



Port Augusta
CITY COUNCIL



Port Pirie
Regional Council



UNEARTH
WHYALLA

AGENDA

UPPER SPENCER GULF REGIONAL ASSESSMENT PANEL

**Civic Conference Room, Whyalla City Council,
21 Grundel St, Whyalla Norrie,**

**Wednesday 12 June 2024,
commencing at 5.30pm.**



Port Augusta
CITY COUNCIL



**UNEARTH
WHYALLA**

AGENDA

UPPER SPENCER GULF REGIONAL ASSESSMENT PANEL

Notice is hereby given that a meeting of the Upper Spencer Gulf Regional Assessment Panel will be held on Wednesday 12 June 2024, Civic Conference Room, Whyalla City Council Building, 21 Grundel Street, Whyalla Norrie, commencing at 5.30pm.

Jodie Perone
ASSESSMENT MANAGER
7 June 2024

1. **Welcome – Stewart Payne, Presiding Member**

2. **Present**

3. **Apologies**

4. **Confirmation of Minutes**

That the minutes of meeting held on 30 April 2024 be received and adopted, with the correction to Item 10 Close declared the meeting closed at 6.45pm.

5. **Business Arising from the Previous Minutes**

6. **Conflict of Interest Declarations**

7. **Appeal Matter**

7.1 Development Application 660/117/2020

Page 3

Renewable Energy Facility (Solar Farm) 2b Marks Road, Port Paterson.

8. Officer Reports

8.1 Development Application 24006777

Page 75

Child-care facility with associated carparking, fencing and associated works.

8.1.1 Seven (7) Representors wish to be heard.

9. Other business

10. Close



HILDITCH LAWYERS

Level 1, 24 Grote Street
Adelaide SA 5000

GPO Box 11010
Adelaide SA 5001
www.hilditchlawyers.com

Tel 08 7325 5900
Fax 08 8231 8323
lawyers@hilditchlawyers.com

27 May 2024

Ms Victoria Shute
Kelley Jones Lawyers
Level 6 / 19 Gilles Street
Adelaide SA 5000

Dear Victoria,

**Green Gold Energy Pty Ltd v Corporation of the City of Port Augusta – 2B
Marks Road, Port Paterson (DA 660/117/2020 – ERD-24-000025)**

I refer to the above matter and confirm I act for the Appellant in relation to the above ERD Court appeal.

I confirm I am instructed to put forward a compromise proposal in the appeal on behalf of my client to see if this matter can be resolved without the need to proceed to a formal, contested hearing in the Courts. This compromise proposal is put forward on a “confidential and without prejudice basis” in the usual way.

Documents

For the purpose of considering the compromise, I am instructed to request you to provide your client with a copy of this letter together with a copy of the attached letter and enclosures from Ben Green & Associates dated 27 May 2024. Mr Green’s letter explains the detail of the compromise proposal and attaches relevant documents including a Construction Environmental Management Plan and a revised landscape plan.

Background

I confirm our client proposes to establish a solar farm (4.95MW) with ancillary infrastructure, battery storage, fencing and landscaping on the above land which is situated within the Rural Living Zone.

This proposal is for a “renewable energy facility” insofar as this term is used in the Development Plan.

The relevant Development Application (“the DA”) was refused by the Upper Spencer Gulf Regional Assessment Panel on 21 February 2024 and an appeal

Liability limited by a scheme approved under Professional Standards Legislation.

Hilditch Lawyers Pty Ltd ACN 145 516 276

to the Environment, Resources and Development Court has been lodged against that decision.

As the DA was lodged on 29 July 2020, the proposal (including any compromise proposal) must be assessed against the provisions of the relevant Development Plan, more particularly the Port Augusta (City) Development Plan consolidated on 7 July 2016.

I have considered the report prepared by the Assistant Community Planner ("the Recommending Officer") to the Panel for its meeting on 21 February 2024 and the relevant Decision Notification Form dated 21 February 2024.

The Recommending Officer acknowledged that the proposal is acceptable in terms of its management of amenity impacts and ecological impacts and acknowledged that the proposal's traffic impact would be acceptable, subject to appropriate management. However, it appears that the Recommending Officer concluded that a solar farm is simply not considered to be appropriate in the Rural Living Zone due to the inherent conflicts of such a proposal with relevant planning policies applicable within this Zone.

The "Refusal Reasons" relate solely to the provisions for the Rural Living Zone and reflect the relevant staff recommendation. For example, the first reason for refusal is that the proposal is not for "rural activities".

Please note that the Recommending Officer concluded that the proposed development is *"not associated with a residential use (to be demolished)"* (see BD at pages 161, 162 and 168) and the DA appears to have been assessed on this basis. I am instructed that this is not correct. The proposal plans have shown a "proposed area to be cleared" of vegetation around the existing dwelling (see BD page 30) which perhaps has been misconstrued as a proposal to demolish the buildings within that area. Whatever the case may be, I am instructed that the dwelling is to be retained as part of this proposal.

The approach to assessment

I have considered the relevant Development Plan as a whole, including the Council Wide provisions and the provisions for its various Zones.

The "Background" to the Development Plan explains that most of the population of the city lives in the urban areas of Port Augusta or Stirling North. The broader Council area is clearly identified as one which presents significant future opportunities for economic growth, including in sectors such as tourism, grazing, aquaculture and mining.

When dealing with employment, the "Background" to the Development Plan includes the following statement:

"Employment in the City is comparatively diverse following the reduction in opportunities in the rail and electricity generating sectors".

The proposal can be described as one which will present new opportunities in the electricity generating sector which is clearly a positive outcome.

The Council's Development Plan clearly contemplates that renewable energy facilities will be established in its area. An entire section of the Council-Wide provisions is devoted to such facilities (CW objectives 119 to 121 and Principles 392 to 395). At the same time, there is not a single provision in the Plan which deals specifically with, for example, solar farm proposals.

Renewable energy facilities, such as wind farms and solar farms, obviously come in many shapes and sizes and so the relevant provisions must be read with this reality firmly in mind. The impacts of a wind farm for example will obviously be very different to the impacts associated with a solar farm. Very low scale proposals (in terms of their height) such as solar farms will also present opportunities for screening through landscaping which will not be possible with respect to wind farms.

Insofar as the Council's various Zones are concerned, none of them have provisions dealing generally with "renewable energy facilities", including solar farms. Renewable energy facilities, including wind farms and solar farms, are merit developments in all Zones and should be assessed accordingly with reference to the Council Wide provisions and the conditions and existing state of development within the relevant locality.

However, the Primary Industry zone and the Defence Zone do have provisions which specifically contemplate and deal with wind farms, which of course present their own unique challenges due to their inevitable height, scale and impacts. It is important to acknowledge that the fact that wind farms are specifically envisaged in these two Zones certainly does not mean that all of the other kinds of renewable energy facilities are not broadly envisaged in other Zones across the Council's area. It would, with respect, be quite wrong to commence the assessment of the proposed solar farm on the basis that they are not envisaged in the Rural Living Zone simply because they are not specifically contemplated in the Zone provisions. Solar farms are not specifically contemplated by the policies within any Zone but they are obviously contemplated and encouraged generally within the Council's area for compelling reasons (subject of course to a proper assessment with reference to local conditions and the existing state of development). The Northern Power Station solar farm, by way of example, was approved within the same Rural Living Zone in 2020 (see locality plan). Some Zones and localities will of course be more conducive than others due to land size and location, the nature of existing land uses and the current arrangement and distribution of electricity infrastructure including power stations and transmission lines.

Adequate weight must be placed on the Council Wide provisions which encourage the establishment of renewable energy facilities, and upon the importance of these facilities as acknowledged by the Plan (Council Wide Objective 119 acknowledges their potential benefit to "the environment, the community and the state".). There is no inherent conflict at all between these Council Wide provisions and the provisions applicable within the individual Zones within the Council's area such as the Rural Living Zone. Furthermore, adequate weight must be placed on the existence of important and related infrastructure in the adjoining Industry Zone which also heavily influences the character of the locality.

The Courts have dealt with the assessment approach and the role of the Development Plan in dealing with renewable energy facilities. The South Australian Environment, Resources and Development Court ("the ERD Court") has noted that the following important observation was made in the matter of *Taralga Landscape Guardians Inc v Minister for Planning and Anor* (2007) 161 LGERA 1, at para 1:

"The insertion of wind turbines into a non-industrial landscape is perceived by many as a radical change which confronts their present reality. However those perceptions come in differing hues. To residents, such as members of Taralga Landscape Guardians Inc (the Guardians), the change is stark and negative. It would represent a blight and the confrontation is with their enjoyment of their rural setting.

To others, however, the change is positive. It would represent an opportunity to shift from the societal dependence on high emission fuels to renewable energy sources. For them, the confrontation is beneficial – being one much needed step in policy settings confronting carbon emissions and global warming. (my emphasis)

The ERD Court then went on to acknowledge its assessment task in the following way:

"... as this Court has previously recognised, our focus, in this assessment when considering planning policy in South Australia, must be directed to the relevant Development Plan.

Our task is to assess the proposed development against the relevant provisions of the Development Plan, and general planning principles, and to decide, in light of that assessment, whether to confirm, vary or reverse the Council's decision to grant development consent to the proposal.

It is important to note, in this context, that the Development Plan is not to be construed like a statute. It is a planning document, couched in the language of planning objectives and principles, rather than that of legal obligation. It uses language appropriate to the expressions of goals and guiding principles rather than the expression of legal mandates."

With this in mind, I would respectfully suggest that the assessment of the DA (having regard to the relevant Council Wide provisions dealing with Renewable Energy Facilities) ultimately boils down to a consideration of whether or not the proposal is located appropriately and sited and designed so as to "minimise" adverse impacts.

Any argument that a solar farm should not be approved simply because it is within a Rural Living Zone is unsustainable. The exercise does not involve a search within the individual zones for provisions which specifically encourage renewable energy facilities and then the refusal of proposals in Zones which do not contain such provisions. If this were the correct approach, and it cannot be, then only wind farms in the Primary Production Zone and the Defence Zone could potentially be supported. Again, Council Wide Objective 119 acknowledges the importance of renewable energy facilities which are of

benefit to the environment, the community and the state and this should be a fundamental consideration when weighing up the pros and cons of the facility with reference to the Development Plan when read as a whole.

This approach to assessment becomes particularly important and relevant when considering the report of the Recommending Officer who quite properly acknowledges that the proposal is acceptable in terms of its management (or minimisation) of amenity impacts and ecological impacts. It also becomes particularly important when understanding that the location of the site has been chosen due to its strategic proximity to the Davenport Substation and the related and obvious efficiencies that this achieves. In this respect, the location of the proposal is ideal and is supported by the Council Wide provisions which encourage the efficient generation and supply of electricity.

Any concerns about the impact that the proposal might be said to have on the open rural-residential character of the locality would need to be properly and realistically weighed against all of the significant positive aspects of the proposal in a wider locality which already comprises the Davenport Substation. The important and pertinent comments of the Court in the *Taralga Landscape Guardians* matter referred to above (and acknowledged by the ERD Court) also become highly relevant. The low scale nature of this proposal, combined with the detailed landscaping proposal, will all be relevant factors to consider in a balanced and proper assessment.

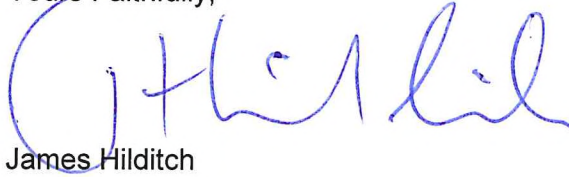
Finally, it will be important of course to recognise that the Rural Living Zone is not a Residential Zone or a Conservation Zone. It is a mixed use Zone intended to accommodate both residential activities and rural/business activities and it is a Zone which can readily accommodate the proposed development in all the surrounding circumstances which are relevant to this matter.

The relevant planning authority can now be invited to consider our client's compromise proposal having regard to the above considerations and its own advice.

Please note that I join Mr Green and my client in requesting the opportunity to briefly be heard (remotely via Zoom/Teams) at the commencement of the consideration of this item by the Regional Assessment Panel, and to answer any queries that may arise before the compromise is considered. I would be grateful if you would take instructions in this regard and if you would please let me know the outcome of this request (and the time of the meeting) in due course.

Please contact me if you have any queries or if you wish to discuss.

Yours Faithfully,

A handwritten signature in blue ink, appearing to read 'J Hilditch', with a large circular flourish on the left side.

James Hilditch

james@hilditchlawyers.com

Our Ref: JRH:000860

Your Ref:

27 May 2024

Upper Spencer Gulf Regional Assessment Panel
Attention: Ms V Shute – Kelledy Jones Lawyers

Dear Victoria,

Proposal: Renewable Energy Facility (Solar Farm)
Location: 2B Marks Road, Port Patterson

Ben Green & Associates has been instructed by Green Gold Energy Pty Ltd, the appellant in ERD-24-000025, to assist in the preparation of the enclosed compromise proposal, in response to the refusal of DA 660/117/2020 at the meeting of the Upper Spencer Gulf Regional Assessment Panel held 21 February 2024.

As submitted, the proposed development is considered to be a 'merit' form of development requiring an on-merit assessment against the relevant provisions of the Port Augusta (City) Development Plan Consolidated 7 July 2016.

To support the compromise proposal, the following attachments are provided in association with this correspondence.

- Updated site plan to reflect the strengthened landscaping provision and to clarify and confirm that the detached dwelling is to be retained as part of the proposal.
- Updated Locality Plan – Confirming Existing Uses in subject locality / Rural Living Zone and those uses that have some influence on the subject land.
- Updated Site Photographs – Montage with Description
- Strengthened landscaping, with an additional row of plantings to assist with minimizing any visual impact associated with the development and to enhance its overall appearance.
- Construction, Environmental Management Plan (CEMP) to detail how the site will be effectively managed during the construction phase.
- Copy of the DNF of the Solar Farm (DA 660/102/2020) at Lot 8 Northern Power Station Road, Pt Augusta that is also located in the subject Rural Living Zone.

Assessment of Compromise

The Panel provided the following grounds for refusal in making its determination:

1. *The proposal is contrary to Objective 1 of the Rural Living Zone in that it is not for 'rural activities'.*
2. *The proposal is contrary to Objective 2 of the Rural Living Zone in that it does not contribute to the desired character of the Zone by being a 'small scale' low impact business activity associated with the use of the land' and would detract from the*



- “rural-residential character” of the locality. Further, the proposed solar array is not a “sparse” form of development and is not generously setback from all boundaries.*
3. *The proposal is contrary to Principle of Development Control 6 in that it is not consistent with the desired character for the Zone.*

The compromise proposal contains a number of amendments which seek to address the grounds for refusal. The following outlines a consideration of the compromise with reference to the reasons for refusal and the policies in the relevant Development Plan:

- 1. *The proposal is contrary to Objective 1 of the Rural Living Zone in that it is not for ‘rural activities’.***

There are no Zones in the Development Plan that speak to renewable energy facilities. They are merit forms of development in **all** zones. This should not be a decisive factor in the assessment of the proposal. All the relevant provisions of the Development Plan need to be carefully considered.

In the absence of any particular commentary provided by the Rural Living Zone, guidance is provided in the Council Wide Section of the Development Plan in the following provisions. ‘Renewable Energy Facilities’ of the Council Wide Section speaks clearly to these forms of development.

Renewable Energy Facilities

OBJECTIVES

Objective 119: Development of renewable energy facilities that benefit the environment, the community and the state.

Objective 120: The development of renewable energy facilities, such as wind farms and ancillary development, in areas that provide opportunity to harvest natural resources for the efficient generation of electricity.

Objective 121: Location, siting, design and operation of renewable energy facilities to avoid or minimise adverse impacts on the natural environment and other land uses.

PRINCIPLES OF DEVELOPMENT CONTROL

392 Renewable energy facilities, including wind farms and ancillary development, should be:

- (a) located in areas that maximize efficient generation and supply of electricity; and*
- (b) designed and sited so as not to impact on the safety of water or air transport and the operation of ports, airfields and designated landing strips.*

In terms of meeting Objective 119, the proposal will clearly benefit the environment by storing solar energy from the sun and utilising it to support the SAPN grid network (that is conveniently accessible from the subject land). Batteries also enable the ability to store energy and support the grid when required. Further, there are wider advantages in having power provided more cheaply and effectively without costs of maintaining public infrastructure or providing power by burning fuels.



With respect to Objective 120 and Principle of Development Control (PDC) 392, the facility is to be located on a site which adjoins a large power station, which is considered an optimal location. This was a critical factor in site selection. The facility would be able to support the power station and its operation. The facility will also not impact upon waterways, air transport or airfields/ landing strips.

The application is supported with an Environmental Noise Assessment prepared by Echo Consulting, which outlines that subject to a number of noise mitigation measures, the proposal meets the maximum allowable noise levels for a rural/ residential context, as sought in the *Environment Protection (Commercial and Industrial Noise) Policy 2023*.

Strengthened landscaping to add an additional row of plantings will further reduce any visual imposition of the facility on the landscape. The facility is also well separated from sensitive receivers (see photo montage attached). I note that the application was the subject of broad category 3 public notification and one representation was received in response. The representor expressed a concern that the proposal will impact upon her “small sea view of Spencer Gulf”. This appears to be a distant and limited view which could readily be impacted upon by any number of uses and development outcomes intended within the Zone. The Development Plan clearly does not prioritise the protection of this distant and limited view over and above the realisation of important council wide policies which encourage the establishment of renewable energy facilities. This is not, of itself, a concern which would justify the refusal of the proposal.

On balance, the facility is considered to meet Objectives 119, 120 and PDC 392. Further, there will be no unreasonable noise impacts being created and any visual impact will be ameliorated by the proposed landscaping in a locality with notable non-residential / rural living uses being quite dominant ie the Davenport Substation, Sundrop Farms, Pt Augusta Renewable Energy Park, Windfarm and Pt Augusta Flying Club (as more clearly shown on the attached updated Locality Plan).

- 2. The proposal is contrary to Objective 2 of the Rural Living Zone in that it does not contribute to the desired character of the Zone by being a ‘small scale’ low impact business activity associated with the use of the land’ and would detract from the “rural-residential character” of the locality. Further, the proposed solar array is not a “sparse” form of development and is not generously setback from all boundaries.**

The residential use of the land is to be maintained and not altered by the proposal. The application does not seek to demolish the dwelling at any stage (although the clearance of vegetation around the dwelling was proposed). There is adequate separation between the existing dwelling and the facility to enable it to function effectively and support occupants. Documents have been updated to clarify that this is the proposal.

The facility is to be set back 16 metres from the Port Patterson Road boundary and 19.6 metres from the southern boundary. The separation distances are suitable to support two rows of landscaping between the arrays and (north/south) boundaries and provide room for maintenance vehicles.

With respect to Objective 121, the facility requires the removal of native vegetation that is considered to be of low quality and is supported to be removed by the Native Vegetation Council. Other than requiring the removal of vegetation, there is minimal excavation and



filling required, due to the site being virtually flat. As a result of this, we are of the opinion that the environment is not negatively impacted by the proposal to a degree which would justify the refusal of the application.

Consideration should be given to the activities occurring on the subject land and neighbouring/nearby properties in the locality at present. Due to the poor quality of soil and current local conditions, there are limited rural activities/pursuits occurring.

3. *The proposal is contrary to Principle of Development Control 6 in that it is not consistent with the desired character for the Zone.*

As discussed above, guidance on the appropriateness of this type of renewable energy development is fundamentally provided by the Council Wide Section of the Development Plan and more specifically the Renewable Energy Facility provisions and not the Desired Character nor zone provisions of the Rural Living Zone.

We are of the opinion that the proposed renewable energy facility does satisfy the relevant tests of the Development Plan *as a whole*. The reality is that the character of the land and locality is already heavily influenced by substantial electricity infrastructure including high voltage overhead power lines and a substantial substation. Electricity infrastructure already heavily influences the character of the locality and is part of that character.

It is important to note that Rural Living Zones often sit between, and form a buffer between, built-up residential land and primary production land. In this sense, it is often a “transitional” Zone. In this instance however the Rural Living Zone is not located in an area which is transitioning from residential land to productive rural land. It is transitioning to an industrial zone which already accommodates significant electricity infrastructure and the land within the Rural Living Zone is clearly marginal. The character of the locality is not only unavoidably influenced by the marginal nature of land within it, but it is also influenced by the existing land uses within it, one apparently involving the storage of a large number of vehicle bodies (apparently well over 100) in a manner perhaps akin to a wrecking yard on adjoining land. Any suggestion that the proposed development will have an adverse impact on the character of this particular locality is firmly rejected. The proposed development will be a highly organised and sophisticated land use which will readily integrate with existing electricity infrastructure within a Zone and wider locality which already accommodates substantial electricity infrastructure. **The Northern Power Station Solar Farm shown on the attached updated Locality Plan, to take one example, was approved in the Rural Living Zone on 27 November 2020.**

For these reasons, we believe the proposal in its amended form warrants support when assessed against all of the relevant provisions of the Development Plan.



Conclusion

The compromise proposal is considered to address the reasons for refusal and the matters raised by RAP members at the 21 February RAP meeting.

We look forward to the compromise being considered at the next available RAP meeting. I will be available to attend the meeting with my client to further explain the proposal and to answer any questions that may arise.

Should you wish to discuss any matters herein, please do not hesitate to contact me on 0410 147 541.

Yours faithfully

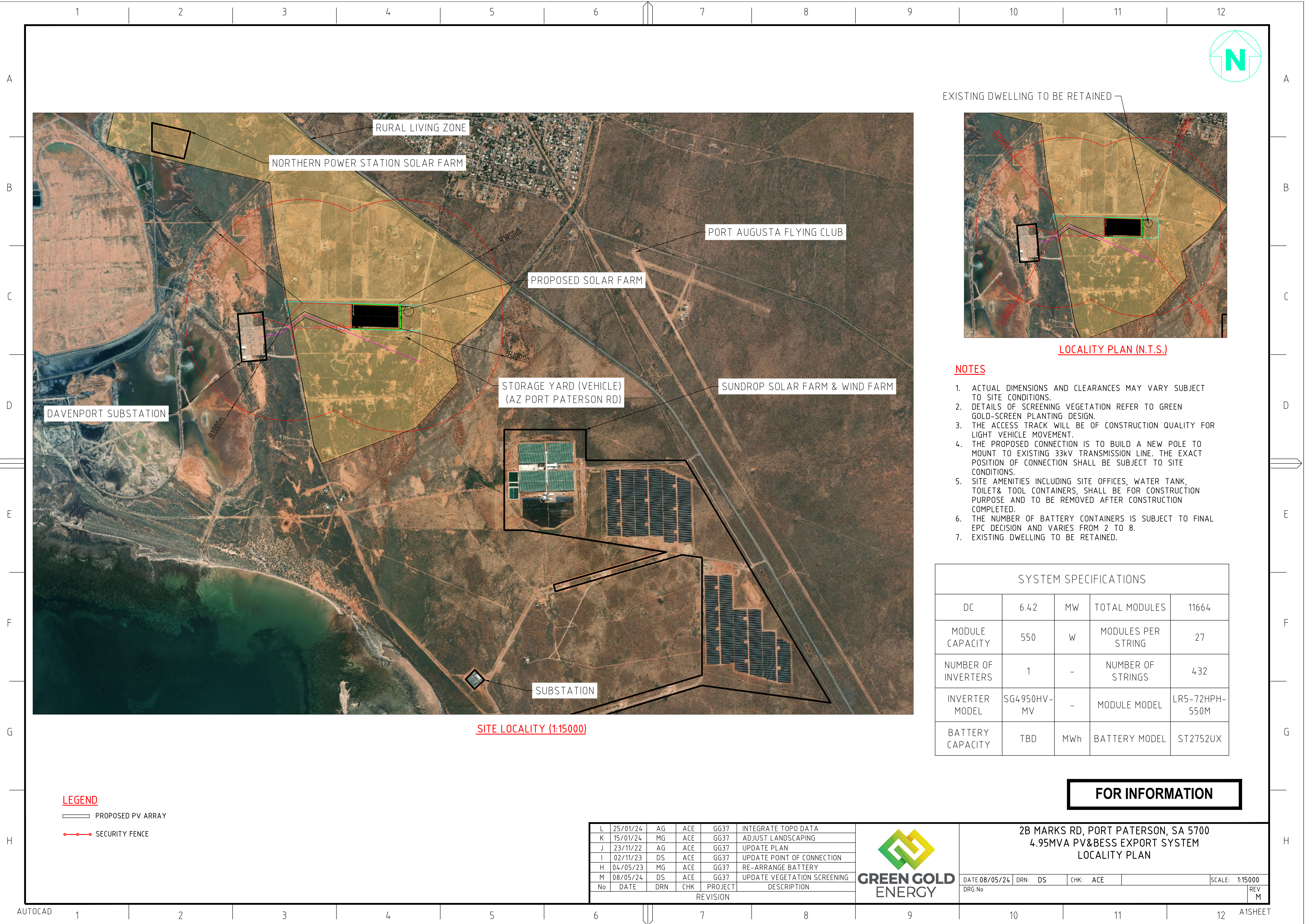
Ben Green & Associates

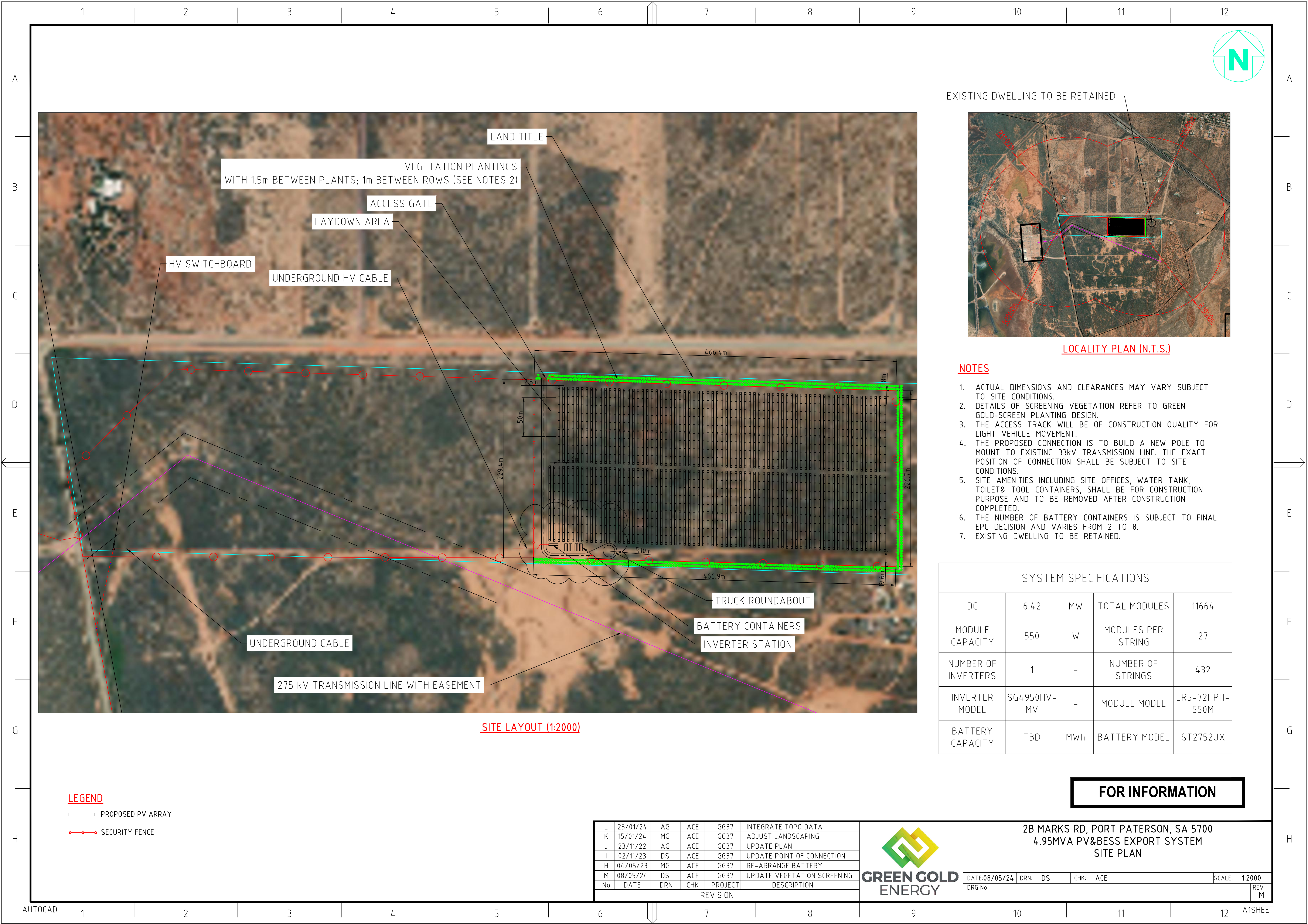
Ben Green, CPP MPIA

Director

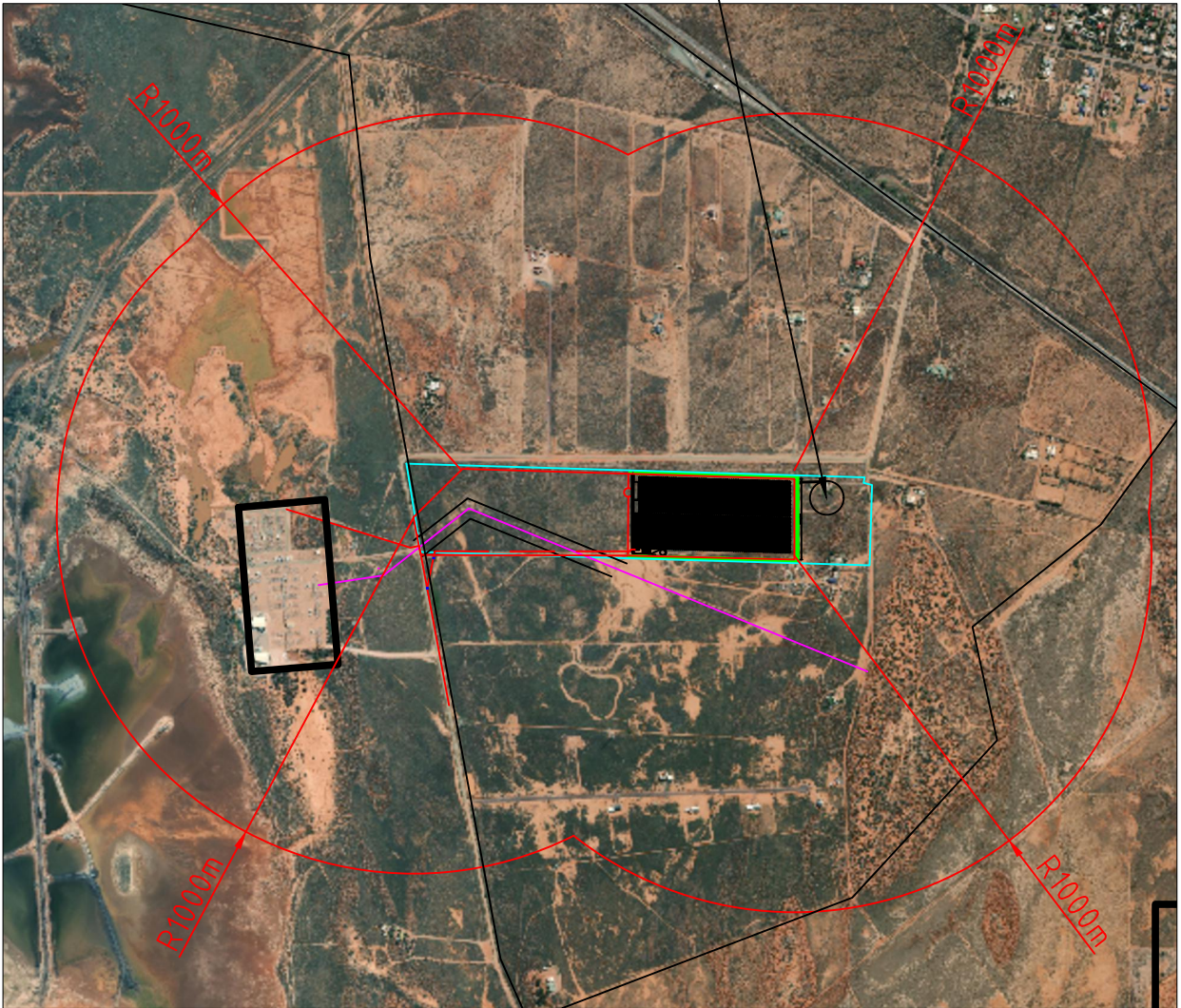
bengreen@bengreen.com.au

enc *Application Plans and Details.*





EXISTING DWELLING TO BE RETAINED



LOCALITY PLAN (N.T.S.)

NOTES

- 1. ACTUAL DIMENSIONS AND CLEARANCES MAY VARY SUBJECT TO SITE CONDITIONS.
- 2. DETAILS OF SCREENING VEGETATION REFER TO GREEN GOLD-SCREEN PLANTING DESIGN.
- 3. THE ACCESS TRACK WILL BE OF CONSTRUCTION QUALITY FOR LIGHT VEHICLE MOVEMENT.
- 4. THE PROPOSED CONNECTION IS TO BUILD A NEW POLE TO MOUNT TO EXISTING 33kV TRANSMISSION LINE. THE EXACT POSITION OF CONNECTION SHALL BE SUBJECT TO SITE CONDITIONS.
- 5. SITE AMENITIES INCLUDING SITE OFFICES, WATER TANK, TOILET& TOOL CONTAINERS, SHALL BE FOR CONSTRUCTION PURPOSE AND TO BE REMOVED AFTER CONSTRUCTION COMPLETED.
- 6. THE NUMBER OF BATTERY CONTAINERS IS SUBJECT TO FINAL EPC DECISION AND VARIES FROM 2 TO 8.
- 7. EXISTING DWELLING TO BE RETAINED.

SYSTEM SPECIFICATIONS

DC	6.42	MW	TOTAL MODULES	11664
MODULE CAPACITY	550	W	MODULES PER STRING	27
NUMBER OF INVERTERS	1	-	NUMBER OF STRINGS	432
INVERTER MODEL	SG4950HV-MV	-	MODULE MODEL	LR5-72HPH-550M
BATTERY CAPACITY	TBD	MWh	BATTERY MODEL	ST2752UX

FOR INFORMATION

LEGEND

- PROPOSED PV ARRAY
- SECURITY FENCE

L	25/01/24	AG	ACE	GG37	INTEGRATE TOPO DATA
K	15/01/24	MG	ACE	GG37	ADJUST LANDSCAPING
J	23/11/22	AG	ACE	GG37	UPDATE PLAN
I	02/11/23	DS	ACE	GG37	UPDATE POINT OF CONNECTION
H	04/05/23	MG	ACE	GG37	RE-ARRANGE BATTERY
M	08/05/24	DS	ACE	GG37	UPDATE VEGETATION SCREENING
No	DATE	DRN	CHK	PROJECT	DESCRIPTION
REVISION					



2B MARKS RD, PORT PATERSON, SA 5700
4.95MVA PV&BESS EXPORT SYSTEM
SITE PLAN

DATE:08/05/24	DRN: DS	CHK: ACE	SCALE: 1:2000
DRG No			REV M

Application No:	24006777
Relevant Authority:	Upper Spencer Gulf Regional Assessment Panel
Applicant:	Emali Port Pirie
Owner:	Emali Port Pirie
Description of development:	Child-care facility with associated carparking, fencing and associated works
Property details:	404 and 406 The Terrace, Risdon Park
Referrals	Council
Nature of Development	Performance Assessed
Notification	Yes - 9 representations – 7 wish to be heard
Recommendation:	Grant Planning Approval - reserved matter and conditions
Days left on clock	22 business days (as of day of RAP meeting)
Officer:	David Altmann
P&D Code	Whole of Code, lodgement 3 April 2024 - Suburban Neighbourhood Zone

CONTENTS:

ATTACHMENT A: Plans and documentation

ATTACHMENT B: Representations and Applicant's response

RELEVANT AUTHORITY

The Upper Spencer Gulf Regional Assessment Panel is the relevant authority for this application under the Planning, Development and Infrastructure Act 2016 – as the application was subject to a Performance Assessment process (Planning & Design Code) with Notification.

PROPOSED DEVELOPMENT

The proposed development comprises of a child-care facility with associated carparking, fencing and associated works – in more detail it includes:

- Child-care facility, with activity rooms and associated facilities – floor area 753sqm, total roofed area 1010sqm for 95 children
- Outdoor play areas with associated verandah/shelter
- Onsite car parking – 24 parks
- Acoustic and privacy fencing
- Associated services and onsite works.

No signage is proposed as part of this application – the plans state they are not part of this application.

All built form is single storey – exhibiting a contemporary style with a range of building materials and finishes.

The hours of operation would be between 6:30am and 6:30pm Monday to Friday (not open on weekends or public holidays).

The outdoor play areas would not be used until after 7:00am.

To facilitate the proposed development the existing dwelling and outbuildings on the land would be demolished – development approval is not required for the demolition as no heritage listings are relevant.

A copy of the application plans and other relevant information is attached for Members reference – refer **Attachment A** - including drawings and reports from:

- URPS Planners
- Aspex Building Designers
- Frank Siow & Associates, Traffic and Parking consultants
- PT Design, Consulting Engineers
- Sonus, Acoustic Consultants.

SUBJECT LAND AND LOCALITY

The subject land is located 404 and 406 The Terrace Risdon Park, being Lot 13 and 14 in Deposited Plan 2419 and Lot 825 in Filed Plan 188957 as contained in Certificates of Title - Volume 5441 Folio 984, Volume 5442 Folio 45 and Volume 5442 Folio 68.

No easements, encumbrances or trusts are registered on the titles.



Subject land and locality

The subject land is a large residential holding with an area of 2457sqm – a dwelling and associated outbuildings are located on the land - the land is generally flat.

The land fronts two roads, The Terrace and Arthur Street – The Terrace acts a main distributor road.

The immediate locality is characterised by its urban setting, with dwellings on residential lots.

The broader locality comprises primarily of residential development, along with a range of some non-residential development such as a church, schools, kindergarten, early learning centre, community facilities and recreational areas along or in the near vicinity of The Terrace and Kingston Road.

REFERRALS

Council

The Council's infrastructure department vetted the stormwater, waste management and traffic/access aspects, with no issues subject to conditions.

PUBLIC NOTIFICATION

Regarding Table 5 of the Suburban Neighbourhood Zone, the proposed development was not classified as a type of development exempt from notification.

The application was therefore Notified in accordance with the requirements the Planning and Design Code and the Planning, Development and Infrastructure Act, with notification to adjoining owners (as defined) and with a Notice on the land.

Nine representations were received in opposition:

- Heather Eglinton*, 412 The Terrace, Port Pirie
- Raylene Phillis* (Kym Piper to appear), 413 The Terrace, Port Pirie
- Chris Keane, 119 Balmoral Road, Risdon Park
- Craig and Annette Rimmer*, 403 The Terrace Port Pirie
- Megan & Matthew O'Shaughnessy*, 405 The Terrace, Risdon Park
- Tanya Williams*, 2 Arthur Street, Port Pirie
- Cameron Williams, 2 Arthur Street, Port Pirie
- Petre Goodridge & Scott Findlay*, 401 The Terrace Port Pirie
- Marieanne Gadaleta*, 18 Harrison Cres, Port Pirie.

*Wish to be heard.

A summary of issues include:

- Demotion of a quality character dwelling
- Inappropriateness of zone and the location for such a land use
- The location is an established residential area – development not in keeping with established character of locality – better locational options exist
- Harsh impact of proposed fencing treatments
- Other similar facilities are conveniently located to serve the community
- The proposed built form, fencing and signage is out of character with location
- Noise, demolition, construction and interface impacts
- Increase traffic, traffic management, parking and waste management issues
- Siting/setback issues
- Light impact
- Potential contamination issues
- Over supply vs demand issues and ability to attract qualified staff
- Impact on property values.

A full copy of the representations and the applicant's response is contained in **Attachment B**.

SERIOUSLY AT VARIANCE

Section 107(2)(c) of the Planning, Development and Infrastructure Act requires the Relevant Authority to determine whether the development is seriously at variance with the Planning and Design Code, disregarding minor variations. A development that is seriously at variance with the Code must not be granted consent.

The Supreme Court previously explained:

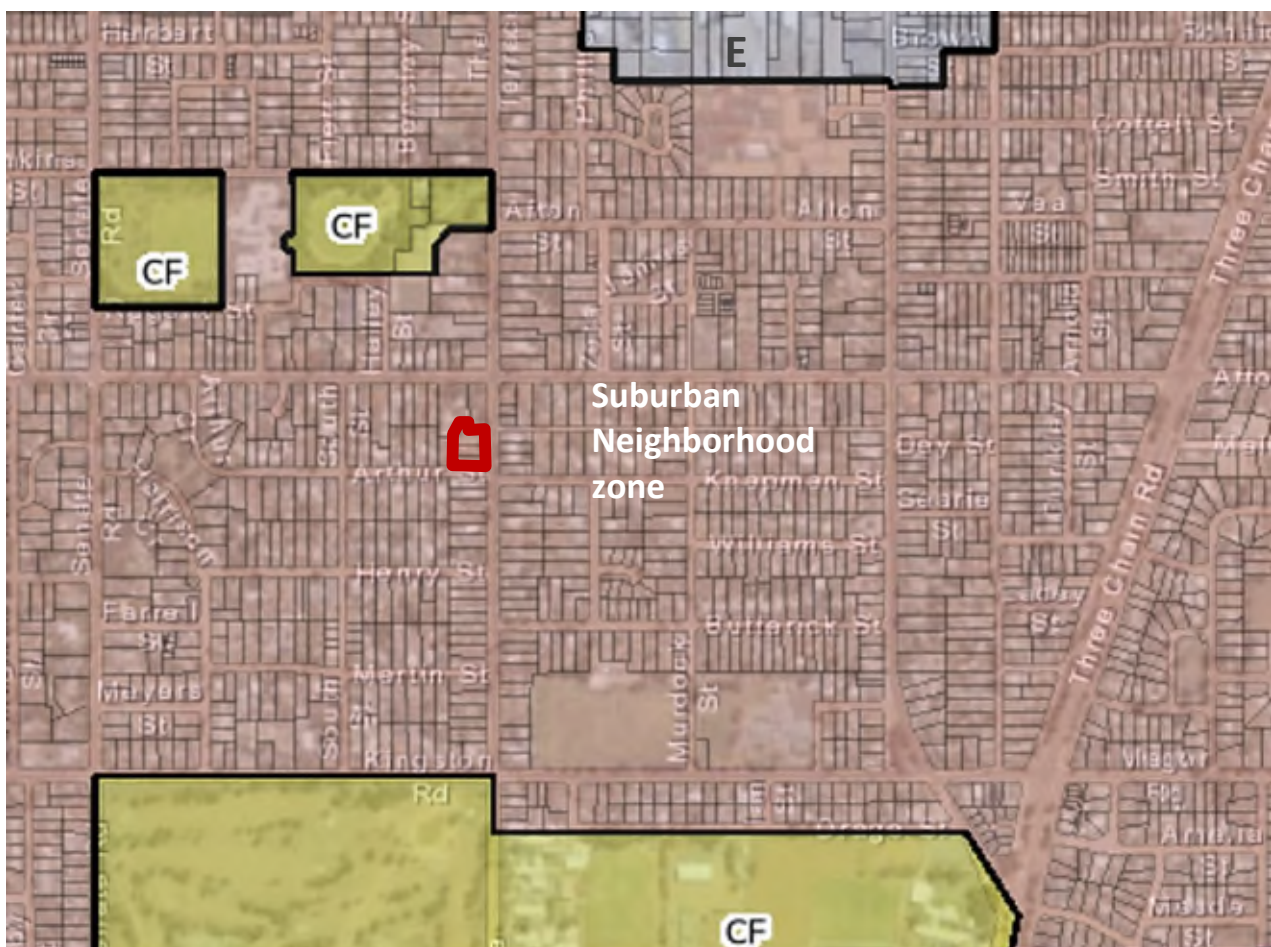
The expression “seriously at variance with the Development Plan” refers to that which is an important or grave departure in either quantity or degree from the Development Plan. It denotes something which is plainly not slight or trifling. ... It is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it (Mar Mina SA Pty Ltd v City of Marion [008] SASC 120).

A more recent judgment of the Supreme Court confirmed that planning authorities are to approach the ‘seriously at variance question’ in the same way it was approached under the predecessor act (para 74 of Geber Super Pty Ltd v the Barossa Assessment Panel [2023] SASC 154).

The proposed development does not represent a grave departure from the Planning and Design Code zone for the purpose of the Seriously at Variance test under Section 107(2)(c) of the Act, given that the Suburban Neighbourhood Zone contemplates a child-care land use. As a result, the application has been assessed on its merits against the Planning and Design Code under Section 107(1)(2)(a) of the Act, as follows.

PLANNING AND DESIGN CODE

The subject land is located within the Suburban Neighbourhood Zone of the Planning and Design Code, as shown below.



The land is within the Overlays of Affordable Housing, Building Near Airfields, Coastal Flooding, Hazards (Flooding - Evidence Required) and Native Vegetation.

The Affordable Housing Overlay is not relevant to this application.

The following Technical Numeric Variations apply:

- Finished Ground and Floor Levels (Minimum finished ground level is 3.15m AHD; Minimum finished floor level is 3.4m AHD)
- Maximum Building Height (Metres) (Maximum building height is 8m)
- Minimum Frontage (Minimum frontage for a detached dwelling is 15m; semi-detached dwelling is 10m; row dwelling is 10m; group dwelling is 10m; residential flat building is 10m)
- Minimum Site Area (Minimum site area for a detached dwelling is 450 sqm; semi-detached dwelling is 400 sqm; row dwelling is 300 sqm; group dwelling is 300 sqm; residential flat building is 300 sqm)
- Maximum Building Height (Levels) (Maximum building height is 2 levels).

An assessment against the Planning and Design Code follows.

Land Use

The Suburban Neighbourhood Zone assigns the proposed development to a Performance Assessed pathway – that is, it is neither identified as Restricted development or Deemed to Satisfy development.

The Desired Outcome (DO), Performance Outcome (PO) 1.1 and the Designated Performance Feature (DPF) 1.1 for the Suburban Neighbourhood Zone envisage predominantly low density housing development and scope for community based development.

DO 1

Low density housing is consistent with the existing local context and development pattern. Services and community facilities contribute to making the neighbourhood a convenient place to live without compromising residential amenity and character.

PO 1.1

Predominantly low density residential development with complementary non-residential uses compatible with a low density residential character.

DPF 1.1

Development comprises one or more of the following land uses*:

- Ancillary accommodation
- Child care facility
- Community facility
- Consulting room
- Dwelling
- Educational facility
- Office
- Place of Worship
- Recreation area
- Shop
- Supported accommodation.

In terms of land use, a child care centre is an envisaged form of development in the zone – so is a range of other community based land uses, such as educational facilities, places of worship, recreational facilities and consulting rooms. That is, the Planning and Design Code clearly contemplates that neighbourhood/residential areas provide for a range or mix of land uses

traditionally envisaged in a town/community environment, such as schools, churches, medical clinics, child care and community developments.

As outlined in PO 1.1, development should contribute to making the neighbourhood a convenient place to live without compromising residential amenity and character. This is discussed later in the report.

PO 1.3 of the zone also contemplates child care facilities:

PO 1.3

Non-residential development located and designed to improve community accessibility to services, primarily in the form of:

- a) small-scale commercial uses such as offices, shops and consulting rooms
- b) community services such as educational facilities, community centres, places of worship, child care facilities and other health and welfare services
- c) services and facilities ancillary to the function or operation of supported accommodation or retirement facilities
- d) open space and recreation facilities.

Design and siting

The design of the development has been guided by Aspex Building Designers and end user needs.

The architectural theme for the proposed development exhibits a modern single storey contemporary design, with a range of building materials and finishes, such as feature brickwork, fibro-cement axion cladding, mini-orb cladding, plywood cladding, colourbond iron and glass – with mix of colours and finishes.

In terms of design and siting the Suburban Neighbourhood Zone contains a range of policy to guide the assessment of the application, including:

DO 1

Low density housing is consistent with the existing local context and development pattern. Services and community facilities contribute to making the neighbourhood a convenient place to live without compromising residential amenity and character.

PO 1.2

Commercial activities improve community access to services are of a scale and type to maintain residential amenity.

PO 1.5

Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood.

PO 3.1

Building footprints consistent with the character and pattern of a low density suburban neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.

DTS/DPF 3.1

The development does not result in site coverage exceeding 50%.

PO 4.1

Buildings contribute to a low-rise suburban character and complement the height of nearby buildings.

PO 5.1

Buildings are setback from primary street boundaries consistent with the existing streetscape.

PO 6.1

Buildings are set back from secondary street boundaries (not being a rear laneway) to maintain a pattern of separation between buildings and public streets and reinforce streetscape character.

PO 7.1

Walls on boundaries are limited in height and length to manage visual and overshadowing impacts on adjoining properties.

PO 8.1

Buildings are set back from side boundaries to provide:

- a) separation between buildings in a way that complements the character of the locality
- b) access to natural light and ventilation for neighbours.

PO 9.1

Buildings are set back from rear boundaries to provide:

- a) separation between buildings in a way that complements the established character of the locality
- b) access to natural light and ventilation for neighbours
- c) private open space
- d) space for landscaping and vegetation

In considering the above policies it is acknowledged that the proposed building is larger than that of a typical dwelling and is arguably not in keeping with the built character of the immediate locality - albeit having noted the existence of a range of non-residential development such as schools, kindergarten, early learning centre, community facilities and recreational areas in the broader locality. In terms of residential development, the zone gives scope for a mix of residential land uses including detached dwellings, supported accommodation and larger scale medium density housing development of up to two storeys in height. Consideration must be given to what is being proposed (a child care facility) and in the knowledge that a such a land use is an envisaged form of development in the zone – regard must be given to the size of the subject land comprising of three land holdings.

With regard to the policies outlined and with the above context in mind, the following is considered:

- PO 1.2, 1.5, 3.1, 4.1, 8.1 and 9.1 – the proposed development is a form of non-residential development, to provide service to the community, as envisaged in the zone – it is a single storey built form consistent with other development in the locality, noting the zone gives scope for two storey development – the built footprint is larger than that of a typical dwelling, but is not excessive having regard to the purpose or the large size of the land holding with a relatively low site coverage of 35%. The proposed child care building has a variety of staggered setbacks to street boundaries – incorporating verandah treatments, feature windows, building articulation/features and associated landscape treatments – with quality building materials, finishes and colours. The setbacks to the side and rear of the proposed building are considered to be acceptable, given the single storey nature of the building, the north/south orientation of the built form (no south facing wall to adjoining lots), the nature of various existing outbuildings (to be demolished) along the western boundary, the deep setback from much of the northern boundary (staggered) and the relatively deep setbacks of adjoining dwellings to the north and west of the subject land.
- PO 5.1, 6.1 and 7.1 - the proposed child care building has a variety of staggered street boundary setbacks, being 9.4m to Arthur Street frontage (3.85m in part for sensory building and approximately 2.8m for the freestanding outdoor play area verandah/shelter) and 15.7m to The Terrace frontage – this is consistent with the pattern of development in the locality noting setback dispensation is quite common for corner lots. Feature street frontage walls are limited to two separate sections of rendered walling (7.8m long and 3.1m long at

1.8m high) which in association with boxed hedging and feature trees would add visual interest to the street presentation.

- Therefore, on balance, meets with the overarching Desired Outcome and PO 1.1 for the zone – by providing a community facility that is readily accessible to the neighbourhood and via a design/siting that has paid due regard to applicable design/siting and built form aspects in a residential locality.

Of importance to the further consideration of the above matters and the interface of the proposed development with the abutting residential properties, the application has been subject to an acoustic assessment by Sonus, in its Environmental Noise Assessment, March 2023. The report concluded that the activities associated with the proposed development would meet with the Environment Protection (Commercial and Industrial Noise) Policy 2023 and World Health Organisation Guidelines for Community Noise 1999, and therefore the Planning and Design Code – acoustic recommendations to meet such criteria were recommended.

The proposed development accords with a range of general design, surveillance, orientation and landscaping policy of the Design in Urban Areas module such as:

PO 1.3

Building elevations facing the primary street (other than ancillary buildings) are designed and detailed to convey purpose, identify main access points and complement the streetscape.

PO 2.2

Development is designed to differentiate public, communal and private areas.

PO 2.4

Development at street level is designed to maximise opportunities for passive surveillance of the adjacent public realm.

PO 3.1

Soft landscaping and tree planting are incorporated to:

- a) minimise heat absorption and reflection
- b) maximise shade and shelter
- c) maximise stormwater infiltration
- d) enhance the appearance of land and streetscapes.

The car parking area incorporates landscaping, walling, fencing treatments inclusive of trees with three metre high canopies to assist to soften the visual impact - Sonus has had regard to noise associated with traffic/parking to its satisfaction relating to noise interface. In the context of the land use proposed and the need for parking to service it, the proposed design is acceptable within the parameters of Performance Outcomes of the Design in Urban Areas module, such as PO 2.3, 7.2, 7.4 and 7.5:

PO 2.3

Buildings are designed with safe, perceptible and direct access from public street frontages and vehicle parking areas.

PO 7.2

Vehicle parking areas appropriately located, designed and constructed to minimise impacts on adjacent sensitive receivers through measures such as ensuring they are attractively developed and landscaped, screen fenced and the like.

PO 7.4

Street-level vehicle parking areas incorporate tree planting to provide shade, reduce solar heat absorption and reflection.

PO 7.5

Street level parking areas incorporate soft landscaping to improve visual appearance when viewed from within the site and from public places.

In terms of the demolition of the dwelling on the land, while this is seen as disappointing, the Planning and Design Code does not recognise the land/dwelling with any form of heritage listing – therefore, under the Planning, Development and Infrastructure Act, no Development Approval is required for its demolition.

The development incorporates ESD provisions relating to stormwater management, solar generation options, built design and landscaping - therefore complying with relevant provisions, such as PO 4.1 and 4.3 of the Design in Urban Areas module – and will need to pass an energy assessment rating at Building Rules stage:

PO 4.1

Buildings are sited, oriented and designed to maximise natural sunlight access and ventilation to main activity areas, habitable rooms, common areas and open spaces.

PO 4.3

Buildings incorporate climate responsive techniques and features such as building and window orientation, use of eaves, verandahs and shading structures, water harvesting, at ground landscaping, green walls, green roofs and photovoltaic cells.

As per the Sonus recommendations, fencing of 2.1m high is proposed to the northern and western property boundaries, abutting those residential properties - 1.2m high fencing with black blades above is also proposed to part of the southern boundary. Noting that such fencing would not ordinarily require Development Approval given it is no higher than the 2.1m high exemption that applies under the Planning, Development and Infrastructure Act.

No assessment of the signage has been undertaken as the application plans state that they will be subject to a separate application at some later date.

Services

The following considerations are outlined in relation to services.

Car parking/traffic

Frank Siow & Associates, Traffic and Parking consultants, provided a traffic and car parking assessment report, March 2024.

Car parking will be provided on-site, including 24 parking spaces – this marries with the requirements of the Planning and Design Code (Table 1 - General Off-Street Car Parking Requirements of the Transport, Traffic and Transport module), that seeks 0.25 spaces per child (calculation 95 children x 0.25 = 24 parks).

The Siow reports also considered matters relating to car park design, waste management, traffic impact and access/egress – and concluded, based on its assessment, that it was satisfied that the parking layout would comply with the relevant parking standards – and was also of the opinion that the traffic impact of the development would not be significant or have an adverse impact on the adjoining roads.

The Siow report recommended that refuse collection occur outside of peak operating hours so as not to impact on other users of the car park.

The application was also vetted to the satisfaction of Council's infrastructure department.

Stormwater

PT Design, Consulting Engineers, provided a stormwater design, September 2023.

The design included onsite stormwater management for the roofed areas, outdoor play areas and the carpark – incorporating onsite detention with underground tanks to slow discharge to the street water table.

The application was also vetted to the satisfaction of Council's infrastructure department.

Other services

The site has availability of other town services, such as SA Water sewerage and water reticulation.

Environmental and hazards

As it relates to the Hazards (Flooding - Evidence Required) Overlay, the subject land is not located with the area that is mapped as being at flood risk by Planning and Design Code and SAPPa overlays. The land also has an elevation of approximately 6.6m which is above the 3.15/3.4m site/floor level recommended by the Coastal Flooding Overlay.

No site history reporting was required as in accordance with the State Planning Commission Practice Direction 14 there is no change to a more sensitive land use.

In terms of the Building Near Airfields Overlay, the subject land is located well away from the Port Pirie Airport and is only for single storey built form.

A native vegetation declaration was provided regarding the Native Vegetation Overlay.

Summary

The proposed development is an envisaged form of development in the Suburban Neighbourhood Zone.

The development exhibits an acceptable level of design – while it is not a form of housing to exactly marry or be the same as other development in the immediate location, it is an envisaged form of development in the zone and has been designed having regard to the large nature of the land holding and the residential interface.

The subject land is in a location that provides for good integration with the local and broader township area.

The proposed development complies with the Planning and Design Code to a degree that it warrants planning consent, subject to conditions.

RECOMMENDATION

That the Upper Spencer Gulf Regional Assessment Panel resolves that:

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code.
2. Pursuant to Section 107(1) and (2)(b) of the Planning, Development and Infrastructure Act 2016, based on an assessment of the application on its merits against the Planning and Design Code, Development Application Number 24006777, by Emali Port Pirie for a child-care facility with associated carparking, fencing and associated works, at 404 and 406 The

Terrace, Risdon Park, be granted Planning Consent subject to the following conditions and notes:

Conditions

General

1. The development is to take place in accordance with the supporting documentation and plans relating to Development Application Number 24006777, except as modified by any conditions attached to this Decision Notification.
2. That the development be undertaken in accordance with the Environmental Noise Assessment, Sonus, March 2023, inclusive of the following noise mitigation measures:-
 - Construct a 2.1m high, solid boundary fence for the extent shown as RED on the Figure on page 9 of the report.
 - Construct a 1.2m high, solid boundary fence for the extent shown as GREEN on the Figure on page 9 of the report.
 - The fences shall be constructed from a material such as 0.35 BMT sheet steel (Colorbond or similar) and sealed airtight at all junctions, including at the ground. For the 1.2m fence shown in GREEN, if the masonry sections in the architectural documentation are discontinuous, then a clear material such as 4mm thick Perspex may be used.
 - The mechanical plant units be located in the location shaded in ORANGE in Figure 2 on Page 12 of the report.
3. The landscaping areas as shown on the approved plans must be planted prior to occupation of the development. The plantings shall be watered and maintained, with diseased and dying plantings replaced as necessary, to the satisfaction of the Council.
4. Stormwater run-off from the proposed development must be managed in accordance with the PT Design, Consulting Engineers, stormwater design, September 2023.
5. That all car parks, driveways and vehicle manoeuvring areas shall be set out and line marked in accordance with the approved plans and in accordance with Australian Standard - Off Street Parking - Car Parking Facilities and be constructed, drained and paved with bitumen, concrete or paving bricks in accordance with sound engineering practice to the reasonable satisfaction of the Council prior to use of the development.
6. The applicant shall undertake sealed driveway crossovers, and associated works, at the applicant's cost – the applicant must provide final design details and civil works plans to the Council for approval prior to undertaking such works.
7. Refuse collection shall occur outside of peak operating hours so as not to impact on other users of the car park.
8. During construction activities the subject land must be managed in a manner as to prevent erosion and pollution of the site and the environment, including keeping the area in a tidy state and ensuring any waste materials are appropriately contained.
9. Any infrastructure within the road reserve that is demolished, altered, removed or damaged during the construction of the project shall be reinstated to the satisfaction of the Council, with all costs being borne by the applicant.
10. Any portion of redundant crossovers shall be closed and reinstated with Council standard kerb and gutter with all cost borne by the applicant.
11. External lighting be directed and shielded to minimise light overspill.

Notes

1. Building Rules approval and final Development Approval must be sought and obtained prior to undertaken any development.
2. No signage shall be erected without the prior consent of the relevant planning authority.