

REPORT REFERENCE: CAP020823 – 4.1
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 2 AUGUST 2023



Originating Officer:	Matt Falconer Development Officer – Planning
Applicant:	PC Infrastructure Pty Ltd
Development Description:	<p><u>Original Development Description</u> Additions and alterations to the existing control building, reconfiguration of the existing on-site carparking, introduction of a convenience drive-thru, 3-metre-high acoustic fence, dog wash and vacuum facilities and a 3.3m pylon with double sided digital signage panel.</p> <p><u>Revised Development Description</u> Additions and alterations to the existing control building, reconfiguration of the existing on-site carparking, introduction of a convenience drive through, 2.4-metre-high acoustic fence, dog wash and vacuum facilities and introduction of hours of operation of 6am to 10pm for the drive-through component</p>
Elements:	Fence Advertisement Retail Fuel Outlet Other – Drive Through Coffee and Dog Wash
Site Location:	216-220 Seacombe Road, Seaview Downs
Zone:	Suburban Activity Centre
Lodgement Date:	03/06/2022
Planning and Design Code:	9 June Version 2022.10
Referrals (External):	Commissioner of Highways
Referrals (Internal):	Development Engineer
Application Type:	Performance Assessed
Delegations Policy:	Instrument of Delegation – CAP, Clause 5.1.1.1 <i>The delegation of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications in relation to which: Any Performance Assessed application that has undergone Public Notification where at least one representor has expressed opposition to the proposed development and has expressed their desire to be heard by the Panel.</i>
Public Notification	Public Notification required <i>A retail fuel outlet is not a use that is exempt from notification in Table 5 of the Zone.</i>
Application No:	22003132
Recommendation:	Advise the Assessment Manager to inform the Environment, Resources and Development Court that Council supports the compromise plans

Attachments

Attachment I: Decision Notification Form

Attachment II: Minutes from Council Assessment Panel Meeting held 21 December 2022

Attachment III: Compromise Proposal Plan and supporting documentation

BACKGROUND

The subject Application was previously presented to the Council Assessment Panel (CAP) at the meeting held on 21 December 2022 and was refused for the reasons listed below.

The original report's plans and attachments can be found in the member's agenda from the 21 December 2022 meeting. Administration will provide Members who were not present at the previous meeting with a copy of the previous proposal plans and supporting documentation. This documentation will be uploaded to the Members' iPad and provided via email (by way of Dropbox link) the day the agenda is released.

Prior to making the decision to refuse the application, CAP discussed in detail their concerns with the proposal. Much of this revolved round the impacts on the amenity of adjoining residents located immediately west of the subject land. The impacts from noise associated with the drive through, overshadowing from the proposed acoustic fencing as well as the light spill caused by the proposed pylon sign were discussed.

The CAP reasons for refusal were:

- 1. Does not satisfactorily meet DO 1 Interface Between Land Uses: Development designed to mitigate adverse effect on or from neighbouring and proximate land uses.**
- 2. Does not satisfactorily minimise adverse impacts from the drive through component as sought by PO 1.2 Interface Between Land Uses.**
- 3. Does not satisfactorily meet PO 2.1 Interface Between Land Uses – non residential development does not unreasonably impact the amenity of sensitive receivers through the hours of operation of the drive through component.**
- 4. Does not satisfactorily meet PO 4.2 Interface Between Land Uses, in particular (a) locating openings of buildings and associated services away from the interface with the adjacent sensitive receivers and zones.**
- 5. Does not adequately meet Design in Urban Areas PO 9.1 as the proposed boundary fence is considered to unreasonably impact the adjoining land's amenity and access to sunlight.**
- 6. Does not satisfactorily meet PO 4.2 of the Suburban Activity Centre Zone as the proposed freestanding advertisement does not adequately avoid visual clutter or positively respond to the site's context.**

The Applicant appealed CAP's decision to refuse the application to the Environment, Resources and Development Court. On 23 March 2023 a preliminary conference was held between PC Infrastructure Pty Ltd (Appellant) and Marion Council (Respondent) where it was agreed to provide a compromise proposal plan for the Panel's consideration. The applicant has sought to adjourn the preliminary conference to 8 August 2023 and has provided a compromise proposal for the CAP to consider.

Refer Attachment III

The overall extent of changes are outlined in the Development Assessment below and considered within the discussion section of this report.

COMPROMISE PROPOSAL

The compromise proposal incorporates the following amendments to the proposal:

- The removal of the illuminated pylon sign sited in the north-west corner of the subject land.
- The operating hours of the proposed drive through are sought to be changed from the initial 24-hour operation to 6 am till 10 pm.
- The acoustic fence proposed along the western boundary has been reduced from 2.9 metres to 2.4 metres in height and constructed of 6 mm fibre cement sheet of a material with the same or greater surface density kg/m² (as recommended in the updated Sonus report).
- The acoustic fence proposed along the southern boundary remains at 2.4 metres in height and is to be constructed of 6 mm fibre cement sheet of a material with the same or greater surface density kg/m² (as recommended in the updated Sonus report).

The removal of the pylon sign and changes to the drive through operating hours results in a change to the description of the proposed development to the following:

Additions and alterations to the existing control building, reconfiguration of the existing on-site carparking, introduction of a convenience drive through, 2.4-metre-high acoustic fence, dog wash and vacuum facilities.

Despite the amendments the general disposition of the buildings and traffic manoeuvring within the site remain the same, The changes do not result in any new public notification triggers and as such, in line with the ERD Court judgement of Citify Pty Ltd v City of Marion [2021] SAERDC 30, it is still appropriate to consider the amendments as a compromise to the original application.

DISCUSSION

The proposed compromise plans seek to address CAP's reasons for refusal through the removal of the proposed pylon sign, amending the form of fencing proposed along the western boundary and proposing a limit on the proposed drive-through hours of operation.

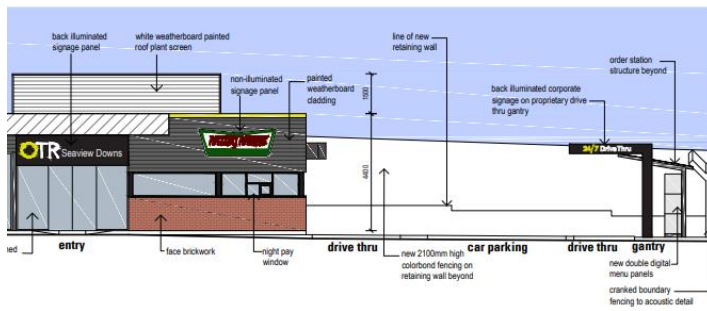
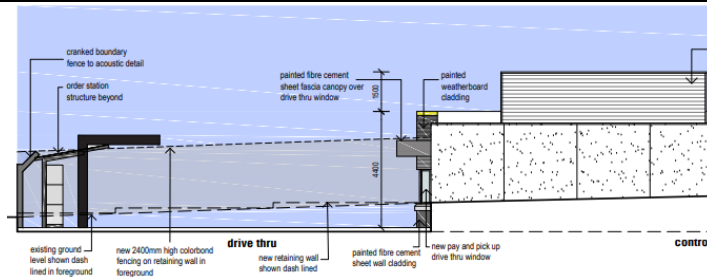
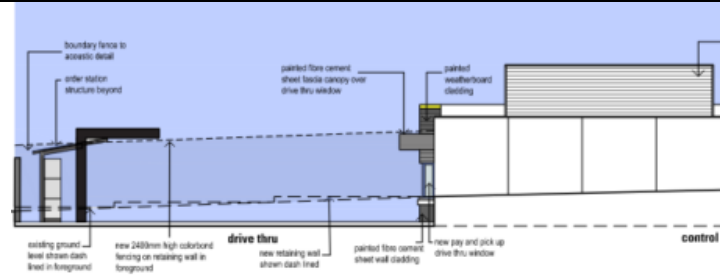
With the removal of the pylon sign, the reason for refusal numbered 6 highlighted below is considered to be adequately addressed.

- 6. Does not satisfactorily meet PO 4.2 of the Suburban Activity Centre Zone as the proposed freestanding advertisement does not adequately avoid visual clutter or positively respond to the site's context.**

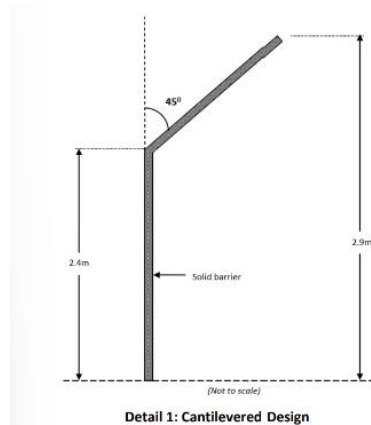
The changes to the to the drive through operating hours and acoustic fencing are discussed in further detail below.

As detailed above, the compromise proposal seeks to restrict the proposed drive through's operating hours from 24 hours to between 6 am and 10 pm. In addition, the amendments result in a change to the design of the acoustic fencing along the southern and western boundaries of the subject site.

I have provided a comparison of the effected elevations below with the first three images being that of the original proposal and the second three being the compromise proposal.

Original Proposal – Northern Elevation**Compromise Proposal – Northern Elevation****Original Proposal – Southern Elevation****Compromise Proposal – Southern Elevation****Compromise Plans**

The revised plans detail the change to the acoustic fencing which is reduced in height along the length of the western boundary to a maximum height of 2.4 metres. The proposed 2.4 metre acoustic fence is the same height as the existing fence, which currently comprises a 1.8 metre high solid colorbond fence with 600 millimetre lattice above. The original proposal sought to have a 2.4 metre high fence with a 45 degree cantilevered section extending to 2.9 metres in height as per the diagram below, which the compromise has now removed.



Whilst acknowledging the proposed fence is to be completely solid to a height of 2.4 metres, the additional height above 2.1 metres (a fence height not requiring approval) shall not result in any unreasonable amenity impact in relation to the visual appearance. The level of overshadowing resulting from the existing 600 millimetre lattice screen being modified to solid fencing will increase, however I am not of the opinion the extent of the increase shall have adverse impacts on the amenity of adjoining properties from an overshadowing perspective. Due to the orientation of the site, the shadowing will occur during the morning with the dwellings able to obtain unrestricted sunlight during

the middle part of the day. As such, I am of the opinion the compromise proposal addresses the reason for refusal number 5 (highlighted below).

5. Does not adequately meet Design in Urban Areas PO 9.1 as the proposed boundary fence is considered to unreasonably impact the adjoining land's amenity and access to sunlight.

The four other reasons for refusal (numbered 1-4) centre around the resulting amenity impact of the proposed development due to the siting of the drive through and associated ordering station and hours of operation.

The proposed development in my opinion satisfies DO 1 and PO 1.2 Interface between Land Uses on the basis that the development through the provision of acoustic treatments to the western and southern boundary fencing shall reduce and minimise the noise impacts on adjoining land, (in particular the residents sited to the west of the subject land). The wording of DO 1 and PO 1.2 is such that it anticipates that there will be forms of development that will result in impacts on adjoining land and consideration of these impacts through appropriate design outcomes should reduce or minimise those impacts rather than excluding them.

DO 1

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

PO 1.2

Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.

It is also worthy to note that the existing residential dwellings sited directly to the west of the subject land are sited in the same zone as the proposed development. Standalone residential land uses are not forms of development anticipated in the zone due to the potential amenity impacts. The dwellings to the west of the subject land already have a compromised level of amenity being located on Seacombe Road and adjacent a retail fuel outlet that operates 24 hours a day. The proposed acoustic fencing, in conjunction with a reduction in the proposed drive-through office hours, will appropriately minimise the impacts of the proposed development on the adjacent properties. The properties will benefit from an acoustic fence with no operation of the drive through between the hours of 10 pm and 6 am.

As such, the provision of appropriate acoustic treatments to the boundary fencing, in conjunction with more limited drive-through hours of operation, will acceptably minimise the adverse impacts from the development in accordance with Interface between Land Uses DO 1 and PO 1.2 and therefore addresses the Reasons for Refusal 1 and 2.

The limit of hours of operation to the drive use through seeks to address Reason for Refusal number 3. A retail fuel outlet is an anticipated form of development within the Suburban Activity Zone and the use has existing use rights to operate 24 hours a day. In accordance with Interface between land uses PO 2.1 the proposed development seeks to mitigate the impacts of the noise associated with the drive through by constructing acoustic fencing to the southern and western boundaries and limiting the drive through hours of operation to 6 am to 10 pm.

Whilst the compromise proposal does not seek a change to design and layout of the development, it is my opinion the development achieves compliance with Interface between Land Uses PO 4.2 given the proposed development satisfies part (d) by providing a suitable acoustic barrier between the proposed development and the sensitive receiver. I am not of the opinion that PO 4.2 seeks development to achieve all listed techniques – if it did, it would include 'and' after each listed

technique. The four techniques provided are simply design options and where appropriately applied satisfy PO 4.2. PO 4.2 is provided below for the Panel's reference.

PO 4.2

Areas for the on-site manoeuvring of service and delivery vehicles, plant and equipment, outdoor work spaces (and the like) are designed and sited to not unreasonably impact the amenity of adjacent sensitive receivers (or lawfully approved sensitive receivers) and zones primarily intended to accommodate sensitive receivers due to noise and vibration by adopting techniques including:

- (a) locating openings of buildings and associated services away from the interface with the adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers**
- (b) when sited outdoors, locating such areas as far as practicable from adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers**
- (c) housing plant and equipment within an enclosed structure or acoustic enclosure**
- (d) providing a suitable acoustic barrier between the plant and / or equipment and the adjacent sensitive receiver boundary or zone.**

CONCLUSION

I am of the view that the proposed changes contained in the compromise plans, in addition to the limitation of the drive-through operating hours, will result in the proposal not unreasonably impacting the amenity of the adjoining property owners. Given the existing use of the land, it is acknowledged there may be some form of impact, however the Planning and Design Code seeks to minimise, not totally eliminate or avoid, the impacts through appropriate design. In this instance, the inclusion of an acoustic fence and reduced hours of operation are considered appropriate outcomes and consistent with the relevant provisions of the Planning and Design Code.

As mentioned above, the removal of the pylon sign located in the north-western corner of the subject land will address the concern relating to light spill and advertising clutter. The reduction in the height of the acoustic fence along the western property boundary to 2.4 metres shall not have an adverse impact on the amenity of the neighbouring properties in relation to visual appearance and overshadowing.

It remains administration's view that the proposed development demonstrates sufficient merit and appropriately satisfies the applicable Objectives and Principles of Development Control to warrant support.

It is recommended that the CAP, as the Relevant Authority, advise the Environment, Resources and Development Court that it supports the comprise proposal, subject to the following conditions.

Please note - At the time of writing this report, Council staff were waiting on advice from DIT as to whether they wish to vary or change the conditions imposed by the Commissioner of Highways relating to the pylon signage. Staff can advise the ERD Court of the deletion of any DIT conditions, should this occur.

RECOMMENDATION

Having considered all relevant planning matters in relation to the subject development application:

- (a) The Panel notes this report and concur with the findings and reasons for the recommendation;
- (b) The Panel concurs that the proposed development is not seriously at variance¹ to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016; and
- (c) The Panel advises the Environment, Resources and Development Court that Planning Consent for Development Application ID: 22003132 for additions and alterations to the existing control building, reconfiguration of the existing on-site carparking, introduction of a convenience drive through, 2.4-metre-high acoustic fence, dog wash and vacuum facilities at 216-220 Seacombe Road, Seaview Downs should be GRANTED, subject to the following Conditions.

CONDITIONS

- 1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
- 2. Operation of the drive-through shall be restricted to the following times;
 - a. 6 am to 10 pm, each day of the week.
- 3. Operation of the dog wash and vacuum facilities shall be restricted to the following times;
 - a. 7 am to 9 pm, each day of the week.
- 4. Prior to the use and/or occupation of the structure(s), all stormwater from buildings and paved areas shall be disposed of in accordance with the approved plans and details.
- 5. Landscaping shall be planted and maintained in accordance with the plans and details forming part of the development authorisation.
- 6. All car parking spaces shall be linemarked or delineated in a distinctive fashion prior to occupation of the premises, with the marking maintained in a clear and visible condition at all times.
- 7. All waste and other rubbish shall be stored in the designated areas and screened from public view in accordance with the approved plans.

¹ Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016 (or Section 35(2) of the Development Act 1993 for applications under that Act), a “development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code” (or the Development Plan if under the Development Act).

What is ‘seriously at variance’ is not a defined legislative term and is not synonymous with a proposal that is merely ‘at variance’ with certain provisions of the Code (or Plan), which many applications will be. Instead, it has been interpreted to be an important or grave departure in either quantity or degree from the Code (or Plan) and accordingly not worthy of consent under any circumstances and having the potential to undermine the objectives of the Code (or Plan) for the land or the Zone.

8. Wheel stopping devices shall be placed and maintained within each parking bay so as to prevent damage to adjoining fences, buildings or landscaping in accordance with Australian Standards (AS/NZS 2890.1:2004 and AS/NZS 2890.6.2009).
9. The advertisement(s) and supporting structure(s) shall be maintained in good repair at all times.

Conditions of Commissioner of Highways

10. Vehicular access to the site shall be in accordance with Site and Floor Plan by ADS Architects, dated 12/09/2022.
 11. All vehicles shall enter and exit the site in a forward direction and all vehicle manoeuvring areas shall be kept clear of impediments to manoeuvring.
 12. The Seacombe Road access points shall be signed and line-marked to reinforce the desired traffic flow (entry via the eastern access and egress via the western access).
 13. The illuminated signage shall be installed as shown on the Site and Floor Plan and Elevation Plan by ADS Architects, dated 12/09/2022 and 07/12/2021 respectively.
 14. The LED screens shall be permitted to display one self-contained message every 45 seconds. The time taken for consecutive displays to change shall be no more than 0.1 seconds. The images/messages shall not flash, scroll or move and shall not be permitted to display or imitate a traffic control device. Sequential messages (i.e., messages that are displayed as part messages over two or more displays) shall not be permitted.
 15. The signs visible from the adjacent roads shall not be permitted to operate in such a manner that could result in impairing the ability of a road user by means of high levels of illumination or glare. The internally illuminated signage shall be limited to a low level of illumination so as to minimise distraction to motorists ($\leq 150 \text{cd/m}^2$). The LED screens shall be limited to the following stepped luminance levels:
- | 16. Ambient Conditions | Sign Illuminance Vertical Component (Lux) | Sign Luminance (Cd/m ²) |
|------------------------|---|-------------------------------------|
| Sunny Day | 40000 | 6300 |
| Cloudy Day | 4000 | 1100 |
| Twilight | 400 | 300 |
| Dusk | 40 | 200 |
| Night | <4 | 150 |
17. The operational system for the LED screens shall incorporate an automatic error detection system that will turn the display off or to a blank, black screen should the screen or system malfunction.
 18. Stormwater run-off shall be collected on-site and discharged without impacting the adjacent road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's cost.