

Our Ref: 23157 – QA: HD

1 April 2022

Department of Planning Lands and Heritage
140 William Street
Perth WA 6000

ATT: Metro Outer Joint Development Assessment Panel

**RE: DEVELOPMENT APPROVAL MINOR AMENDMENT REQUEST | DAP/16/01067 | FORM 2
LOT 1001 (25) PEVERETT LANE & LOT 200 (NO. 1674) & LOT 210 THOMAS ROAD, OAKFORD
DEVELOPMENT OF A 37.5 MW SOLAR FARM**

Dear Sir/Madam,

Harley Dykstra has been engaged by Westgen Pty Ltd (the applicant) to request an amendment to the existing Development Approval granted by the Metro East JDAP (DAP016/01) for the Byford Solar Farm at Lot 1001 (25) Peverett Lane, Lot 200 (No. 1674) and Lot 210 Thomas Road, Oakford.

A copy of the original MEJDAP approval is provided at **Appendix A**, while the extension to the substantial commencement date in accordance with section 17A of the DAP regulations is attached at **Appendix B** for reference.

1. INTRODUCTION

WA renewable energy company Westgen Pty Ltd is developing the 37.5MW Byford Solar Farm, which will include large-scale battery storage, and supply clean, reliable electricity to the grid and to electricity customers of WA energy retail company Kleenheat (Wesfarmers).

The project is well advanced, having secured a contract to sell the electricity (to Kleenheat), an EPC contract for the equipment and construction, options to purchase vacant land at Oakford for the site (redundant Western Power land plus one smaller private block) and connection agreements with Western Power to enable the plant to connect to the grid at the Byford Substation.

The project capital cost of \$140 million is very close to a Final Investment Decision, targeting the end of May/early June 2022.

The project will deliver 50-60 jobs during construction and 5-10 long term jobs in maintenance and market interface.

Development Approval was granted by the MEJDAP in December 2016, requiring substantial commencement within 2 years of approval. This approval was subsequently granted a two-year extension by the Shire of Serpentine-Jarrahdale in 2018, so that substantial commencement for the approval was set for the 7th of December 2020.

In April 2020, the Minister for Planning signed a Notice of Exemption from Planning Requirements During a State of Emergency in accordance with section 78H of the *Planning and Development (Local Planning Schemes) Regulations 2015*, granting an automatic extension to the Development Approval until the 7th of December 2022.

However, following legal advice the Shire of Serpentine-Jarrahdale has advised that condition 21 of the DA as written, prohibits the ability of the applicant to substantially commence the development.

PERTH & FORRESTDAL

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FS 536019

Ordinary Council Meeting - 18 July 2022

This amendment request therefore seeks the MOJDAP resolve to amend condition 21 to ensure this project may be substantially commenced prior to the 7th of December 2022.

2. PLANNING PROPOSAL

This amendment request relates to condition 21 of the approval (PA 16/01) which states the following:

“21. The Solar farm shall be fully constructed in accordance with the approved plans, within two years from the date of this approval.”

The date of approval as referenced within condition 21 is the original date of approval, the 7th of December 2016. Construction must therefore be completed by the 7th of December 2018.

The DA approval was granted a 2-year extension by the Shire of Serpentine Jarrahdale on the 18th of December 2018 in accordance with section 17A of the DAP Regulations and the Shire’s Local Planning Policy 1.3 – Amendments and Extensions to Existing Approvals. The approval extension expressly states:

“... In accordance with the above policy, all conditions of the previous approval (attached) remain unchanged. The approval is now valid until the 7th of December 2020. If the subject development is not substantially commenced within this two-year period, the approval shall lapse and be of no further effect.”

No changes were made to condition 21 by the Shire when granting the extension to the DA. Given the Shire’s advice in relation to condition 21, the applicant is currently unable to substantially commence the development without the progression of this minor amendment.

The applicant therefore seeks approval for the following amendment to condition 21 to facilitate the substantial commencement of this development prior to the 7th of December 2022:

*“21. The Solar farm shall be fully constructed in accordance with the approved plans, within **a period of two years from the commencement of construction.**”*

3. PLANNING RATIONALE

3.1. Intent of Condition 21

In consultation with the Shire, Westgen Pty Ltd were advised on the 7th of July, 2017 by Mr Walker that:

“Condition 21 – Approval Period

The current approval requires the project to be fully constructed within two years from the date of approval. The rationale behind the condition was to ensure that all construction activities which may impact the amenity of neighbouring properties, were completed within two years.

The Shire has no in-principle objection to the request to allow 36 months for completion of construction, from the date of approval, on the basis that the construction period itself will not exceed 24 months.”

A copy of the correspondence received from the Shire is attached as **Appendix C**.

The Shire’s intent for condition 21 was and remains to ensure construction onsite is limited to a prescribed period of no more than 2 years. This time period, in the opinion of the Shire, would appropriately manage impacts on adjoining residents during construction.

3.2. Date of Approval

The “date of approval” as referenced in condition 21 could reasonably be interpreted as being: the date of the initial approval (07/12/16); The date of the approval extension (18/12/2018); and, the date of the approval extension granted by the Notice of Exemption signed by the Minister for Planning (effective from 7/12/2020 for this approval).

It is inconceivable that the granting of two approval extensions would not also mean that the two-year construction time limit as specified within condition 21 would not be extended to the new substantial commencement date.

To remove all doubt, this application for a minor amendment seeks to modify condition 21 and provide a clear interpretation of this condition’s intent.

4. CONCLUSION

Westgen Pty Ltd are in the final stages of progressing this \$140 million development, with the Byford Solar Farm to be substantially commenced by the 7th of December 2022 and construction completed within the agreed period of 2 years. We therefore request this minor amendment be supported by the MOJDAP to rectify this minor anomaly and ensure this market leading development may substantially commence construction.

Should you have any queries with respect to any aspect of the above request, please do not hesitate to contact the undersigned.

Yours sincerely,

Daniel Lewis
Town Planner
Harley Dykstra Pty Ltd
E-mail: Daniell@harleyDykstra.com.au



APPENDIX A | MEJDAP APPROVAL – DAP/16/01067



Government of **Western Australia**
Development Assessment Panels

LG Ref: PA16/01
DoP Ref: DAP/16/01067

Mr Dermot Costello
WestGen Pty Ltd
Suite 7, 56 Kings Park Road,
West Perth WA 6005

Dear Mr Costello

**Metro East JDAP – Shire of Serpentine Jarrahdale – DAP Application PA16/01
Determination
Lot 1001 (25) Peverett Lane and Lots 200 (1674) and 210 Thomas Road, Oakford
Development of a 29.7MW Solar Farm**

Thank you for your application and plans submitted to the Shire of Serpentine Jarrahdale on 28 June 2016 for the above development at the abovementioned site.

This application was considered by the Metro East Joint Development Assessment Panel at its meeting held on 7 December 2016, where in accordance with the provisions of the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2, it was resolved to approve the application as per the attached notice of determination.

Should the applicant not be satisfied by this decision, a DAP Form 2 application may be made to amend or cancel this planning approval in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*.

Please also be advised that there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*. Such an application must be made within 28 days of the determination, in accordance with the *State Administrative Tribunal Act 2004*.

Should you have any queries with respect to the conditions of approval, please contact Mr Marcel Bridge on behalf of the Shire of Serpentine Jarrahdale on (08) 9526 1318.

Yours sincerely,

Michelle Tan

DAP Secretariat

13/12/2016

Encl. DAP Determination Notice
Approved plans

Cc: Mr Marcel Bridge
Shire of Serpentine Jarrahdale
6 Paterson Street,
MUNDIJONG WA 6123



wa.gov.au

Postal address: Locked Bag 2506 Perth WA Street address: 140 William Street Perth WA 6000
Tel: (08) 6551 9919 Fax: (08) 6551 9961 TTY: 6551 9007 Infoline: 1800 626 477
daps@planning.wa.gov.au www.planning.wa.gov.au
ABN 35 482 341 493

Ordinary Council Meeting - 18 July 2022



Planning and Development Act 2005

Shire of Serpentine Jarrahdale Town Planning Scheme No. 2

Metro East Joint Development Assessment Panel

Determination on Development Assessment Panel Application for Planning Approval

Location: Lot 1001 (25) Peverett Lane and Lots 200 (1674) and 210 Thomas Road, Oakford

Description of Proposed Development: Development of a 29.7MW Solar Farm

In accordance with regulation 8 of the *Planning and Development (Development Assessment Panels) Regulations 2011*, the above application for planning approval was **granted** on 7 December 2016, subject to the following:

Approve the proposed Use Not Listed (Solar Farm) and Incidental Tourist Facility, Office and Site Facilities application reference DAP/16/01067 at Lots 1001 Peverett Lane, Lot 210 Abernethy Road and Lot 200 Thomas Road, Oakford and amended plans dated 21 August 2016, subject to the following planning conditions:

Conditions

Local Government:

1. Lots 1001 Peverett Lane, Lot 210 Abernethy Road and Lot 200 Thomas Road, Oakford are to be amalgamated into a single lot prior to the submission of a building permit application. Alternatively the owner may enter into a legal agreement with the Shire of Serpentine Jarrahdale, prepared by the Shire's solicitors at the expense of the owner.

The legal agreement will allow the owner 12 months to amalgamate the lots. The agreement is required to be executed by all parties concerned prior to the commencement of the works hereby permitted.

2. Prior to the submission of a building permit a site plan illustrating any existing vegetation to be retained (specifically relating to black cockatoo feeding habitat) shall be submitted and approved to the satisfaction of the Shire of Serpentine Jarrahdale.
3. Prior to the submission of a building permit amended plans shall be submitted illustrating setbacks of 12 metres from all side and rear boundaries to any proposed development to the satisfaction of the Shire of Serpentine Jarrahdale.
4. Prior to the submission of a building permit a noise impact statement shall be submitted and approved to the satisfaction of the Shire of Serpentine Jarrahdale.
5. Prior to the submission of a building permit a drainage management plan shall be submitted, approved and thereafter implemented to the satisfaction of the Shire of Serpentine Jarrahdale.



6. Prior to the submission of a building permit a construction management plan shall be submitted, approved and thereafter implemented to the satisfaction of the Shire of Serpentine Jarrahdale.
7. Prior to the commencement of works a Traffic Management Plan shall be submitted, approved and thereafter implemented to the satisfaction of the Shire of Serpentine Jarrahdale. The Traffic Management Plan shall ensure there is an adequate and safe turning circle along Rice Road adjoining Lot 200 Thomas Road. This is to allow traffic entering Rice Road, outside of the operating hours of the facility, to be able to conduct a safe u-turn to exit Rice Road onto Thomas Road.
8. Prior to the commencement of works a Bushfire and Emergency Management Plan, shall be submitted, approved and thereafter implemented to the satisfaction of the Shire of Serpentine Jarrahdale.
9. Prior to the commencement of works a landscaping/revegetation plan which includes mature vegetation along the perimeter of the development site for the purposes of screening and privacy of nearby affected residences shall be submitted and approved by the Shire of Serpentine Jarrahdale.
10. Prior to the commencement of the use the approved landscape/revegetation plan shall be implemented and thereafter maintained to the satisfaction of the Shire of Serpentine Jarrahdale.
11. Prior to the commencement of the use all proposed crossovers shall be designed and constructed to the satisfaction of the Shire of Serpentine Jarrahdale.
12. Prior to the commencement of the use, a tourist facility management plan shall be submitted, approved and thereafter implemented to the satisfaction of the Shire of Serpentine Jarrahdale. The Tourist Facility Management Plan shall include suitable operating hours.
13. A monetary contribution of \$500,000 being paid to Council for the establishment of public art within the Oakford area in accordance with Council's Local Planning Policy No. 59 - Public Art Policy for Major Developments to the satisfaction of the Shire prior to occupation of the development.
14. A minimum of two (2) car parking bays are required to be provided within the office and switch room compound to the satisfaction of the Shire of Serpentine Jarrahdale.
15. Rice Road pavement shall be widened to a minimum width of 6 meters up to the turning circle referred to in condition 7 and it shall be sealed to the specification and satisfaction of the Shire of Serpentine Jarrahdale at the landowner/applicant's cost.
16. An interpretive information panel is to be provided at the tourist area to the satisfaction of the Shire of Serpentine Jarrahdale.
17. The applicant(s) / land owner(s) shall advise the Shire of Serpentine Jarrahdale in writing the solar farm facility has completed construction.



18. Prior to the commencement of works a plan outlining the conceptual decommissioning and rehabilitation of the site will be required to be submitted.

Within two years of the facility being decommissioned, a final decommissioning rehabilitation plan shall be submitted, approved and thereafter implemented to the satisfaction of Shire of Serpentine Jarrahdale.

19. Prior to the submission of a building permit a fauna and flora study shall be undertaken, submitted and approved by the Shire of Serpentine Jarrahdale. This study shall inform the landscaping plan to ensure significant flora is retained for its conservation value or habitat value with respect to fauna.
20. No herbicides shall be used for the maintenance of the height of the ground cover, only mowing or grazing shall be permitted.
21. The solar farm shall be fully constructed in accordance with the approved plans within two years from the date of this approval.
22. The applicants/operators of the solar farm shall prepare an ongoing air quality and/or erosion management plan to the satisfaction and approval of the Shire of Serpentine Jarrahdale and shall be implemented for the life of the project.

Main Roads:

23. No vehicle access shall be permitted onto the Thomas Road reserve and all vehicle access shall be restricted to the Local Road network.
24. As the Planning Report indicates that significant traffic will be entering into and out of the site during construction phase, a Transport Statement or Transport Assessment for this stage of the project will be required. In this regard, please refer to the WAPC's Part 4 "Transport Assessments Guidelines for Individual Developments for further information.
25. No development or car parking, other than landscaping shall be permitted on the land as shown required for future road purposes on the enclosed WAPC Drawing 1.3229/2.
26. No earthworks shall encroach onto the Thomas Road reserve.
27. No stormwater drainage shall be discharged onto the Thomas Road reserve.
28. The applicant shall make good any damage to the existing verge vegetation within the Thomas Road reservation.

Advice Notes:

1. The applicant is required to obtain a clearing permit for the removal of existing vegetation from the Department of Environment and Regulation prior to commencement of works. (DER)
2. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not

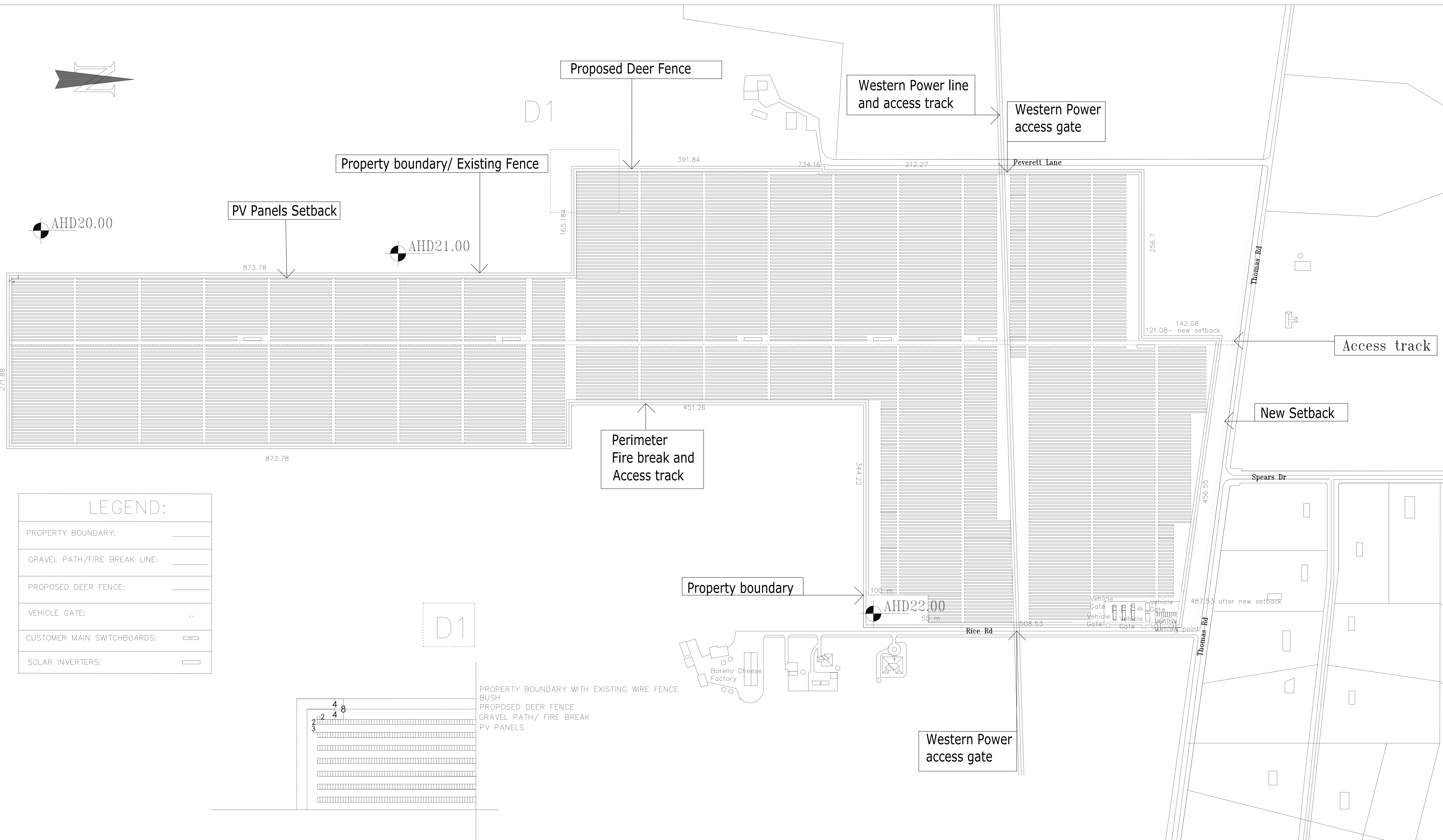


substantially commenced within the two year period, the approval shall lapse and be of no further effect.

3. This property is affected by land reserved in the Metropolitan Region Scheme as shown on the enclosed extract of WAPC drawing 1.3229/2 and will be required for the road purposes at some time in the future. (Main Roads)
4. The project for the upgrading/widening of Thomas Road is not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability whatsoever for the information provided. (Main Roads)
5. A Danger Zone, Registered Easement, Restriction Zone or Minimum approach distance represent areas of high risk when building or working near the Western Power network. Before commencing any work it is essential that you complete a Dial Before You Dig enquiry to obtain the location and voltage of the Western Power network.
6. In relation to condition 9, mature vegetation means initial tree plantings shall have a height of two (2) metres and shall grow to a full height of no less than 5 metres. The trees shall not be pruned to a height less than five (5) metres.
7. Operating hours of the Tourist Facility should consider when the facility is manned.

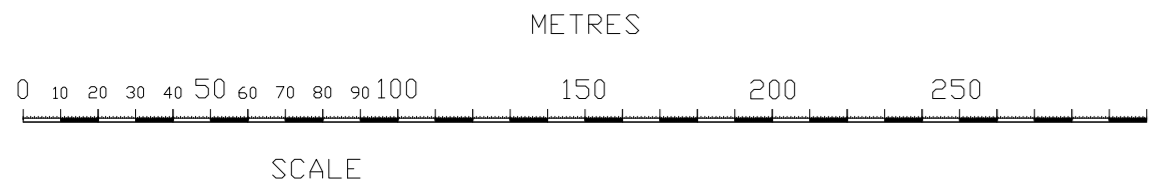
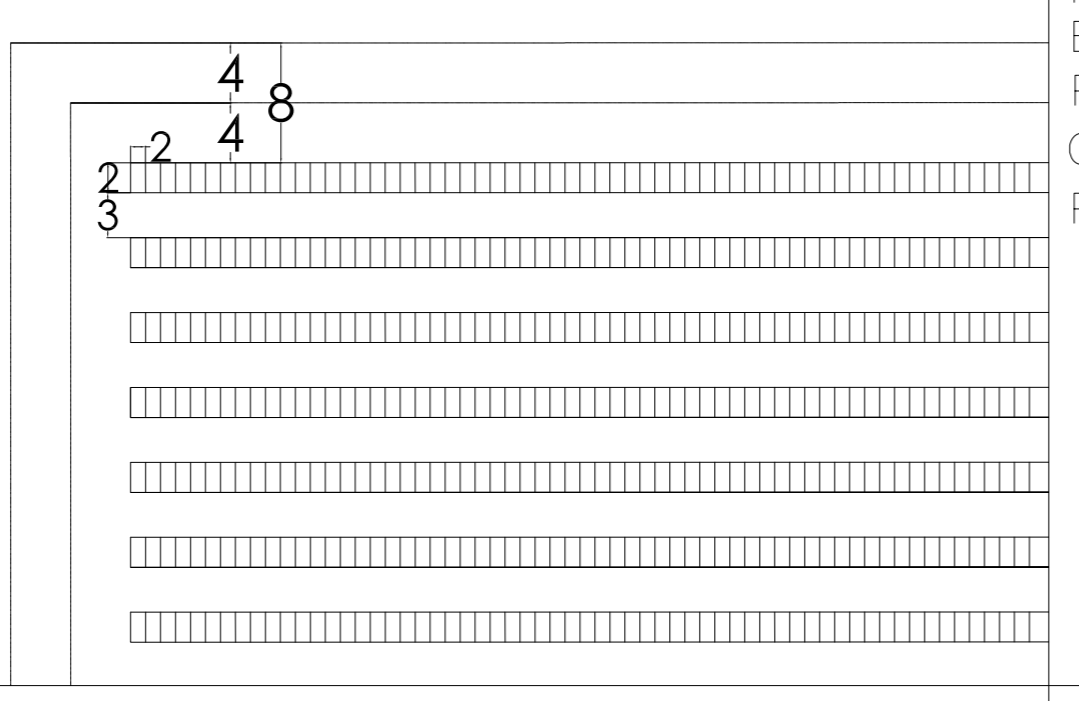
Where an approval has so lapsed, no development shall be carried out without further approval having first been sought and obtained, unless the applicant has applied and obtained Development Assessment Panel approval to extend the approval term under regulation 17(1)(a) of the *Planning and Development (Development Assessment Panels) Regulations 2011*.

DRAFT - NOT FOR CONSTRUCTION - SUBJECT TO SITE SURVEY



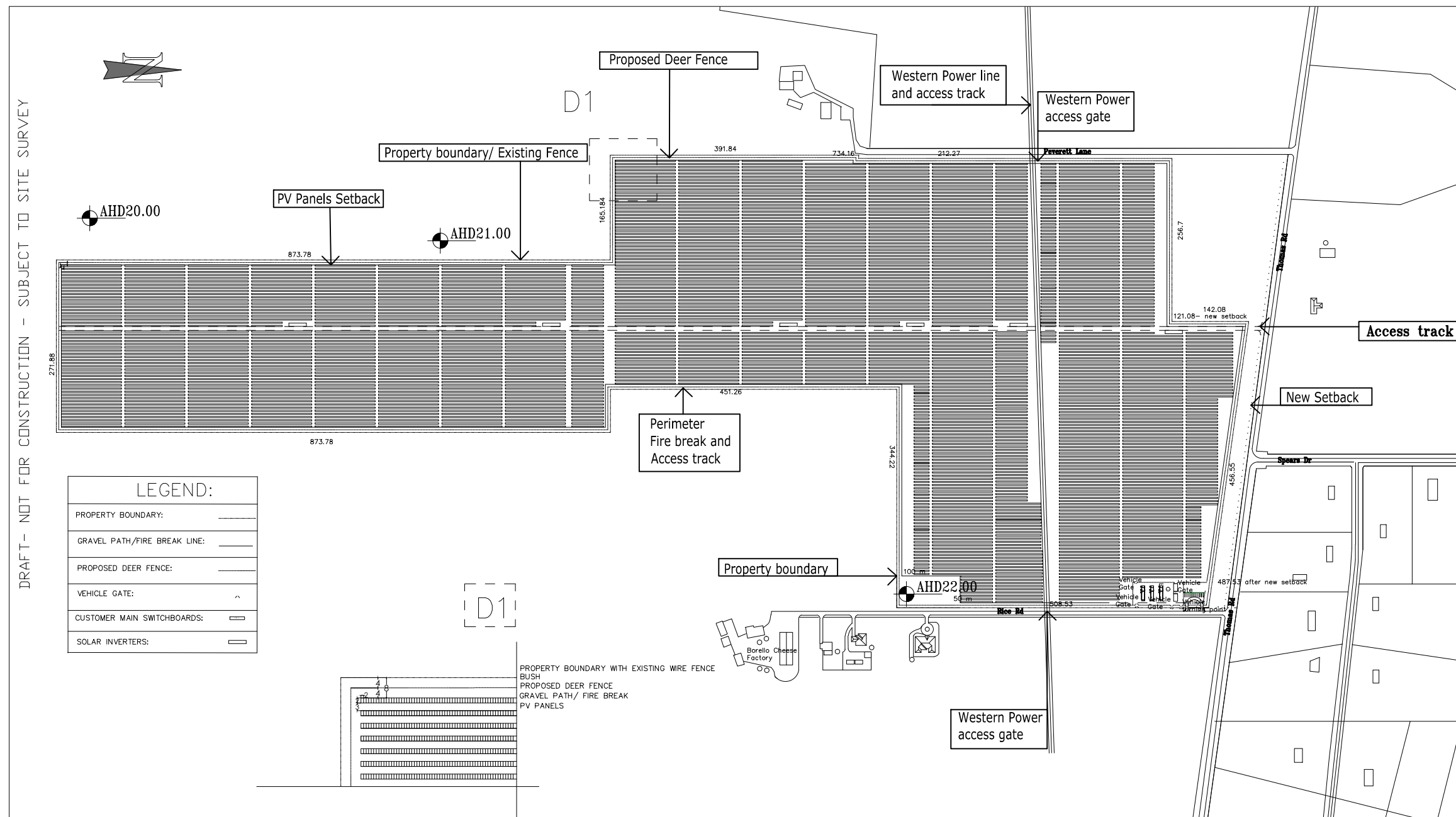
LEGEND:

PROPERTY BOUNDARY:	---
GRAVEL PATH/FIRE BREAK LINE:	---
PROPOSED DEER FENCE:	---
VEHICLE GATE:	^^
CUSTOMER MAIN SWITCHBOARDS:	□
SOLAR INVERTERS:	□




SITE PLAN

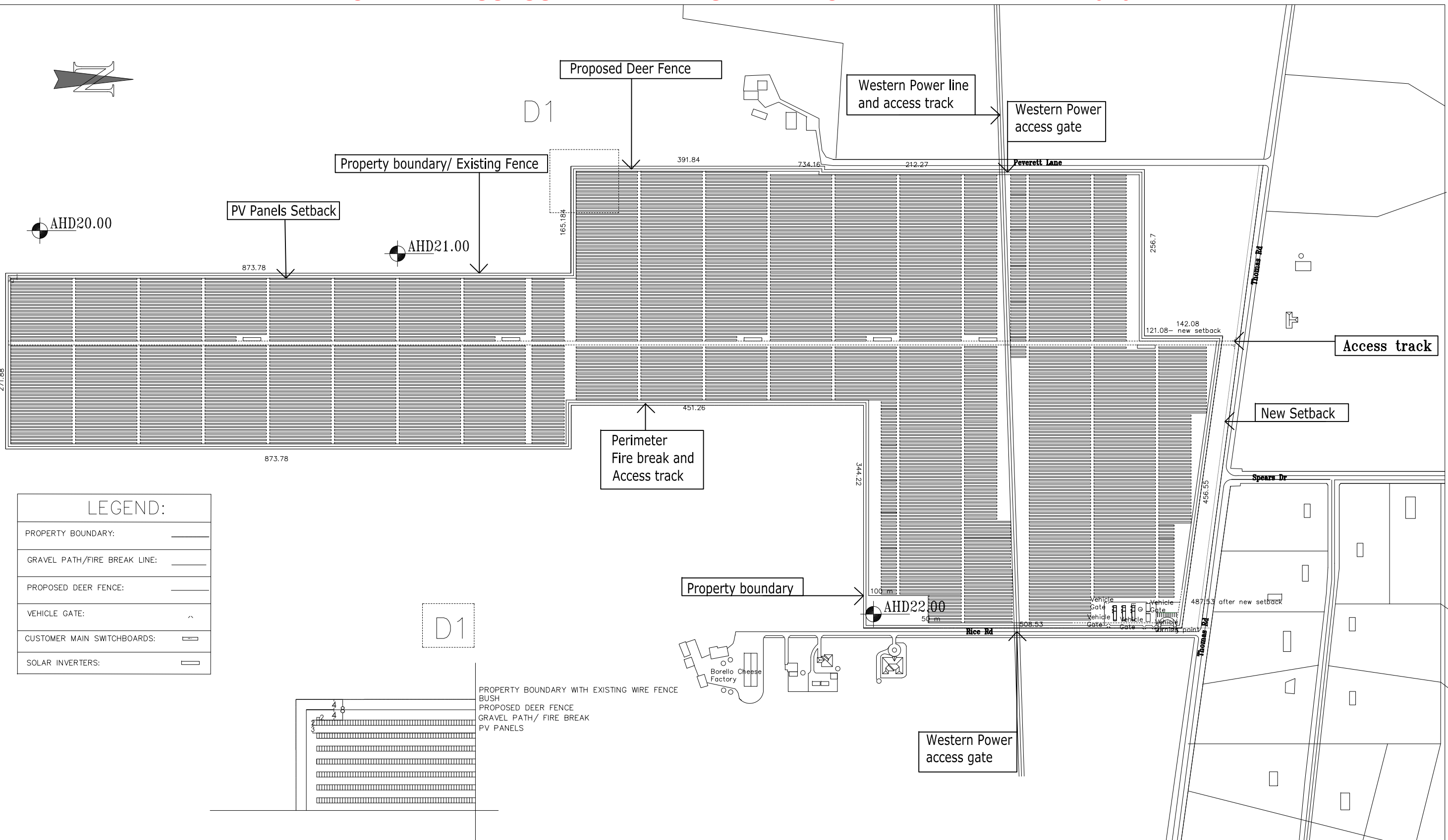
Version: 10 Rev 3	Project Name: BYFORD SOLAR FARM	Company: WestGen
Date: 21.11.2016	Lot/Address: Lot 1001 on plan 62901 / 25 Peverett Lane, Oakford, WA Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA Lot 210 on plan 152817	
Scale 1: 2000 @ A0		



SITE PLAN

Rev: 9	Project Name: BYFORD SOLAR FARM	Company: WestGen
Date: 21.11.2016	Lot/Address: Lot 1001 on plan 62901 / 25 Peperett Lane, Oakford, WA Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA	
Scale 1: 7500 @ A3	Lot 201 on plan 152817	

DRAFT - NOT FOR CONSTRUCTION - SUBJECT TO SITE SURVEY



SITE PLAN

Version: 10 | Rev 3

Project Name: BYFORD SOLAR FARM

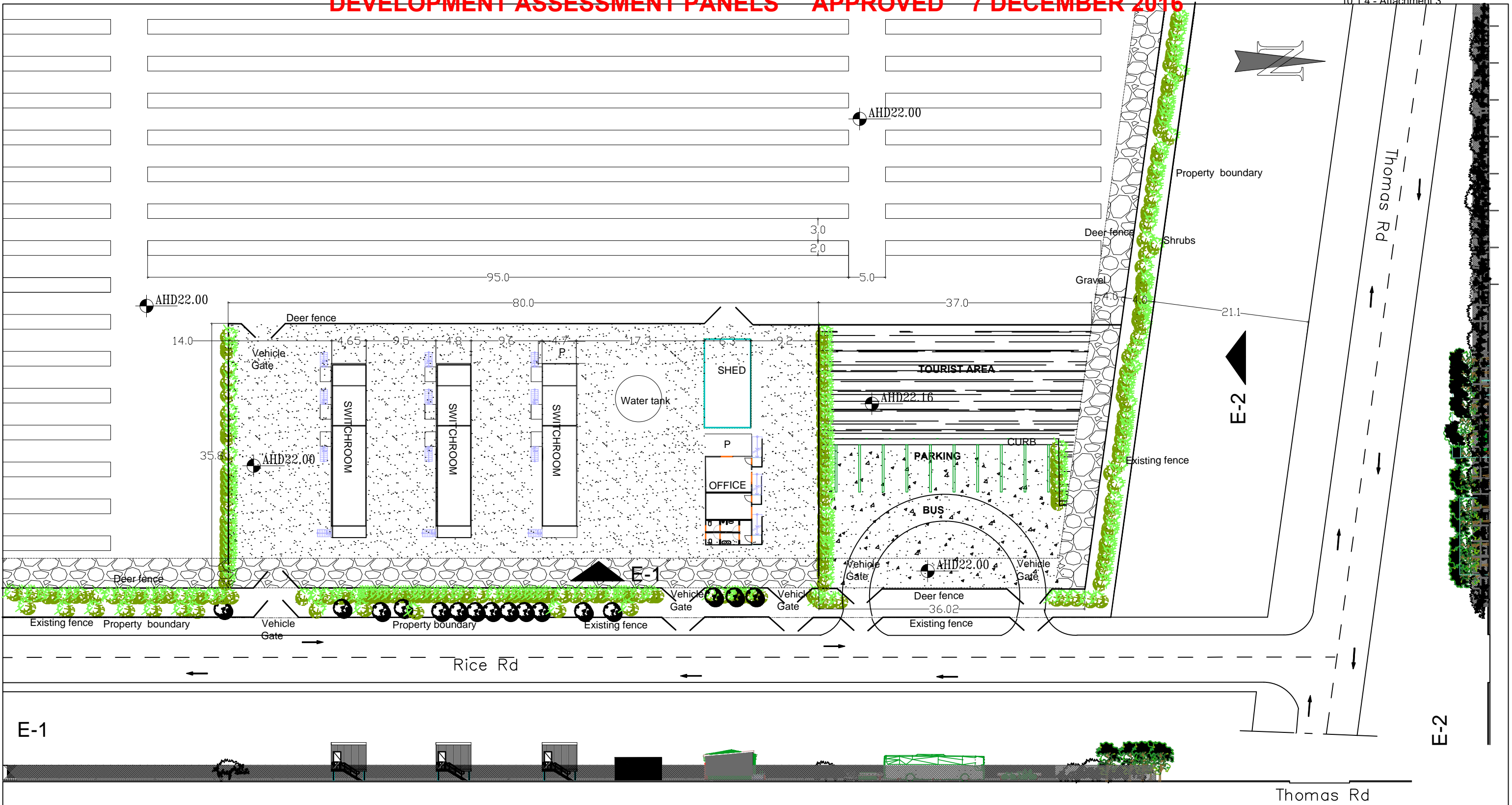
Company: WestGen


Date: 21.11.2016

Lot/Address: Lot 1001 on plan 62901 / 25 Peverett Lane, Oakford, WA
 Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA
 Lot 210 on plan 152817


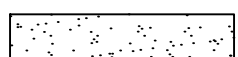
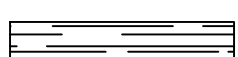

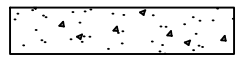
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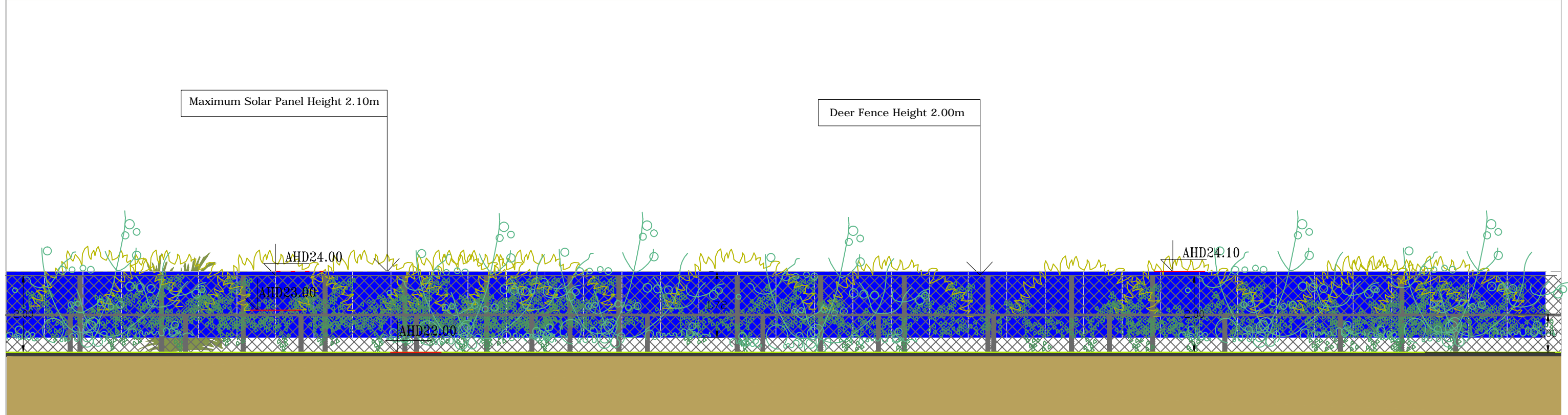
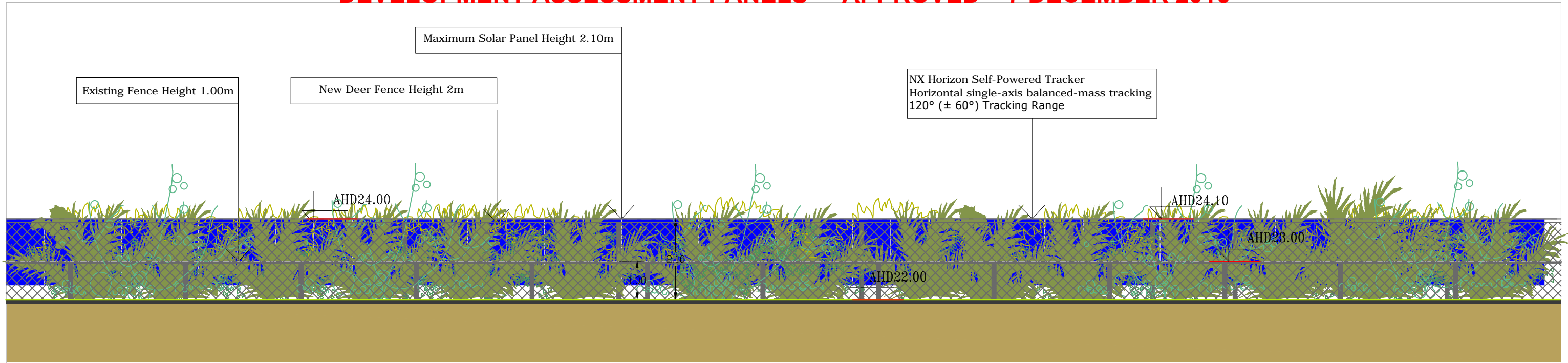





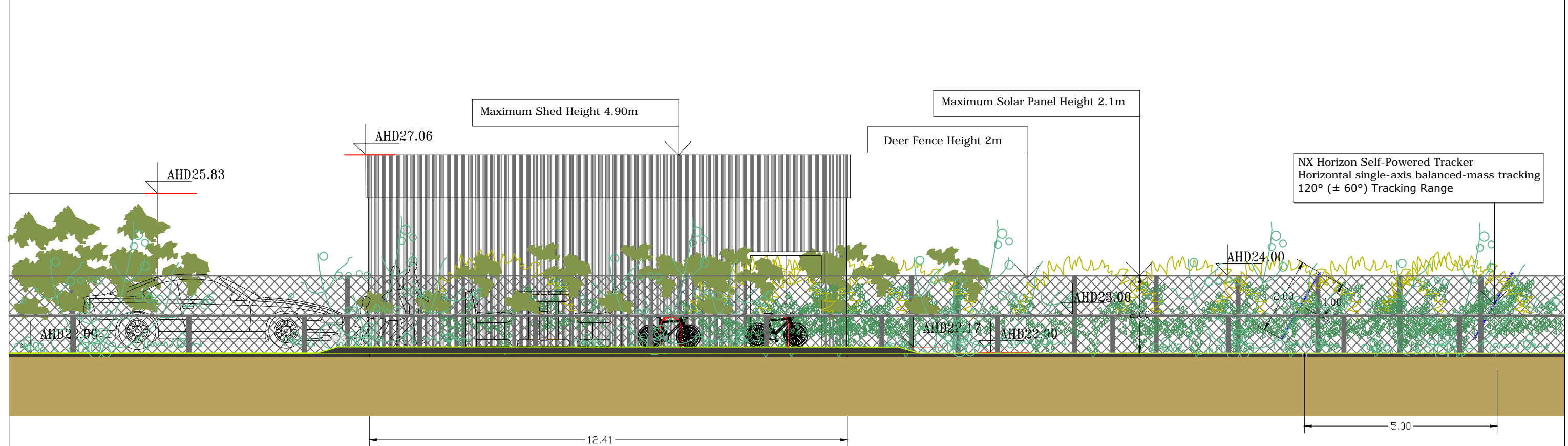
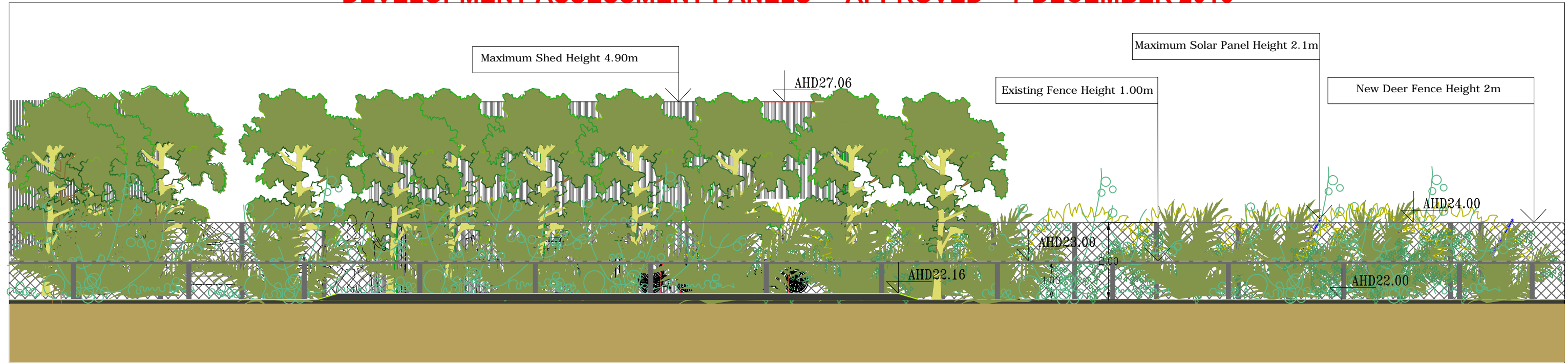
Company:

 Date: 28.11.2016.
 Drawing Number: 2
 Version: 10


Project Name: BYFORD SOLAR FARM
 Drawing Name: SWITCHYARD AREA SITE PLAN
 Lot/ Street:
 Lot 1001 on plan 62901 /25 Peverett Lane, Oakford, WA
 Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA
 Lot 210 on plan 152817

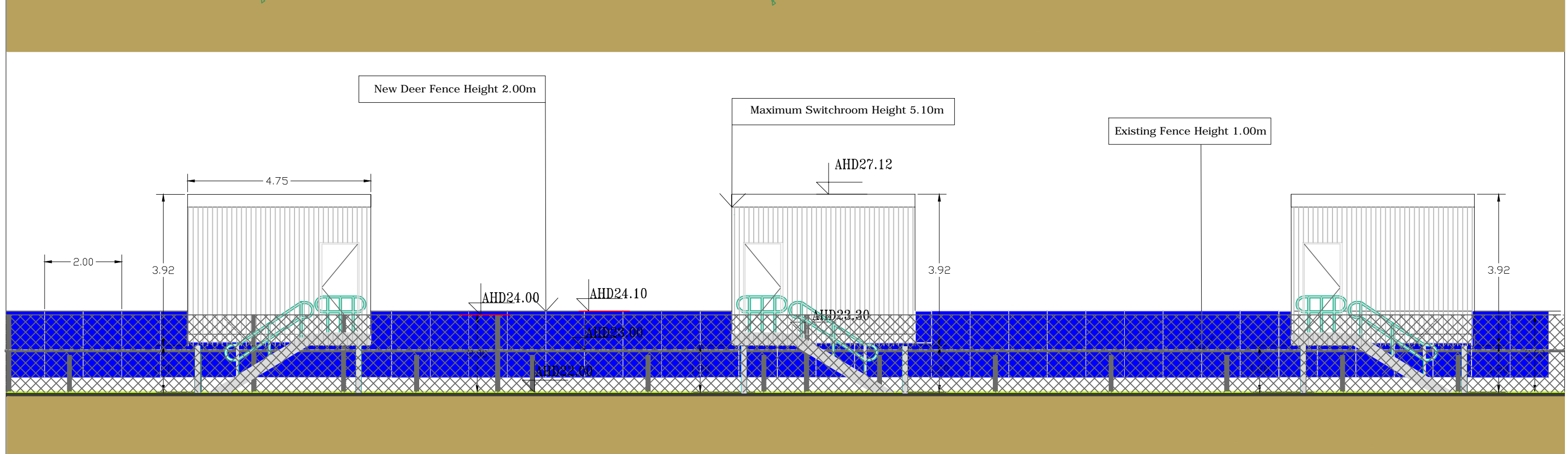
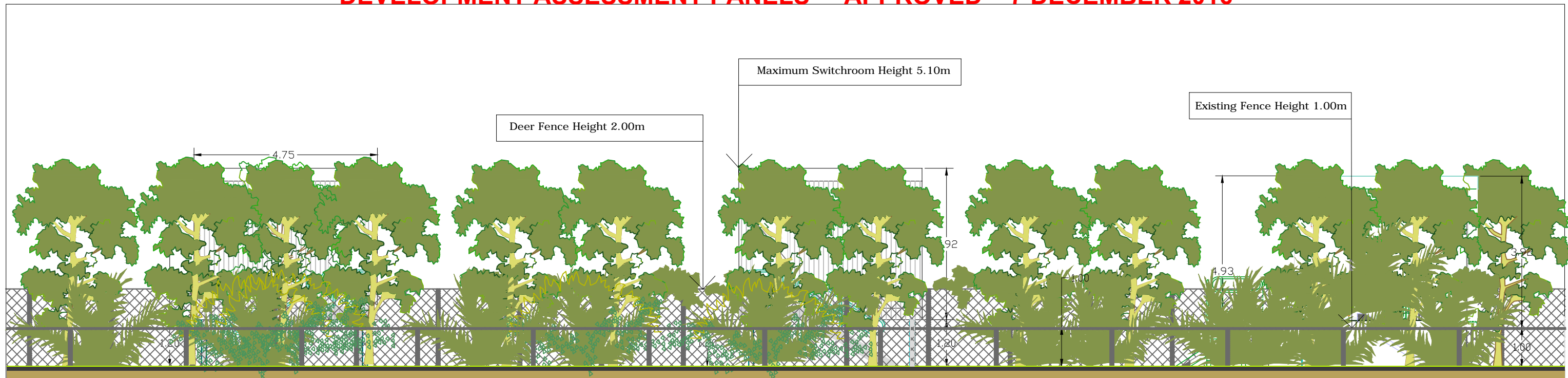
LEGEND:		0 10 20 30 40 50	
PROPERTY BOUNDARY:	-----	PROPOSED GRAVEL:	
EXISTING FENCE:	————	CRUSHED LIMESTONE:	
PROPOSED DEER FENCE:	————	RED ASPHALT:	
PROPOSED SHRUBS:		BLACK ASPHALT:	




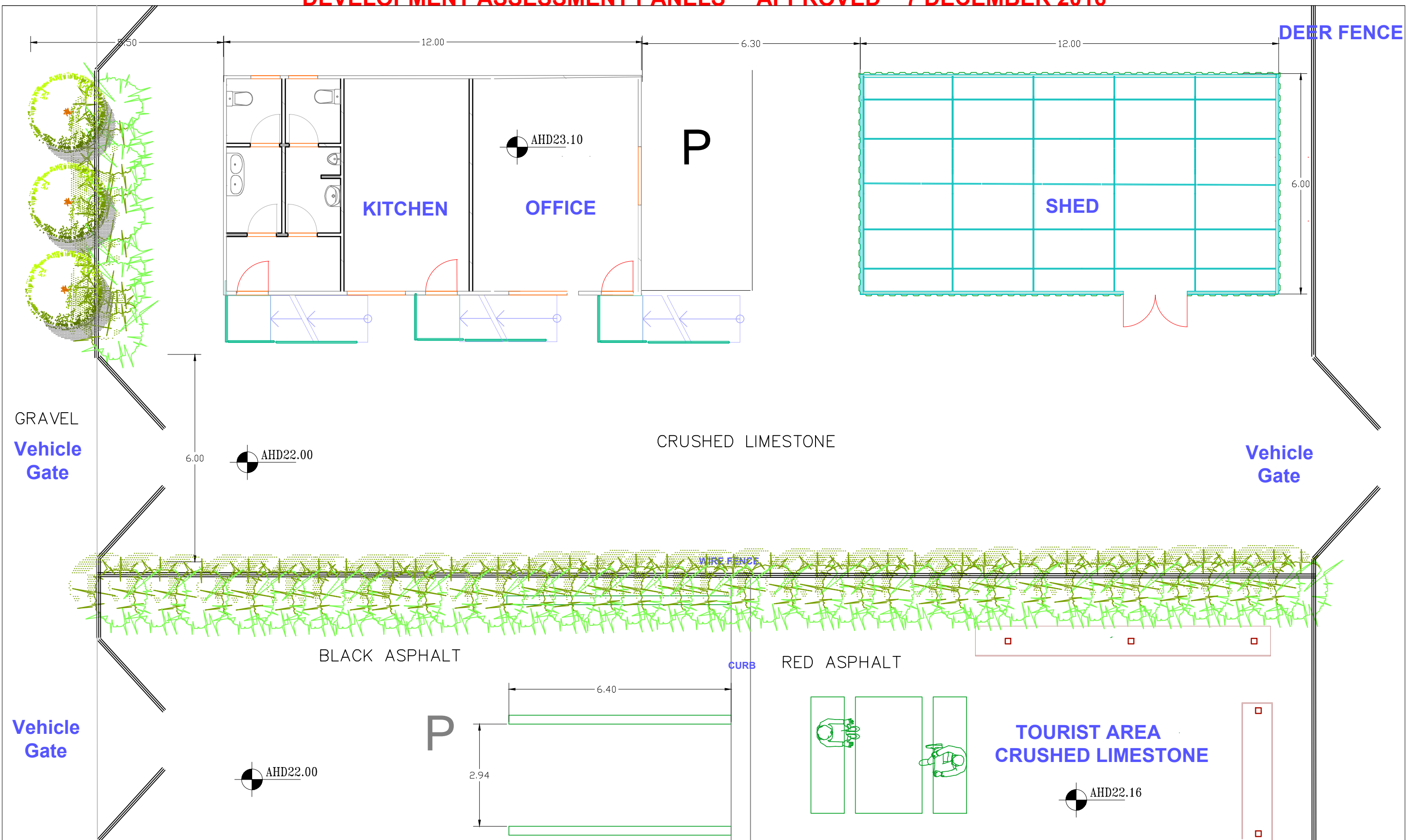
Company: 	Project Name: BYFORD SOLAR FARM	Date: 28. 11. 2016	Version: 10	Drawing Number: 3
	Drawing Name: SOLAR FARM TYPICAL ELEVATION	Lot/ Street: Lot 1001 on plan 62901 /25 Peverett Lane, Oakford, WA Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA Lot 210 on plan 152817		




Company: 	Project Name: BYFORD SOLAR FARM	Date: 28.11. 2016	Version: 10	Drawing Number: 4
	Drawing Name: THOMAS ROAD ELEVATION	Lot/ Street: Lot 1001 on plan 62901 /25 Peverett Lane, Oakford, WA Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA Lot 210 on plan 152817		



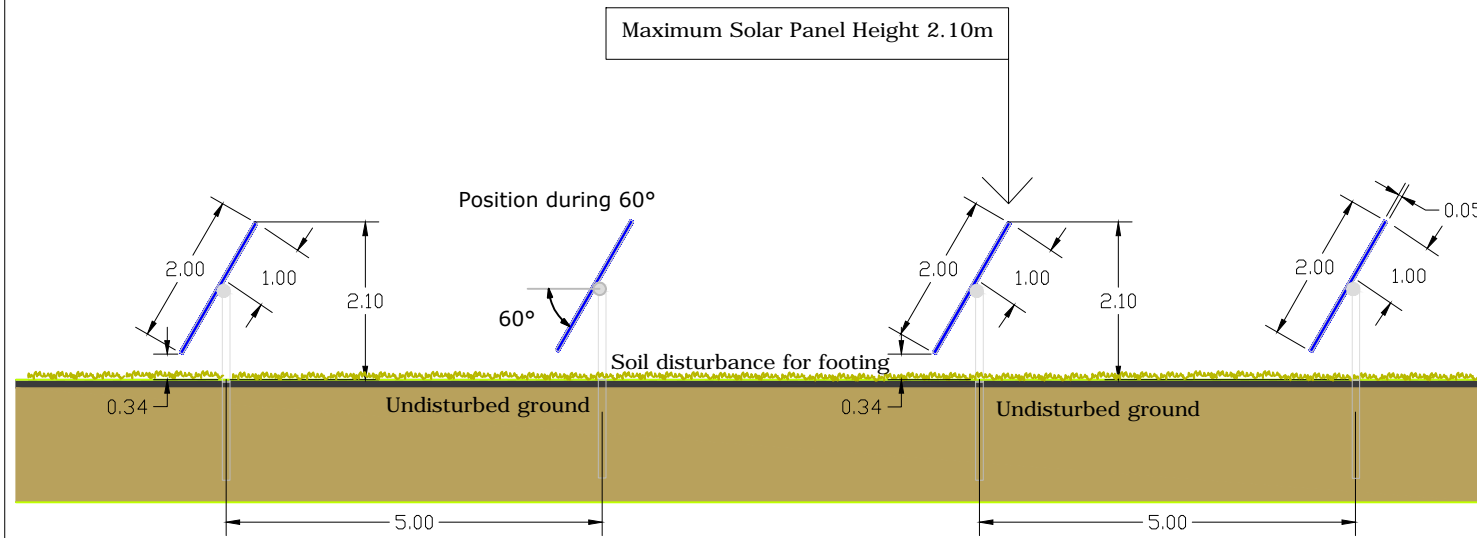
Company: 	Project Name: BYFORD SOLAR FARM	Date: 28. 11. 2016	Version: 10	Drawing Number: 5
	Drawing Name: RICE ROAD ELEVATION	Lot/ Street: Lot 199 on plan 152817 / 52 Peverett Lane, Oakford, WA Lot 210 on plan 152817 / 210 Abernethy Road Oakford, WA Lot 200 on plan 152817 / 1674 Thomas Road Oakford, WA		



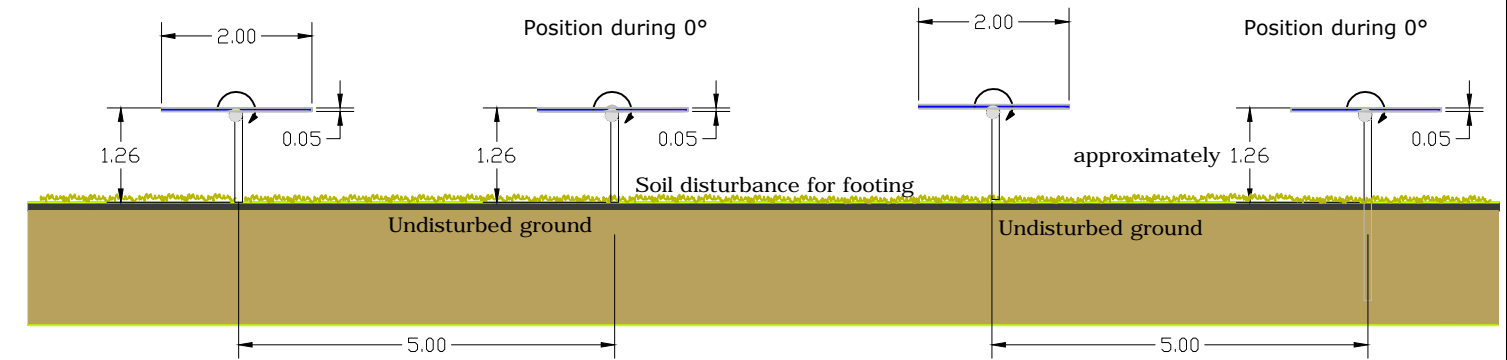
Company: 	Project Name: BYFORD SOLAR FARM	Date: 28. 11. 2016	Version: 10	Drawing Number: 6
	Drawing Name: OFFICE AND SHED FLOOR PLAN	Lot/ Street: Lot 1001 on plan 62901 /25 Peverett Lane, Oakford, WA Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA Lot 210 on plan 152817		

TYPICAL SECTION (60° POSITION)

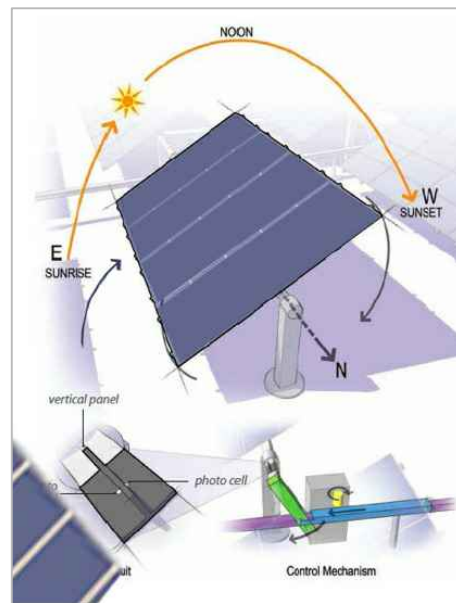
NX Horizon Self-Powered Tracker
Horizontal single-axis balanced-mass tracking
120° (± 60°) Tracking Range



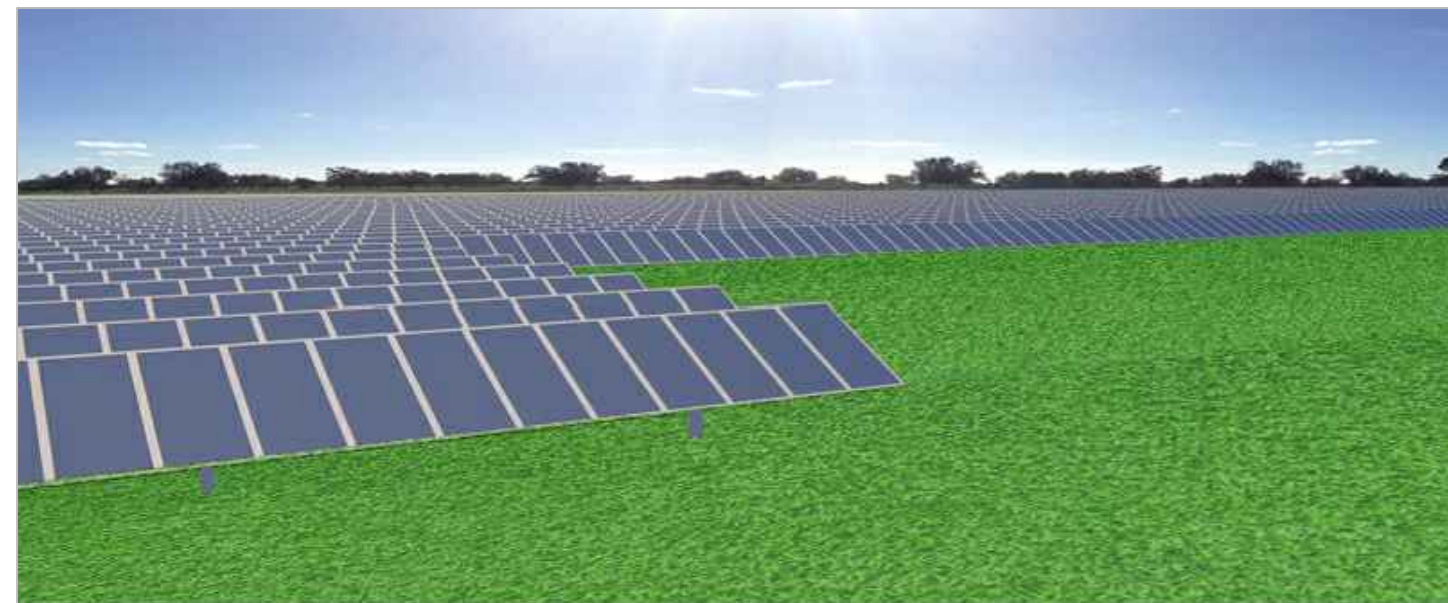
TYPICAL SECTION (0° POSITION)




SCHEMATIC VIEW



EAST FACING VIEW



Company: 	Project Name: BYFORD SOLAR FARM	Date: 28. 11. 2016	Version: 10	Drawing Number: 7
	Drawing Name: TYPICAL SECTION	Lot/ Street: Lot 1001 on plan 62901 /25 Peverett Lane, Oakford, WA Lot 200 on plan 152817 /1674 Thomas Road Oakford, WA Lot 210 on plan 152817		

APPENDIX B | SHIRE OF SJ - DA EXTENSION

All enquiries to Planning Services on 9526 1111
Our ref: PA18/1110/HC:wj



18 December 2018

Westgen Pty Ltd
Suite 7, 56 Kings Park Road
WEST PERTH WA 6005

Via email: richard.harris@westgen.com.au

Dear Sir/Madam,

Proposed Solar Farm ('Use Not Listed')
Lot 1001, 25 Peverett Lane and Lots 200, 1674 and 210 Thomas Road, Oakford

Thank you for your development application, received 13 December 2018 on the aforementioned lot. The Shire is pleased to advise that, in accordance with Local Planning Policy 1.3 – Amendments and Extensions to Existing Approvals, the timeframe for your development application has been extended for a further two years.

In accordance with the above policy, all conditions of the previous approval (attached) remain unchanged. The approval is now valid up until 7 December 2020. If the subject development is not substantially commenced within this two year period, the approval shall lapse and be of no further effect.

Yours faithfully

Ashwin Nair
Manager Statutory Planning and Compliance



APPENDIX C | SHIRE OF SJ - CORRESPONDENCE

All enquiries to Planning Services on 9526 1111
Our ref: PA16/01



7 July 2017

Richard Harris
WestGen Pty Ltd
Suite 7, 56 Kings Park Road,
WEST PERTH WA 6005

Dear Richard

Proposed Amendments to Approved Solar Farm and Incidental Tourist Facility, Office and Site Facilities - Lot 1001 (#25) Peverett Lane and Lots 200 (1674) and 210 Thomas Road, Oakford

Thank you for your enquiries lodged with the Shire on 5 & 6 July 2017, regarding amendments to a conditional planning approval for a Solar Farm which was issued by the Metro East Joint Development Assessment Panel (JDAP) on 13 December 2016.

The Shire acknowledges the request to amend Conditions 1, 13 and 21 of the conditional approval. In principle, the Shire has no objection to the proposed amendments, which are discussed in more detail below.

In terms of process, as the development approval was determined by the JDAP, you are required to lodge a formal request to the Shire (in the form of an application) in order for the Shire to reconsider the three conditions of approval. The Shire has the ability to amend this development approval in accordance with Regulation 17A of the *Planning and Development (Development Assessment Panels) Amendment Regulations 2016*. I have attached a copy of the relevant application form for your use, and the application fee is \$196.00.

Condition 1 - Timeframe for Amalgamation

The Shire acknowledges the request for an extension of the timeframe to amalgamate the different lots, due to the land acquisition processes. In principle the Shire no has objection to the proposed request for a 12 month extension, subject to WestGen entering into a legal agreement with the Shire of Serpentine-Jarrahdale to ensure that the amalgamation is carried out within 24 months.

Condition 13 - Public Art

The Shire acknowledges the request to make annual payments of \$100,000 over a period of five years commencing in the second quarter of 2018. Officers are satisfied with the justification provided and consider the request to be reasonable, subject to WestGen entering into a legal agreement with the Shire of Serpentine-Jarrahdale to secure that arrangement.

One legal agreement can be prepared to address both Conditions 1 and 13. That agreement should be prepared by the Shire's solicitors at the expense of WestGen.

Condition 21 - Approval Period

The current approval requires the project to be fully constructed within two years from date of approval. The rationale behind the condition was to ensure that all construction activities, which may impact the amenity of neighbouring properties, were completed within two years.

The Shire has no in-principle objection to the request to allow 36 months for completion of construction, from the date of approval, on the basis that the construction period itself will not exceed 24 months.

I hope this letter provides a response to your queries and clear guidance about lodging an application to amend the conditions. Should you have further queries or require additional information please do not hesitate to contact me on 9526-1132.

Yours faithfully



Stephen Walker
Coordinator Statutory Planning

Cc: Application Form