 11, 13, 14, 15, 18

As previously discussed the proposal is considered for many reasons to minimise impact on the environment and natural assets largely as is it reuse of an existing building and is considered in accordance with PDCs 1 & 2. In addition to existing onsite stormwater management an easement has been proposed over neighbouring land through a pipe and then a swale for management of stormwater from the hardstand and the proposal is considered in accordance with PDCs 13, 14, 15 and 18.

Orderly and Sustainable Development

Objectives: 1, 3, 10

PDCs: 1, 3

By re-using an existing building and locating the industrial use centrally within the building to minimise impacts on neighbours the proposal is considered in accordance with PDC 1. Further in the opinion of staff the proposal does not jeopardise the continuance of adjoining land uses in accordance with PDC 3.

Siting and Visibility

Objectives: 1

PDCs: 1, 4, 5, 7, 9, 10

As the proposal repurposes portion of an existing building which is well set back from the road and adjoining boundaries the visual impact of the proposal on rural and natural character of the area is considered in to be in accordance with PDC 1. A very small portion of the fill on the site is greater than 1.5 metres in depth in the north eastern portion of the hard stand. The fill is approximately 25 metres from the northern boundary and 8 metres from the eastern boundary. Given the batter has been in place for 2 -3 years without subsidence no treatment is proposed. On balance the proposal is considered in accordance with PDC 4.

PDC 7 concerns the external appearance of buildings as previously addressed in this report. The proposal is considered in accordance with PDC 7. Whilst there are often shipping containers on the northern hardstand there is no intention to permanently have them there and conditions have been suggested to manage containers on site.

The hardstand and driveway north of the building is a black compact gravel surface which appeared to not be too dusty on-site inspection. It is not spray sealed. On balance the proposal is in accordance with PDC 9.

There is existing vegetation on the site and neighbouring sites which may need some enhancement for the parking proposed on the hardstand particularly in the north western portion. The addition of landscaping on the northern boundary of the subject land ensures on balance the proposal is in accordance with PDC 10.

Transportation and Access

Objectives: 2

PDCs: 14, 28, 32, 39

All loading and unloading is on site in accordance with PDC 14 and there is only one access point to the site in accordance with PDC 28. The proposed driveways and hardstand with the exception of the north eastern portion are in accordance with PDC 32. The additional fill in the north eastern portion is considered minor in the scheme of the site. Currently 48 car parking spaces have been identified for the site. The parking proposed adjacent the eastern boundary was raised by a representor as an issue however those carparks have been consolidated with the carparks proposed on the hardstand. The parking identified is in excess of the number of staff expected on site by the current tenants. However, given the broad nature of the change of use the development plan requires a greater number of car parks which may be activated by a

change in tenancy. It is recommended the parking be line marked in accordance with Australian standards. (refer recommended condition 12).

Waste

Objectives: 1

PDCs: 1, 2, 5, 6

A new on site waste system will be installed as a part of any approval for this site and a hard waste collection area has been identified to the rear of the site. The proposal is considered in accordance with PDCs 1, 2, 5 & 6.

## 7. SUMMARY & CONCLUSION

This application is retrospective. There is an active section 84 enforcement matter in the ERD Court concerning the site. In particular it is unclear how long the unauthorised uses have been on the site and there is some dispute about the hardstand north of the building even being development. The hardstand was installed sometime between June 2016 and January 2017. Sometime between 2012 and the current day a number of sliding doors were installed on the northern elevation of the existing building. These two actions have changed the way the site operates by enabling all weather vehicle access to the northern and eastern elevations of the building. Council considers that the proposed activities are an intensification of the use of the land and an additional to the use of the land for storage and agriculture. Also during this time Council has agreed to the parking of four trucks on site as part of the owners farming operations.

All the aforementioned has the potential to impact on the rural amenity of the northern neighbours in particular, noting these neighbours do not have a dwelling on site. The addition of the proposed landscaping along the northern boundary will act as a screen of the development and the hardstand for the northern neighbours. Further car parking proposed on the eastern boundary has been consolidated into the hardstand area. There is an argument general storage in a rural area is inappropriate, hence the non-complying nature of the proposal. Had the proposal been for a new building it would have been unlikely to garner Council support. However, the proposal is for a sensible re-use of an existing building which was in danger of falling into disrepair. Whilst some consideration was given to limiting the type of goods stored in the building to those associated with agriculture, that avenue of enquiry would lead to ongoing site management issues. The proposal for approximately 1/5<sup>th</sup> of the building to be used for an industry which supports agricultural activity is considered acceptable. Council are therefore recommending that the use of the remainder of the building for storage of goods is acceptable and the application has afforded an opportunity to add some conditions to the operation of the site to maintain amenity and bring the building up to modern building fire safety requirements.

## 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 19/210/473 by John Nitschke for a change of use from store to include industry (manufacturing) including building alterations & additions & car parking (non-complying) at 359 Nairne Road Woodside subject to the following conditions:**

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

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

- Amended site plan drawing A6 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021
- Amended floor plan drawing A7 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021
- Amended North and East elevation plan drawing A 8 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021
- Amended West and South elevation plan drawing A9 prepared by Michael Watson Architect project number NIT004 dated 23 February 2021

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

**(2) Shipping Containers**

The number of shipping containers on the land must comply with the following criteria:

- Shipping containers shall only be associated with delivery of goods to the land
- Shipping containers shall not be used for additional storage space
- No more than three (3) shipping containers shall be kept on the land at any one time
- All shipping containers shall be unpacked and removed within 48 hours of delivery
- Shipping containers must only be placed on the hardstand area on the northern side of the building between the car parking and the building and should not inhibit safe access and egress

**REASON:** To maintain and enhance the visual amenity of the locality.

**(3) Hours of Operation**

The operating hours of the light industry and the storage tenancies shall be 8.00am to 6.00pm seven days a week.

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

**(4) Stormwater Management – Soakage Trench**

All roof run-off and surface run-off generated by the development hereby approved shall be managed on-site in accordance with the civil design to prevent trespass onto adjoining properties and to the satisfaction of Council.

The stormwater management system shall be constructed, and connected to the approved overflow (including overflow from rainwater tanks), within one month of Development Approval.

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

**(5) Timeframe For Landscaping To Be Planted**

Landscaping detailed in the amended proposed site plan from Michael Watson Architect drawing number A6 project number NIT 004 dated 23 February 2020 shall be planted in the planting season following Development Approval and maintained in good health and condition at all times. Any such vegetation shall be replaced in the next planting season if and when it dies or becomes seriously diseased.

REASON: To maintain and enhance the amenity of the locality.

**(6) Maximum number of tenancies and further Building Works**

In accordance with the plans herein approved the maximum number of tenancies shall not exceed seven (7). A separate approval will need to be made be sought for any changes to the approved configuration or number of tenancies.

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

**(7) EPA Condition**

The wastewater management system must be installed and operational in accordance with the *On-site Wastewater Management Report prepared by Maxwell Consulting Engineers marked Version (A) dated 28 August 2020* and the *Stormwater and Wastewater Plan prepared by Michael Watson Architect marked Project Number NIT 004 (A11) dated 2 November 2020* within three (3) months of Development Approval being granted.

**(8) Removal Of Solid Waste**

All solid waste including food, leaves, papers, cartons, boxes and scrap material of any kind shall be stored in a closed container having a close fitting lid. The container/s shall be stored in an area close to the building and not in the car parking area.

REASON: To maintain the amenity of the locality.

**(9) Delivery, Collection and Waste vehicle movement**

Delivery, collection and waste vehicle movements to the site shall be with the span of operating hours in condition 4 with the exception of Sundays.

REASON: To maintain the amenity of the locality.

**(10) Commercial Lighting**

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

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

- (11) **Gravel carparking 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 of compacted gravel prior to occupation 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.

#### NOTES

(1) **Development Plan Consent**

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

(2) **Erosion Control During Construction**

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

(3) **Department of Environment and Water (DEW) - Native Vegetation Council**

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

[www.environment.sa.gov.au/Conservation/Native\\_Vegetation/  
Managing\\_native\\_vegetation](http://www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation)

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

(4) **EPA Notes**

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

- EPA information sheets, guidelines documents, codes of practice, technical bulletins etc can be accessed on the following web site: <http://www.epa.sa.gov.au>

**(5) Site Contamination Investigations**

**Council has relied on the site investigations undertaken as evidence there are no known contaminants present to prevent the site being used for residential use. There can be no complete guarantee that contaminants are not present at significant concentrations in some areas. Should site works or other research uncover additional information in relation to site contamination, persons having benefit of this authorisation may need to undertake further investigations.**

**(6) Additional Signage Requires Separate Development Application**

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

**9. ATTACHMENTS**

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

Respectfully submitted

Concurrence

---

**Melanie Scott**  
**Senior Statutory Planner**

---

**Deryn Atkinson**  
**Assessment Manager**

## COUNCIL ASSESSMENT PANEL MEETING

10 March 2021

### AGENDA – 9.2

<b>Applicant:</b> Lloyd Building Solutions Pty Ltd	<b>Landowner:</b> B S Lloyd & J Bala
<b>Agent:</b> N/A	<b>Originating Officer:</b> Ashleigh Gade
<b>Development Application:</b>	20/1049/473
<b>Application Description:</b> Single storey split level detached dwelling, deck (maximum height 2.6m), retaining walls (maximum height 1m), domestic outbuilding - garage & associated earthworks	
<b>Subject Land:</b> Lot:391 Sec: P81 DP:123071 CT:6234/308	<b>General Location:</b> 34 Fern Hill Road Bridgewater  <b>Attachment – Locality Plan</b>
<b>Development Plan Consolidated :</b> 8 August 2019 <b>Map AdHi/31 &amp; 75</b>	<b>Zone/Policy Area:</b> Country Living Zone - Country Living (Bridgewater) Policy Area
<b>Form of Development:</b> Merit	<b>Site Area:</b> 964m <sup>2</sup>
<b>Public Notice Category:</b> Category 2 Merit	<b>Representations Received:</b> 2  <b>Representations to be Heard:</b> 2

#### 1. EXECUTIVE SUMMARY

The purpose of this application is to construct a single storey split level dwelling, deck, freestanding garage and associated retaining walls. The dwelling contains three bedrooms and two living areas across two floor levels. The split level design responds to the site topography, with a 24% grade from the road up to the rear of the block reflecting a height difference of some 13.5 metres. The deck wraps around the northern and eastern elevations of the dwelling with the garage located forward of the main building line addressing Fern Hill Road.

The subject land is located within the Country Living Zone and the Country Living (Bridgewater) Policy Area. The proposal is a merit form of development and pursuant to the procedural matters for the Zone was subject to Category 2 public notification. The application received two (2) representations during the public notification period and both parties wish to be heard in support of their representations.

As per the CAP delegations, the CAP is the relevant authority for Category 2 applications where representors wish to be heard.

The main issues relating to the proposal are vegetation clearance, overlooking, stormwater management and impact on the character and amenity of the locality.

In consideration of all the information presented, and following an assessment against the relevant Policy Area, 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:

- A single storey split level dwelling centrally located on the subject land with Colorbond wall and roof cladding in 'Night Sky', comprising three bedrooms and a study, two bathrooms and two living areas.
- An elevated wrap around deck (attached to the main dwelling) on the northern and eastern elevations with a maximum height of 2.6m above natural ground level.
- Freestanding double garage located forward of the main building line toward Fern Tree Hill Road, with access to be established through the north-west corner of the allotment
- Retaining walls located along the east boundary and adjacent to the east and south walls of the proposed garage with a maximum height of 1m.

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

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
15 July 2020	18/401/473 (18/D23/473)	The creation of an additional allotment of 964m <sup>2</sup> (subject land) and retention of the existing dwelling and associated structures on a reduced allotment of 1.312 Hectares (25 Fern Hill Road).

The subject site at 34 Fern Hill Road was created through land division 18/401 which sought the creation of an additional allotment fronting Fern Hill Road on what was at the time land comprising part of 25 Fern Hill Road. The intention of the land division was to separate the subject land within the Country Living Zone from the remainder of the land then forming part of 25 Fern Hill Road, which is within the Watershed (Primary Production) Zone. The land division was a Non-Complying proposal subject to Category 3 public notification which received four representations in opposition at the time. These representors included the two representors against the current dwelling proposal.

Land division 18/401 was determined by the Council Assessment Panel (CAP) on 10 April 2019. The proposal was granted Development Plan Consent and Land Division Consent. It was further determined that the Land Management Agreement (LMA) which applied to the land at the time be rescinded, primarily as the wording which was applied under the *Planning Act 1982* had been determined as invalid in case law. The LMA has since been rescinded.

#### 4. REFERRAL RESPONSES

- **AHC Engineering**

There is currently no formal crossover established for vehicle access to the site. A crossover to the north-west of the allotment frontage is proposed and a condition regarding the creation of this to Council's reasonable satisfaction is recommended (Refer to Recommended Condition 11). Council's Engineering Department support the crossover location.

Council's Engineer has reviewed the proposed stormwater disposal method and determined that controlled stormwater flows can be directed to the street. A Stormwater Management Plan and associated calculations were submitted to Council on 21 January 2021. Engineering are satisfied with the proposed stormwater management plan, with no further information required. Recommended condition 2 reinforces the need for the stormwater management plan to be implemented as part of the construction.

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 the procedural matters for the Country Living Zone, pursuant to the height of the deck above natural ground level. Two representations in opposition to the proposed development were received during the notification period. Both parties have indicated that they wish to be heard. The CAP is the relevant authority for Category 2 applications where representors wish to be heard and the hearing of representations is at the discretion of the CAP.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Paul Angas & Nicola Barnes	23 Fern Hill Road, Bridgewater	Self
Darrell & Bianca Stanbridge	32 Fern Hill Road, Bridgewater	Self

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

- Removal of native vegetation, specifically along the western boundary and removal of vegetation beyond the building envelope plan shown in the original land division.
- Overlooking of the dwelling at 32 Fern Hill Road.
- The building height of the proposed dwelling
- The impact on views from neighbouring properties.

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**. A copy of the plans which were provided for notification are included as **Attachment – Publicly Notified Plans**.

The applicant and the owner may be in attendance.

## 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 a rectangular shaped allotment of approximately 946m<sup>2</sup> located on the high side of Fern Hill Road. The site slopes from the south-west corner of the allotment toward the north-east and the Fern Hill Road boundary. The property is serviced by SA Water mains water and sewer. The site is currently vacant of buildings and contains a number of native trees in varying condition.

ii. The Surrounding Area

The subject site is on the interface of the Country Living and Watershed (Primary Production) Zone. As such the locality has two distinct characters. To the North, South and West of the subject site the character is comprised of predominantly low density residential development on uniform rectangular allotments, ranging from 950m<sup>2</sup> to 1100m<sup>2</sup> in size. To the East of the subject site the character could be considered rural residential, with larger holdings ranging from 0.4047ha up to 3ha interspersed with generous dwellings and surrounding gardens, with large tracts of native vegetation common. Despite the two distinctive residential characteristics the entire locality has a coherent natural wooded character with substantial landscaping along Fern Hill Road mixing visually with the larger stands of native vegetation found in the adjacent Watershed (Primary Production Zone). The vegetation along Fern Hill Road creates a private setting where views of buildings from the public realm are limited, though it is not uncommon for some garages and newer dwellings to be visible from the road where vegetation is yet to be established. This private setting is also contributed to by varying front setbacks, with some dwellings having deep setbacks from the road.

The land in the locality is steep and there is a crest in Fern Hill Road to the West of the subject site that limits views within the locality. Many of the surrounding dwellings within the Country Living Zone locality share similar characteristics to the proposed dwelling, being located higher on the allotments with split level or two-storey designs built to respond to the slope of the land. There are a number of instances of garages and parking areas forward of dwellings in the locality, generally due to access issues arising from of the slope of the land.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

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

- Development that contributes to the desired character of the policy area and zone; and
- Residential development sensitive to the particular topography of the area and which has minimal visual and environment impacts.

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

*Objectives: 1*

*PDCs: 1 & 2*

Objective 1 and PDC 1 of the Policy Area seek for development to be consistent with the desired character of the Policy Area. The desired character statement for the Bridgewater Policy Area envisages that the design of buildings will vary considerably within the Policy Area and that the built form in residential areas will be characterised by relatively modest one or two storey dwellings. This statement also seeks that dwellings generally be of brick veneer construction with front verandahs and tiled or pre-coated metal pitched roofs. The proposed development is considered to be sufficiently consistent with the desired character statement in that it is one storey (split over two levels) and whilst the walls of the dwelling and garage are not of brick veneer, they will be of pre-coated dark tone metal finish and highlighted by timber features which will blend into, and complement the locality.

PDC 2 of the Policy Area refers to the setbacks of the dwelling from property boundaries. With respect to the front setback it is noted that the quantitative guide of 6 metres is easily met by the proposed dwelling which is to be setback 18.5 metres from Fern Hill Road. Similarly the proposed side and rear setbacks are considered consistent with the minimum quantitative provisions of 1 and 4 metres respectively. The Policy Area does not identify setbacks sought for elements such as attached decking and it is noted that the proposal includes an attached deck sited directly on the eastern side boundary. This is considered in more detail below. It is considered that the dwelling footprint satisfies the intent of the setback requirements and the dwelling is therefore consistent with PDC 2. With respect to the garage location, this is discussed further below.

The following are considered to be the relevant Zone provisions:

*Objectives: 1, 2 & 3*

*PDCs: 6, 7, 9, 10 & 12*

Objectives 3 and PDC 6 seek for development to contribute to the desired character of the Zone. The desired character statement acknowledges that the Zone contains traditional designs and materials but envisages that new dwellings will incorporate modern designs and building materials. Based on this excerpt the dwelling is considered to portray characteristics that satisfy the intent of the Desired Character Statement, by incorporating modern design elements and materials which will be of appropriate colours to complement the landscape.

This statement also acknowledges the importance of energy efficient design and it is noted that the main living areas are orientated to the North in line with good passive design principles. This will allow for internal solar access in the winter months to assist with heating, and during the summer months the integrated verandah and eaves will provide adequate shading to reduce solar heat load.

The Desired Character Statement also seeks that development respond sensitively to site topography. The split level design is considered an appropriate response to the site topography and will ensure that the building sits sensitively within the locality. The setting down of the freestanding garage also minimises the need for excessive earthworks to enable access.

Similarly, PDCs 7 and 9 seek for development to be designed and sited to relate to the slope of the land so that the bulk and scale of the built-form does not dominate the landscape, that the earthworks are kept to a minimum and the visual impact to adjoining dwellings and public spaces are minimised. As detailed, the split level design and location of the freestanding garage reduce resultant earthworks and the associated retaining walls will therefore have a maximum height of 1m. In relation to the bulk and scale of the dwelling, it is noted that the proposed dwelling is relatively modest design that complies with quantitative setback and height guiding criteria. The attached decking which will sit directly on the Eastern boundary adjoins a large rural allotment and is sited beyond the cul-de-sac end of Fern Hill Road. It is considered that the bulk and scale of the proposed dwelling is unlikely to dominate the locality and is therefore considered to be consistent with the Desired Character Statement and the relevant PDCs 7 and 9.

In relation to impacts on views from adjoining dwellings, it is considered that the proposed development will have some level of impact particularly from 21, 23 and 32 Fern Hill Road which are all located directly adjacent to the cul-de-sac adjoining the subject site. In considering this outcome, it is worth reflecting that the dwelling does not offend any setback or height parameters, as previously mentioned and as such is of a scale that is envisaged and anticipated in the Zone. It is further noted that residential development is envisaged and anticipated within the Zone.

The quantitative parameters for outbuildings are set out in PDC 12. The proposed garage complies with all but the front setback criteria, which seeks a minimum 8m setback. The proposed garage is to be sited a minimum of 5m from the Fern Hill Road boundary and will therefore likely have the biggest impact as viewed from neighbouring properties and the streetscape. Notwithstanding the proposal's variance with the provisions of PDC 12, the siting of the garage forward of the building line has been proposed in response to the steep topography of the subject land. The siting in this location will result in an overall reduction of earthworks, in comparison to what would be required to site the garage in-line with a dwelling on the site. It is therefore considered the visual impact of the garage will not be excessive and will be mitigated by established and proposed landscaping, which includes dedicated planting forward of the garage building line. As such, it is considered that the proposed development is not contrary to PDC 7(c) and 10 and demonstrates sufficient consideration to mitigate the shortfall in achieving the quantitative provisions of PDC 12.

With respect to vegetation, the Native Vegetation Council have endorsed the clearing of native vegetation in association with the house. In addition, trees identified as Regulated and Significant in the associated arborist report are within 20m of the existing dwelling at 32 Fern Hill Road and their removal is exempt from development controls. The Significant tree along the Western boundary is proposed to be removed as part of the application, however it is noted that this tree is exempt from development controls as it is within 20m of an existing dwelling within a bushfire risk

area. The Regulated tree to the rear of the allotment is to be retained, though it is also exempt from development controls due to its proximity to an existing dwelling. The Native Vegetation Report submitted in support of the application notes that the site is highly modified and does not represent an intact stratum. On balance it is considered that the excerpt of the Desired Character Statement relating to vegetation has been adequately considered.

*b) Council Wide provisions*

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

- Development of a high design standard and appearance that responds to and reinforces the positive aspects of the local environment and built form.
- Orderly and economic development that creates a safe, convenient and pleasant environment in which to live in.
- A diverse range of dwelling types and sizes available to cater for changing demographics.

Design and Appearance

*Objectives: 1*

*PDCs: 1, 3, 7, 9, 18, 20 & 28*

Objective 1 seeks that development is of a high design standard, whilst PDC 1 seeks for proposed buildings to reflect the desired character of the locality whilst incorporating contemporary designs which have regard for mass and proportion, external materials, roof pitch, façade articulations and detailing. It is considered that the proposed dwelling is of appropriate design standard which incorporates the use non-reflective finishes and darker natural tones that will blend in with the locality. The use of darker tones in the finishes is consistent with the intent of PDC 3. Whilst the contemporary split-level and pitched gable design combination is not commonly seen in this locality it has become a common design style throughout the hills. It is noted that the proposed dwelling will sit below the height of the adjacent two storey dwelling at 32 Fern Hill Road and complies with quantitative height provisions. As mentioned earlier in the report, from a streetscape perspective the bulk and scale of the dwelling is acceptable and is also generally consistent with quantitative requirements pertaining to setbacks stipulated in the Policy Area and Zone, with the exception of the garage front setback. On balance the proposal is therefore considered sufficiently consistent with Objective 1 and PDC 1.

Concerns were also raised by the representors in regards to the impact on views from their property. It is considered that the dwelling is well setback from the shared boundary at 32 Fern Hill Road and based on the orientation of the neighbouring dwelling, it is considered that the proposed dwelling will not have a significant nor unreasonable impact on neighbouring views in its own right. When the impact is considered with respect to the existing vegetation (proposed to be removed) and the general ambience of the site, it is acknowledged that the transition from a vacant allotment to a residential property will cause a degree of interruption to the existing views, however it is noted that when the land division proposal was considered it was

anticipated that the site would eventually be developed for residential purposes. The design and placement of the dwelling is considered modest and responsive to the site topography, consistent with PDC 7.

PDC 18 seeks that development minimises direct overlooking of the main internal living areas and areas of private open space of neighbouring properties by offsetting the location of balconies and windows so that the views are oblique rather than direct, by setting the building away from boundaries and incorporating screening where appropriate. It is noted that the height of the attached decking triggered the need for public notification of this proposal. In respect to the neighbouring property at 32 Fern Hill Road, the applicant has provided plans demonstrating that the decking will sit approximately 2.3m below the ground level of the neighbouring dwelling. This will largely diminish the opportunity for direct views, particularly when consideration is given to the retention of existing boundary fencing and vegetation on the neighbouring allotment which will further mitigate potential overlooking.

It is acknowledged that there will be some views into the neighbouring properties from the Eastern end of the decking. The adjacent land at 25 Fern Hill Road forms part of an unusual 'dog-leg' in the allotment shape and does not form part of the private open space in association with the dwelling on this land. Furthermore, the dwelling at 25 Fern Hill Road is not readily visible from the subject land due to vegetation and the siting of the dwelling at 53 Wattle Tree Road. Views across to 53 Wattle Tree Road will be obscured by vegetation and diminished by both the topography of the land and sight line distances. The proposal is therefore considered to be consistent with PDC 18.

With respect to the relationship to the public realm and setbacks to the primary street it is considered that on balance and with regard to the site constraints and context that the proposal will contribute positively to the Fern Hill Road streetscape. This is despite the freestanding garage being located forward of the proposed dwelling. In this regard it is considered that impact of the garage will be diminished by its position below the dwelling, where views from the deck and the main living areas will still be available to the public realm, its complimentary colour scheme and the softening to be provided by proposed screen planting particularly adjacent to the Northern wall of the garage. Based on the above the qualitative guidance provided by PDCs 20 and 28 are considered to be sufficiently addressed.

#### Energy Efficiency

*Objectives: 1*

*PDCs: 1, 2, 3*

The proposed dwelling responds well to passive design principles, by locating the main living area with northern orientation, allowing solar access in the winter months. This is complimented by sufficient eave overhang and a verandah that will block out harsh summer sunlight and subsequent heat loads.

The main roof orientation on the Northern side of the dwelling with a pitch of 22.5 degrees will maximise exposure to direct sunlight for any future solar collectors. Citing the above the proposal is considered to reasonably satisfy Objective 1 and PDCs 1, 2 and 3.

### Hazards

*Objectives: 5*

*PDCs: 7 & 8*

There is no mapped flood risk to the property. The nearby watercourse is managed with an existing culvert under the driveway of 23 Fern Hill Road. The slope of the land to the East makes it unlikely that the subject land and surrounding area would be inundated in a flood event, as this would be more likely further downstream.

Due to the topography of the land the dwelling could not be sited within 30m of Fern Hill Road and as such the appropriate access and manoeuvring areas for firefighting vehicles were required to be demonstrated on-site in accordance with the Ministers Code. Although a formal referral to the CFS is not required under Schedule 8 for this proposal as the land is within a Medium Bushfire Risk Area, the applicant consulted with the CFS pursuant to the difficult access conditions on the site. A solution utilising the initial section of the proposed driveway and the cul-de-sac end of Fern Hill Road to complete a 'T-turn' manoeuvre was developed in consultation with the CFS. The proposed solution therefore satisfies PDC 7.

The proposal generally responds to PDC 8 with respect to vegetation clearance, access and provision of an adequate water supply for firefighting purposes.

### Natural Resources

*Objectives: 1*

*PDCs: 14 & 37*

The main concern of both representors is the loss of native vegetation including mature trees and understorey. Whilst this is a legitimate concern, and one also considered at the land division stage, the applicant has demonstrated that due process has been undertaken in seeking the relevant endorsement from the Native Vegetation Council. In response to the advice of the Native Vegetation Council the proposed dwelling, garage and all associated earthworks have been confined to the area shown in green on the Regulation Advice plan 2020/3108/473. This endorsement is subject to an offset payment into the Native Vegetation Fund which is a matter between the applicant and the Native Vegetation Council. The remainder of trees on site are to be retained and proposed screening vegetation has been selected to balance the planting of native trees with species recommended by the CFS for bushfire safety, in accordance with Objective 1 & PDC 37.

PDC 14 seeks that development include a stormwater management system that mitigates peak flows and ensures appropriate discharge of stormwater, without exceeding carrying capacities of downstream systems. The applicant has provided a stormwater management plan for the subject land demonstrating that all stormwater will be captured and directed to stormwater tanks with overflow being discharged to Fern Hill Road via a rock-filled swale. Engineering are satisfied with the method of stormwater management and as such it is considered that proposal is consistent with PDC 14.

### Orderly and Sustainable Development

*Objectives: 1 & 4*

*PDCs: 1*

The subject land is located in Country Living Zone (Bridgewater) Policy Area which anticipates residential use of land in the form of single and two storey dwellings. The proposal is therefore considered to be consistent with Objectives 1 and 4, and PDC 1. PDC 9 states that development should take place on land which is suitable for the intended use having regard to the location and the condition of that land. As noted, this Zone is designated for residential purposes and the associated land division was approved in expectation of such development.

### Residential Development

*Objectives: 1 & 2*

*PDCs: 9, 10, 13, 15, 17, 18, 19 & 27*

Objective 1 seeks safe, convenient, sustainable and healthy living environment whilst Objective 2 seeks a diverse range of dwelling types and sizes to cater for changing demographics. The proposed dwelling is considered to achieve both of these objectives by expanding the residential offering in the Zone and also incorporating a contemporary dwelling design that provides a modern and adaptive open plan living arrangement.

The dwelling is designed with living rooms and outdoor areas that take advantage of external outlooks across the street and adjoining vegetation. The entry to the dwelling will be clearly visible from the street ensuring a coherent relationship to the public realm. This ensures consistency with PDCs 9 and 10.

The location of the garage forward of the dwelling has been previously referred to and is considered a reasonable outcome given site topography and the proposed screen plantings. There are other examples of garages forward of dwellings in the locality, typically due to comparable topographic access difficulties. The proposal is therefore considered on balance to satisfy PDCs 13 and 15.

The site coverage of the proposal is modest and equates to approximately 33% of the allotment, well below the quantitative guide of 50%. This allows for appropriate dwelling configuration and space for rainwater tanks, private open space and landscaping, so as to accord with PDC 17.

Private Open Space will be provided in surplus of the qualifying and quantitative criteria under PDCs 18 and 19. Based on the site plan private open space excluding the decking area will account for a minimum of 300m<sup>2</sup>, well above the 80m<sup>2</sup> requirement. Minimum dimension and accessibility criteria are also met when the decking area is considered.

It is not considered the proposal introduces the potential for undue overlooking or the reduction of visual privacy to neighbouring private open space or habitable room windows. As demonstrated by the applicant, the level differences between the proposed dwelling and the dwelling at 32 Fern Hill Road will mitigate overlooking

concerns when looking west from the attached decking. To the North the dwelling looks over Fern Hill Road Reserve and to the East the subject site abuts rural land comprising significant mature vegetation. As discussed, the dwellings to the East and South-east are screened by vegetation and sight-line distance in addition to the topography of the land all combine to prevent direct overlooking into habitable spaces. It is therefore considered the proposal accords with the intent of PDC 27.

#### Transportation and Access

*Objective: 2*

*PDCs: 25, 32 & 34*

The grade of the access driveway has been determined as appropriate by Council's Engineer. Additionally, the applicant has demonstrated capacity for fire-fighting vehicle access and manoeuvring in accordance with the Minister's Code. The garage provides for two undercover car parking spaces with two further on-site visitor car parking spaces possible forward of the garage. This ensures the proposal complies with Objective 2 and PDCs 25, 32 and 34.

## 7. SUMMARY & CONCLUSION

The development proposal is to construct a single storey split level dwelling with associated freestanding garage and retaining walls at 34 Fern Hill Road, Bridgewater. During the public notification period, two representations were submitted to Council. Both representations were in opposition to the proposal and were predominantly concerned with the removal of native vegetation required to facilitate the dwelling. One of the representors, whose property directly abuts the subject land, also expressed concern with the building height and visual impact, as well as the potential for overlooking.

The proposal has been assessed against the relevant provisions of the Development Plan and based on what is anticipated for a residential development in the Country Living Zone, the proposal is considered to represent an appropriate form of development for the site. The proposed dwelling is appropriately setback from site boundaries and designed to respond to the topography of the site. It is considered that some visual impact can be anticipated due to the clearing of native vegetation to facilitate the development. However, the applicant intends to landscape the site to soften the proposal and to provide partial screening to the garage as viewed from Fern Hill Road.

Concerns in relation to overlooking have been carefully considered and based on the level differences, separation distance of buildings, existing fencing and existing and proposed landscaping, it is considered that the proposal will not introduce the potential for unreasonable overlooking.

Based on the above 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 on balance 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 20/1049/473 by Lloyd Building Solutions Pty Ltd for Single storey split level detached dwelling, deck (maximum height 2.6m), retaining walls (maximum height 1m), domestic outbuilding - garage & associated earthworks at 34 Fern Hill 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:

- Civil Stormwater Management Plan Revision 2 prepared by Tesseract International dated 21 January 2021 and received by Council 21 January 2021.
- Site Plan Sheet No .2, Issue A prepared by Lloyd Building Solutions dated 11 February 2021 and received by Council 11 February 2021.
- Floor Plan Sheet No. 3 prepared by Lloyd Building Solutions dated 26 November 2020 and received by Council 26 November 2020.
- North East, South-West and South East Elevation Sheet No. 3 prepared by Lloyd Building Solutions dated 26 November 2020 and received by Council 26 November 2020.
- North West Elevation, Garage Elevations and Garage Floor Plan Sheet No. 5 prepared by Lloyd Building Solutions dated 26 November 2020 and received by Council 26 November 2020.
- External Colour Scheme prepared by Lloyd Building Solutions dated 5 November 2020 and received by Council 5 November 2020.
- Civil Calculations 20-453 prepared by Tesseract International dated 21 January 2021 and received by Council 21 January 2021.

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

### (2) Stormwater Overflow Directed to Street

All roof runoff generated by the development hereby approved shall be directed to a rainwater tank with overflow to the street in accordance with the Stormwater Management Plan and Civil Calculations prepared by Tesseract International dated 21 January 2021 and to the satisfaction of Council, within one month of the roof cladding being installed.

All roof and hard paved water runoff shall be managed to prevent trespass onto adjoining properties and into the effluent disposal area where an on-site waste control system exists. Overflow from rainwater tanks is to be directed to the street in accordance with Stormwater Management Plan and Civil Calculations prepared by Tesseract International dated 21 January 2021 to the satisfaction of Council.

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

**(3) Residential 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.

**(4) External Finishes**

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

**DWELLING WALLS:** Colorbond 'Night Sky' or similar

**DWELLING ROOF:** Colorbond 'Night Sky' or similar

**GARAGE ROOF & WALLS:** Colorbond 'Night Sky' or similar

**GARAGE DOOR:** Gliderol 'Tuscan Merbau' panels or similar

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

**(5) Timeframe for Landscaping to be Planted**

Landscaping detailed on the Site Plan Sheet No. 2 Issue A prepared by Lloyd Building Solutions dated 11 February 2021 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 in the next planting season if and when it dies or becomes seriously diseased.

**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.

**(6) Treatment to Excavations and Fill**

All exposed excavations and fill as shown on the Site Plan Sheet No. 2 Issue A prepared by Lloyd Building Solutions dated 11 February 2021 shall be:

- (a) rounded off and bettered to match and blend with the natural contours of the land;
- (b) covered with approximately 100mm of topsoil;
- (c) seeded to avoid erosion and visual concerns; and
- (d) screened with trees, shrubs and ground covers prior to occupation of the approved development to the reasonable satisfaction of Council.

**REASON:** To maintain the visual amenity of the locality in which the subject land is located.

**(7) Access Requirements**

Private roads and access tracks shall provide safe and convenient access and egress for bushfire fighting vehicles as follows:

- Access to the building site shall be of all-weather construction, with a minimum formed road surface width of 3 metres.
- The 'T'-shaped turning area, utilizing the public road, shall be a minimum formed length of 11 metres with minimum internal radii of 9.5 metres on bends, including bends connecting private access to public roads.
- Vegetation overhanging the access road shall be pruned to achieve a minimum vehicular clearance of not less than 4 metres in width and a vertical height clearance of 4 metres.
- Entry and exit angles to the driveway shall be designed to accommodate safe travel for large fire-fighting vehicles with a long wheel base (length 8.3 metres).
- The gradient of the access road shall not exceed 16 degrees (29%), in steep terrain the construction of the public road or driveway shall be a sealed surface.

**REASON:** To provide safe access to properties in the event of a bushfire.

**(8) Firefighting Water Supply – Mains Water Supply Available**

A supply of water independent of reticulated mains supply shall be available at all times for fire-fighting purposes:

- A minimum supply of 2,000 (two thousand) litres of water shall be available for fighting purposes at all times; and
- The water supply shall be located such that it provides the required water; and
- The water supply shall be fitted with domestic fittings (standard household taps that enable an occupier to access a supply of water with domestic hoses or buckets for extinguishing minor fires); and
- The water supply outlet shall be located at least 400mm above ground level for a distance of 200mm either side of the outlet; and
- A water storage facility connected to mains water shall have an automatic float switch to maintain full capacity; and
- Where the water storage facility is an above-ground water tank, the tank (including any support structure) shall be constructed of non-combustible material.

**REASON:** To minimise the threat and impact of fire on life and property as the property is located in a Medium Bushfire Prone Area.

**(9) 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.

**(10) Restriction on Use of Outbuilding**

The outbuilding (garage) shall not be used for human habitation, commercial or industrial purposes. Any such activity may constitute a change in use and will require separate development approval.

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

**(11) Residential Access Point – SD13**

The vehicle access point and cross over shall be constructed in accordance with Adelaide Hills Council standard engineering detail SD13 – residential vehicular crossing paved for sealed road with kerb and SD19 – allowable crossover locations, within 3 months of occupation/use of the development.

**REASON:** For safe and convenient movement of vehicles.

**NOTES**

**(1) Development Plan Consent (DPC) Expiry**

This Development Plan Consent is valid for a period of twelve (12) months commencing from the date of the decision or where an appeal has been commenced the date on which the appeal is determined In the Environment, Development and Resources (ERD) Court.

**(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) 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.

**(4) Department of Environment and Water (DEW) - Native Vegetation Council**

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

[www.environment.sa.gov.au/Conservation/Native\\_Vegetation/Managing\\_native\\_vegetation](http://www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation)

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

**(5) 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  
Referral Responses  
Representation  
Applicant's response to representations  
Publically Notified Plans

Respectfully submitted

Concurrence

---

**Ashleigh Gade**  
**Statutory Planner**

---

**Deryn Atkinson**  
**Assessment Manager**

## COUNCIL ASSESSMENT PANEL MEETING

10 March 2021

### AGENDA – 9.3

<b>Applicant:</b> Sharyn Stone	<b>Landowner:</b> D A Kazi & S K Stone
<b>Agent:</b> Olden and Van Senden Pty Ltd	<b>Originating Officer:</b> Ashleigh Gade
<b>Development Application:</b>	20/443/473 (473/D018/20)
<b>Application Description:</b> Land Division - boundary realignment (3 into 3)	
<b>Subject Land:</b> Lot:68 Sec: P5152 FP:129922 CT:5716/6 Lot:50 Sec: P5152 DP:43185 CT:5287/786 Lot:69 Sec: P5152 FP:129923 CT:5372/282	<b>General Location:</b> 663 & 665 Swamp Road, & 671A Swamp Road, Lenswood SA 5240 <b>Attachment – Locality Plan</b>
<b>Development Plan Consolidated :</b> 8 August 2019 <b>Map AdHi/3 &amp; 53</b>	<b>Zone/Policy Area:</b> Watershed (Primary Production) Zone - Lenswood Policy Area
<b>Form of Development:</b> Merit	<b>Site Area(s) Existing (and Proposed):</b> Lot 68: 1686m <sup>2</sup> ( Lot 50: 5.4 ha Lot 69: 1.6 ha
<b>Public Notice Category:</b> Category 1 Merit	<b>Representations Received:</b> N/A  <b>Representations to be Heard:</b> N/A

#### 1. EXECUTIVE SUMMARY

The purpose of this application is to adjust the property boundaries between three (3) rural properties currently being used for residential purposes. The proposal is intended to improve site management on each allotment by realigning the boundaries along the naturally dividing physical features, being the centre line of the watercourse and mid-point between two rows of mature poplar trees. The realignment also resolves existing encroachments and increases the natural resource management capacity of the land.

The subject land is located within the Watershed (Primary Production) Zone - Lenswood Policy Area and the proposal is a merit form of development.

As per the CAP delegations, the CAP is the relevant authority for land division boundary realignment applications within the Watershed (Primary Production) Zone which involve three (3) or more titles and results in the creation of rural living allotments of 2 hectares or less, except where all the existing allotments are already 2 hectares or less in area.

The main issues relating to the proposal are natural resources management, on-site wastewater capacity in a watershed area, and ensuring the proposal represents orderly development.

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 a boundary re-alignment involving three (3) titles.

### Existing Allotments

Allotment	Area (ha)	Currently containing
Lot 68	700m <sup>2</sup>	Dwelling and Outbuilding
Lot 50	5.4 ha	Dwelling and Outbuildings
Lot 69	1.6 ha	Dwelling and Outbuildings

### Proposed Allotments

Allotment	Area (ha)	Containing
Lot 32	3800m <sup>2</sup>	Dwelling and Outbuilding
Lot 30	5.3 ha	Dwelling and Outbuildings
Lot 31	1.5 ha	Dwelling and Outbuildings

The plan of division results in the transfer of land as follows:

- 430 square metres of land from 663 (Lot 69) Swamp Road to 671A (Lot 30) Swamp Road.
- 660 square metres of land from 663 (Lot 69) Swamp Road to 665 (Lot 32) Swamp Road.
- 2440 square metres of land from 671A (Lot 50) Swamp Road to 665 (Lot 32) Swamp Road.

There is no change to the location of existing easements and rights of way, however a portion of the easement marked 'B' in favour of the Minister for the Environment and Natural Resources will become part of 665 (Lot 32) Swamp Road.

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
	05/1067/473	665 Swamp Road: Additions to detached dwelling
	17/987 /473	671A Swamp Road: single storey detached pole dwelling including verandah and deck

The aerial imagery of the subject land available shows that the dwelling at 665 Swamp Road was built prior to 1949 and at that time, the surrounding land was used for horticultural purposes. The dwelling at 663 Swamp Road was built sometime before aerial imagery dated between 1986 and 1989, by which time the horticultural use of the surrounding land had reduced significantly. The next available imagery is from 2011 and by this time all horticultural activity on the subject

land had ceased. The dwelling at 671A Swamp Road was subsequently built in 2018. There remains no primary production activity on the subject land and all three allotments are exclusively used for residential purposes.

#### 4. REFERRAL RESPONSES

- **CFS**  
The SA Country Fire Service has no objection to the proposed boundary realignment.
- **SA WATER**  
No requirements.
- **AHC EHU**  
All allotments have on-site waste disposal.

EHU have confirmed no impact from the proposal to existing on-site disposal areas or septic tanks via the realignment. The proposal introduces capacity for better wastewater management and this is the intent of the applicant however, it is also noted this is not a requirement as EHU are satisfied the existing situation can be retained.

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

#### 5. PLANNING & TECHNICAL CONSIDERATIONS

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

- i. The Site's Physical Characteristics  
The subject land is 7.1 hectares in area and currently exists as three (3) lots of varying size, ranging from 0.16 of a hectare to 5.4 hectares. Each allotment is used for rural residential purposes, with the applicant stating that no primary production is undertaken from the land and aerial imagery suggesting this has been the case for at least the past decade. Notwithstanding, the larger allotments do retain the capacity for low-intensity primary production activities. As a whole the land slopes down toward Swamp Road and all three allotments are intersected by a watercourse.
- ii. The Surrounding Area  
The locality is rural with allotments of varying sizes. There is generally a mixture of allotments used for residential purposes and those used for primary production; typically horticulture.
- iii. Development Plan Policy considerations
  - a) *Policy Area/Zone Provisions*  
  
Policy Area  
The subject land lies within the Lenswood Policy Area and these provisions seek:
    1. *The retention of orchards and bushland as the dominant uses.*
    2. *Retention of the present village character and size of Lenswood and Forest Range.*
    3. *No further provision of small rural living allotments.*

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

*Objectives: 1 & 3*

The proposal is considered to have negligible impact on achieving the objectives of the Policy Area. This is due to there being no new allotments, buildings or substantial earthworks or alterations proposed as part of the application.

The following are considered to be the relevant Zone provisions:

*Objectives: 1, 2, 3 & 5*

*PDCs: 18, 19, 20, 21, 22, 33 & 36*

The proposal is in accordance with all the objectives of the zone as it does not change the essential nature of the existing allotments. It is also not considered the proposal will have any impact on functional primary production land in the locality, given that the proposal does not introduce the potential for further dwellings nor place any existing building in closer proximity to surrounding horticultural land. The proposal supports ongoing management of the land in accordance with Objectives 1, 2 & 3. The proposal will retain the existing natural amenity of the locality, consistent with Objective 5.

The proposal does not introduce the opportunity for additional dwellings nor is there any built form associated with the boundary realignment. All existing allotments contain a dwelling with appropriately approved on-site wastewater systems, in accordance with PDCs 18 & 19.

As noted in the proposal summary, the realignment will align site boundaries with natural dividing features namely the centre line of the watercourse and two lines of established poplar trees. The realignment also resolves existing building encroachments from 665 Swamp Road, where the attached carport and verandah on the southern elevation and two small outbuildings straddle the existing boundary with 663 Swamp Road. Corrections of boundary anomalies are envisaged by PDC 20.

There will be no loss of primary production land so the proposal is considered in accordance with PDC 21 and the allotments are similar in size to others in the locality in accordance with PDC 22.

A watercourse traverses the three allotments and the intent of this application is to provide better access to the watercourse from each respective property, in order to improve the natural resources management in the vicinity, ensuring adherence with PDCs 20(b) and 36. The realignment allows for land adjacent the creek to be managed on each allotment without crossing the watercourse, as is required under the current arrangement. In addition, the realignment allows for an effluent disposal area for 665 Swamp Road (Lot 32) that is over 50m from the creek and suitable distances from buildings and boundaries. This is consistent with the outcomes sought by PDC 36.

*b) Council Wide provisions*

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

- i. Orderly and economic development
- ii. Development to be undertaken on land that is suitable for the intended purpose, whilst also having regard for the zoning of the land,
- iii. Retention of rural area for the maintenance of the natural character and rural beauty of these areas, and
- iv. Protection of the Mount Lofty Ranges Watershed from pollution.

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

*Animal Keeping and Rural Development*

*Objectives: 1*

The proposal does not intend to change the longstanding rural residential land uses, however it will support the retention of existing vegetation while enhancing the capacity for land management in an area of scenic beauty, in accordance with Objective 1.

*Interface Between Land Uses*

*Objectives: 1*

*PDCs: 2, 4 & 16*

As there is no change in the relationship of the buildings and uses on the subject land to the current situation, the proposal is considered to minimise negative impacts on existing and future land uses in the locality in accordance with Objective 1 & PDC 2.

The proposed increase in the size of proposed lots 68 and 69 offers increased buffers from potential land use conflicts in accordance with PDCs 4 & 16.

*Land Division*

*Objectives: 2, 4 & 5*

*PDCs: 21, 22 & 23*

The proposal will retain the existing use on all allotments consistent with Objective 2.

The proposal is not considered to influence the primary production value of the land as each existing allotment has been used exclusively for residential purposes since 2018 and the subject land as a whole has not been used in any primary production capacity for at least a decade. The proposal will retain and improve the capacity for management of natural resources on the land, as such the proposal is considered to be in accordance with Objectives 4 & 5 and PDCs 21, 22 & 23.

*Natural Resources*

*Objectives: 1, 2 & 14*

*PDCs: 45*

The proposal primarily seeks to improve the outcome of natural resources management between the three allotments, as envisaged by Objectives 1, 2 & 14 and PDC 45.

*Orderly and Sustainable Development*

*Objectives: 1, 2 & 3*

*PDCs: 1, 2 & 9*

The proposal will result in amended frontage widths to each allotment. However this will not change the appearance of the allotments within the streetscape and is not considered likely to impact upon adjoining properties. There is no proposed change to existing access arrangements. The proposal does not change the intended use of the land or prejudice the development of land in the zone and will facilitate the continuation of the existing residential uses. In accordance with the above, the proposal is considered orderly and economic in accordance with Objectives 1, 2 & 3 and PDCs 1, 2 & 9.

*Stormwater Management*

No change to existing stormwater arrangements is proposed and all allotments will continue to manage stormwater on-site as there is no capacity to discharge to Swamp Road.

*Water Supply & Effluent Disposal*

The existing on-site waste system for each dwelling will be contained wholly within the proposed corresponding allotment boundaries. The boundary realignment also allows the opportunity in the future for improved wastewater management on 665 (Lot 32) Swamp Road, providing the opportunity for an increased setback from the watercourse.

*Fire Protection Issues*

The application does not propose any changes to existing arrangements regarding CFS access.

**6. SUMMARY & CONCLUSION**

The proposal is for the rearrangement of boundaries between three (3) adjoining properties. There is no change to vehicle access, buildings or to the current use of the land. The reallocation of land forming the proposal is considered to improve the potential for effective land management, particularly in relation to management of the watercourse. The application does not prejudice existing or potential primary production uses of the land given that the existing allotment arrangement provides limited opportunity for primary production of meaningful scale. The proposed realignment also addresses existing encroachments and wastewater management difficulties arising from the existing allotment pattern.

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.

## 7. 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 and Land Division Consent to Development Application 20/443/473 (473/ D018/20) by Sharyn Stone for Land division - Boundary realignment (3 into 3) at 663 Swamp Road, 665 Swamp Road, and 671A Swamp Road, Lenswood, 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:

- Plan of Division (Boundary Realignment) prepared by Olden & van Senden, Version 4, dated 20 October 2020.

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

### Planning Notes

(1) Development Plan Consent

Development Applications lodged prior to 12 November 2020 are valid for a period of twelve (12) months commencing from the date of the decision. Development Applications lodged from 12 November 2020 are valid for a period of twenty four (24) months commencing from the date of the decision. In either case - if an appeal has been commenced the date on which the appeal is determined. Please check page one (1) for the lodged date of this application.

Please refer to page two (2) of this form (Notes for Applicant blue box) for information on changes to the planning system and potential changes to extensions of time requests.

### Council Land Division Statement of Requirements

Nil

### Council Land Division Notes

Nil

**SCAP Land Division Statement of Requirements**

**(1) Requirement for Certified Survey Plan**

**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 Commission Assessment Panel for Land Division Certificate purposes.**

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

**SCAP Land Division Notes**

**Nil**

**9. ATTACHMENTS**

Locality Plan  
Proposal Plans  
Application Information  
Referral Responses

Respectfully submitted

Concurrence

---

**Ashleigh Gade  
Statutory Planner**

---

**Deryn Atkinson  
Assessment Manager**

**COUNCIL ASSESSMENT PANEL MEETING**  
**10 March 2021**  
**AGENDA**  
**BUSINESS ITEM – 10.1**

**Originating Officer:** Deryn Atkinson, Assessment Manager

**Subject:** Draft Council Agenda Format under the PDI Act

**For:** Decision

---

**SUMMARY**

This report provides a draft Agenda format for consideration of the Council Assessment Panel (CAP) as part of business readiness for the 19 March 2021 Phase 3 implementation date of the Planning and Design Code and the *Planning, Development and Infrastructure Act 2016* (PDI Act). It is intended that CAP meeting agendas after 19 March 2021 would be in the revised format.

The draft document provides a clear separation between assessment of development application under the *Development Act 1993* and the PDI Act. These latest changes have been incorporated into the draft revised Operating and Meeting Procedures prepared by staff for consideration and recommended for adoption by the CAP (refer to **Appendix 1**).

---

**RECOMMENDATION**

1. **The report be received and noted**
  2. **The amended agenda layout for order of business contained in Appendix 1 be adopted for meetings after 19 March 2021**
  3. **The Assessment Manager be permitted to make changes to the agenda format as may be necessary from time to time.**
- 

**1. Reasons for new agenda format**

In business readiness for the 19 March 2021 Phase 3 implementation date of the Planning and Design Code and the *Planning, Development and Infrastructure Act 2016* (PDI Act) it is necessary to amend the CAP agenda format to:

- separate the assessment of development applications assessed against the Adelaide Hills Council Development Plan and though development applications assessed against the Planning and Design Code
- delete the reference to Council delegation as the CAP is a relevant authority in its own right under the PDI Act
- include a new item relating to the applications for Review of Assessment Manager decisions
- include ERD Court Appeals which may at times be confidential

The CAP are requested to consider this format and provide feedback on any changes required.

- Staff recommend that the revised agenda format in Appendix 1 be adopted for use for CAP meeting agendas from 19 March 2021.

## **2. APPENDICES**

- (1) Draft Agenda format for CAP

# COUNCIL ASSESSMENT PANEL MEETING

10 March 2021

## AGENDA

### BUSINESS ITEM – 10.2

**Originating Officer:** Deryn Atkinson, Assessment Manager

**Subject:** Amendment to Council Assessment Panel (CAP) Operating and Meeting Procedures

**For:** Decision

---

#### SUMMARY

The Council Assessment Panel (CAP) was established by the Council on 26 September 2017 under Section 83 of the *Planning, Development and Infrastructure Act 2016* (PDI Act)

The *Planning, Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) came into operation on 1 October 2017 and prescribe basic meeting procedures for Council Assessment Panels (CAPs). These meeting procedures are limited to:

- Instances where a CAP may exclude the public from attendance (i.e., go into confidence)
- The recording of minutes and access to agendas and minutes by members of the public
- The determination of a meeting quorum
- Voting rights
- The validity of CAP proceedings in the event of a vacancy in membership or a defect in the appointment of a member.

Further meeting procedures are determined by the CAP itself in accordance with Regulation 18 of the PDI Regulations. The current Operating and Meeting Procedures were last adopted by CAP on 10 June 2020.

On 9 April 2020 the *COVID-19 Emergency Response Act 2020* (COVID Act) commenced operation in response to the COVID-19 pandemic. The COVID Act originally expired on 9 October 2020 or on the day on which all relevant declarations relevant to COVID-19 have ceased in South Australia (Expiry Day). Section 17 of the COVID Act provides that despite a provision of any other act, a requirement that a meeting occur that requires two (2) or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio-only communication. An addendum to the current Operating and Meeting Procedures prepared for the Local Government Association was adopted as part of the updated meeting procedures. The date in this addendum has now been amended to 31 May 2021 to facilitate temporary electronic meetings whether necessary until the expiry date day of the COVID Act.

As part of business readiness for Go Live for Phase 3 of the implementation PDI Act the model Assessment Panel meeting procedures prepared for the LGA have also been updated to largely reflect the hearing of applications for review of an Assessment Manager decision and to make reference to the Planning Rules along with other minor wording changing and heading restructure. These latest changes have been incorporated into the draft revised Operating and Meeting Procedures prepared by staff for consideration and recommended for adoption by the CAP (refer to **Appendix 1**).

---

## RECOMMENDATION

**That the Council Assessment Panel adopts the revised Operating and Meeting Procedures as detailed in Appendix 1 of this report to replace the Operating and Meeting Procedures adopted on 10 June 2020.**

---

### 1. GOVERNANCE

#### ➤ Legal Implications

The Council is required to have an Assessment Panel in place which is comprised of independent members and up to one Council Elected Member.

The *Planning, Development and Infrastructure Act 2016* (PDI Act) was assented to by the Governor on 21 April 2016 after the passage through Parliament. The implementation has been staged over the last 5 years.

On 1 October 2017 the operation of Council Assessment Panel (CAP) pursuant to Sections 82 and 83 of the PDI Act commenced and the *Planning, Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) came into operation.

All development applications continue to be lodged under the *Development Act 1993* until 18 March 2021. From the designated date of 19 March 2021 development applications for Phase 3 Councils will be lodged under the PDI Act.

Pursuant to Section 83(1) (f) of the PDI Act the operating procedures of the CAP must be in accordance with any requirements prescribed by the regulations. Regulations 13 to 18 of the PDI Regulations address matters including public access to meetings, minutes, documents, quorum and voting. Regulation 18 permits the CAP to adopt other procedures not prescribed as it considers necessary.

The COVID-19 Emergency Response Act 2020 (COVID Act) commenced operation on 9 April 2020 in response to the COVID-19 pandemic. Section 17 of the COVID Act provides that despite a provision of any other act, a requirement that a meeting occur that requires two (2) or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio-only communication. An addendum to the current Operating and Meeting Procedures was adopted to facilitate temporary electronic meetings until the expiry day of the COVID Act (originally 9 October 2020 or on the day on which all relevant declarations relevant to COVID-19 have ceased in South Australia). This date has now been amended to be 31 May 2021.

Under the PDI Act the requirement to provide reasons for the imposition of conditions is no longer present.

The current requirement to provide reasons pursuant to Regulation 42(3) of the Development Regulations 2008 is not replicated in the new requirement pursuant to Regulation 58 of the PDI Regulations.

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

All applications which have been publicly notified and have representors who wish to be heard (unless otherwise delegated to the Assessment Manager) are reported to the CAP for consideration. This ensures that such members of the community have an opportunity to present their views about a specific development and its potential impacts to the CAP. The CAP involvement in the assessment process provides for a high level of independent scrutiny of applications and the determination of certain developments in public meeting forum, providing a transparent process.

Under the temporary arrangements, representors who wish to be heard and applicants are able to connect to the CAP meeting by electronic means, including telephone, computer or other electronic device used for communication. The public has access to the virtual meeting room in a similar way. The information and link for connection to the virtual meeting room is advertised on the Council website and the link is included in the Notice of Meeting.

The minutes will record the methods of attendance by all CAP members present and by every person who makes or responds to a representation.

**2. AMENDMENTS TO CAP OPERATING AND MEETING PROCEDURES**

A Panel may adopt its own procedures as long as they are consistent with the PDI Act or the PDI (General) Regulations.

In consideration of the updated Model Meeting Procedures prepared by the LGA, the following matters are recommended to be included in the revised Operating and Meeting Procedures for CAP:

- Introduction – reference to the CAP’s Policy for Assessment Panel Review of Decision of Assessment Manger
- 5. Deletion of heading of HEARING OF REPRESENTATIONS and replacement with new heading ASSESSMENT OF DEVELOPMENT APPLICATIONS (and explanation) with sub-clauses 5.1, 5.2 and 5.3 relocated from clause 6 and Presiding Member changed to Assessment Manager out of necessity as these decisions occur prior to the CAP meeting.
- 5. 4 Hearing of representations renumbered to continue on after sub-clause 5.3
- 5.4.1 Wording added to clarify that Category 2 and 3 applications are under the *Development Act* and other applications for which notice must be given are under the PDI Act and to exclude applications where there are only supporting representations which are delegated to be determined by the Assessment Manager.
- 6.1.1 Addition of Planning Rules (as relevant)
- 6.1.2 Amendment of Development Plan Consent to development authorisation and inclusion of a footnote that imposition of reasons for conditions is only required for assessment against the Development Plan.
- 6.2 As per 6.1.1 and 6.1.2 above

- 7.3.4 Wording added to clarify that names of every person who makes a representation or responds to a representation in relation to a development application needs to be recorded in the minutes
- 7.3.5 New clause to recognise the requirement to record the names of every person who appears before the CAP for review of an Assessment Manager decision).
- 7.3.6 & 7.3.6.1 Addition of development and Planning Rules (as relevant)
- 7.3.6.2 Inclusion of a footnote that imposition of reasons for conditions is only required for assessment against the Development Plan
- 7.3.7 Addition of new sub-clauses for the review of Assessment Manager decisions with the aforementioned footnote
- 7.3.8 Addition of a new sub-clause requiring the decision, mover and seconder to be recorded in the minutes where the decision is by majority vote.
- 7.4 Amendment to the timeframe from five to three business days in consideration of quicker turnarounds.
- 9.1 Inclusion of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy
- Temporary Addendum – Amendment of the date to 31 May 2021 and inclusion of the additional paragraph relating to persons appearing before the CAP for review of an Assessment Manager decision.
  
- Staff recommend that the revised Operating and Meeting Procedures in Appendix 1 are adopted to replace the Operating and Meeting Procedures adopted on 10 June 2020.

### **3. APPENDICES**

- (1) Revised Draft Operating and Meeting Procedures for CAP
- (2) Marked up Revised Draft Operating and Meeting Procedures for CAP