

OFFICE USE ONLY

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**ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA**

No. 189 of 2019

BETWEEN

PC INFRASTRUCTURE PTY LTD

Appellant

And

CITY OF BURNSIDE

Respondent

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ORDER

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Judicial Officer:

Commissioner Nolan

Date of Order:

30 March 2021

**Recitals**

The parties have reached agreement on the settlement of this action and jointly consent to this order to give effect to the settlement pursuant to section 16(7)(d) of the *Environment, Resources and Development Court Act 1993*.

BY CONSENT THE COURT ORDERS that:

- A. The appeal is allowed for the purpose of varying the conditions of consent.
- B. That the appeal is allowed and that Development Plan consent is granted for DA 180/1265/18 by PC Infrastructure Pty Ltd being for alterations and additions to an existing mechanical workshop building and the change of use of land at 285-287 Kensington Road, Kensington Park to a new integrated service station complex including new canopy, fuel facilities, underground fuel storage tanks, shop, store, pergola, free standing pylon sign, associated car parking, timber batten fence and landscaping subject to the following conditions:
  1. The development granted Development Plan Consent shall be undertaken in accordance with the following approved plans, drawings and specifications forming Exhibit A to the reasonable satisfaction of the Council, except where varied by conditions below.
    - 1.1 Site & Floor Plan dated 30/11/2020.
    - 1.2 Elevations Plan dated 30/11/2020.

- 1.3 Oxigen letter dated 22/3/2021.
  - 1.4 Oxigen Landscape Plan Revision H dated 22/3/2021.
  - 1.5 Oxigen Landscape Precedents Revision I dated 22/3/2021.
  - 1.6 3 renders indicating proposed colours (unreferenced).
  - 1.7 The acoustic measures recommended for the site at pages 8 & 9 of the Sonus Environmental Noise Assessment dated February 2019.
  - 1.8 Sagero Stormwater Plan Drawing C01 Issue B & C02 Issue B both dated 27 February 2019.
2. All materials, refuse and goods including fuel shall at all times be loaded and unloaded within the confines of the subject land.
  3. Fuel delivery vehicles shall only access the site between the hours of 7.00a.m. and 10.00p.m. on any day.
  4. Refuse collection and the delivery of goods shall only occur between the hours of 9.00 a.m. and 7.00 p.m. on a Sunday or public holiday and between 7.00 a.m. and 7.00 p.m. on any other day.
  5. The landscaping approved herein (Landscape Plan prepared by Oxigen dated 22 March 2021) shall be planted prior to occupation/operation of the development and any person(s) who have the benefit of this approval shall cultivate, tend and nurture the landscaping and replace any plants which may become diseased or die.
  6. No goods, materials or equipment associated with the approved development shall be stored outside of the control building or designated storage areas.
  7. The fence along the northern boundary is sealed airtight from top to bottom including at the ground and at the junctions.
  8. Details of acoustic treatments for mechanical plant in accordance with the recommendations of the Environmental Noise Assessment (February 2019) prepared by Sonus shall be submitted to the satisfaction of Council prior to the issue of Development Approval.
  9. A detailed stormwater management system and computations for the development be provided to the satisfaction of Council prior to the issue of Development Approval.

The stormwater management system shall include:

- (a) harvesting and re-use of stormwater runoff from the control building and impervious surfaces that is to be designed by a suitably qualified stormwater/civil engineer to demonstrate the most economical and sustainable solution for the development;
  - (b) stormwater detention measures to demonstrate that the stormwater discharge from the development would be equivalent to having a 0.25 runoff coefficient for a critical 20 year ARI storm event; and
  - (c) stormwater quality improvement measures that are demonstrated to satisfy the State Government Water-Sensitive Urban Design policy guidelines.
10. All solid waste shall be stored in bins/containers having a close fitting lid. The bins/containers shall be stored within the designated screened bin enclosure. Collection of waste shall be carried out at least once a week by a private contractor and within the approved collection hours.
  11. Floodlighting within the car park and around the control building and canopy shall be restricted to that necessary for access and security purposes only and be directed and shielded in such a manner as to cause no light overspill nuisance of nearby properties.

12. All car parking areas shall be line marked to delineate the parking spaces prior to the occupation of the development.
13. The advertising displays shall not contain any elements that flash, scroll or move.
14. The internal illumination of the pylon sign shall be limited to a low level in order to minimise the impact on road safety.
15. All vehicles shall enter and exit the site in a forward direction.
16. Each of the 6 fuel dispenser pumping stations shall provide a full range of all fuel types and ensure that the length of hose can extend to both sides of a vehicle.
17. The site shall be serviced by an entry point from May Terrace and an exit point to Kensington Road at the locations shown as access points on the Site and Floor Plan, Document Set ID: 4988171, Version 2 dated 30 November 2020. The entry and exit points shall be designed and signed appropriately to reinforce entry from May Terrace and exit to Kensington Road. Chevron line-marking shall also be incorporated in the design to reduce the width of the access for passenger vehicles while still permitting access for delivery vehicles.
18. Removal of the May Terrace street tree and the planting of a new replacement tree to the north of the new crossover by the person benefiting from the consent shall be undertaken prior to the occupation/operation of the development to the reasonable satisfaction of Council.
19. The height of the landscaping shall be restricted and maintained to no higher than 900 millimetres located 2.0 meters either side of the point of egress to ensure sightlines are maintained.
20. The largest vehicle allowed to enter and exit the site shall be a 13.8 metres long rigid truck for fuel deliveries.
21. Any obsolete crossover/s (or portions thereof) shall be replaced with upright kerb and gutter to Council's specifications at the applicant's expense prior to operation of the development.
22. All servicing of the site by heavy vehicles shall be undertaken outside of the peak trading periods and peak traffic periods in order to minimise the potential for vehicular conflict and queues affecting Kensington Road or May Terrace.
23. All off-street parking shall be designed in accordance with AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009. Additionally, clear sightlines, as shown in Figure 3.3 'Minimum Sight Lines for Pedestrian Safety' in AS/NZS 2890.1:2004, shall be provided at the property line to ensure adequate visibility between vehicles leaving the site and pedestrians on the adjacent footpath.
24. All off-street commercial vehicle facilities shall be designed in accordance with AS 2890.2:2018.
25. No stormwater from this development shall be permitted to discharge on-surface to the adjacent roads. In addition, any existing drainage of the roads is to be accommodated in the development and any alterations to road drainage infrastructure as a result of this development are to be at the expense of the applicant.

### **Commissioner of Highways Condition**

26. All structures, fencing, signage and vegetation at the Kensington Road/May Terrace corner shall be located clear of a 3.0 metres by 3.0 metres corner cut-off.

### **EPA Conditions**

27. Prior to operation, all fuel storage tanks (apart from diesel and LPG) must be fitted with a Stage 1 vapour recovery system (which includes underground storage tank vent pipes being fitted with a pressure vacuum relief valve) that directs the displaced vapours back into the tank during filling.

28. Prior to operation, all fuel dispensers (apart from diesel and LPG) must be fitted with a Stage 2 vapour recovery system that directs vapours back into the tank during vehicle refuelling.
29. All runoff from hardstand areas (including the refuelling and fuel delivery areas) of the site (refer to plans by Sagero Project No. SA180044, Drawing Number C01 Issue B, C02 Issue B) must be directed via grates and grade changes to a forecourt full retention oil/water separator (no bypass function) that:
  - (a) has as a minimum spill capture capacity of 10,000 litres;
  - (b) reduces oil content in the outlet to less than 5 milligrams per litre (as confirmed by independent third-party scientific testing);
  - (c) operates effectively in the event of a power failure; and
  - (d) has an alarm connected by telemetry to appropriate maintenance personnel.
30. Any sludge or residues collected within the forecourt full retention oil/water separator is considered waste and must be removed by an EPA licensed waste transporter.
31. All underground fuel storage tanks must be double-walled and fitted with Automatic Tank Gauging (ATG) as a leak detection and monitoring system.
32. Prior to use, all fuel lines between the underground storage tanks and fuel dispensers must be double contained and fitted with a mechanical pressure leak detection system.
33. The development (which includes the removal and disposal of all Underground Storage Systems (USS) must be undertaken in accordance with the "Construction Environment Management Plan, On The Run Marryatville - 287 Kensington Road, Kensington, SA", prepared by Fyfe reference 80017-27, dated 24 July 2019 and a suitably qualified and experienced site contamination consultant engaged to:
  - (a) manage and dispose of contaminated soil in accordance with EPA and other relevant guidelines; and
  - (b) validate USS excavations in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended in 2013) and other EPA guidelines.



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DEPUTY REGISTRAR