



LIGHT
REGIONAL
COUNCIL

VISION & ASPIRATIONS

A vibrant and growing community to be supported by quality infrastructure, a sustainable environment and excellent services that meet everybody's needs and maintains our unique lifestyle.

AGENDA PAPERS

for the meeting of

**LIGHT REGIONAL COUNCIL
DEVELOPMENT ASSESSMENT PANEL**

*in the
COUNCIL CHAMBER
93 Main Street, Kapunda*

WEDNESDAY, 7 JULY 2010 at 5.30 pm

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LIGHT REGIONAL COUNCIL
DEVELOPMENT ASSESSMENT PANEL

AGENDA

MEETING HELD ON WEDNESDAY, 7 JULY 2010,
IN THE COUNCIL CHAMBER, 93 MAIN STREET, KAPUNDA
COMMENCING AT 5.30 P.M.

MEMBERSHIP COMPOSITION

Mr Bruce Ballantyne (Presiding Member), Mr Kelvin Goldstone, Mr Peter Whimpress, Ms Janine Lennon, Mr Robert Hornsey, Mrs Lynette Reichstein, Ms Jane Alcorn.

1. **PRESENT**

2. **IN ATTENDANCE**

3. **COMMENCEMENT AND WELCOME**

4. **APOLOGIES**

5. **CONFIRMATION OF PREVIOUS MINUTES**

Recommendation

That the minutes of the meeting of the Development Assessment Panel held on Wednesday, 5 May 2010 be confirmed as a true and correct record of that meeting.

6. **DEVELOPMENT REPORT**

- 6.1 Development Application - 313/108/2010 - DI Petty.
- 6.2 Development Application - 313/68/2010 - K Weber.
- 6.3 Development Application - 313/574/2009 - Aqua Reef Pty Ltd.
- 6.4 Development Application - 313/116/2010 - CM Anderson.
- 6.5 Development Application - 313/D010/09 - Mr BW Hamlyn.

7. **LATE CORRESPONDENCE**

8. **OTHER BUSINESS**

9. **NEXT MEETING**

10. **CLOSURE**

6.0 DEVELOPMENT REPORT

6.1 Development Application - 313/108/2010 - DI Petty

Reporting Officer: Chad King
Senior Development Officer - Planning

Development Application No: 313/108/2010
Applicant: D Petty
Subject Land: Parkers Road GAWLER BELT, Certificate of Title: Lot 2 DP 160521, Hd Mudla Wirra
Proposal: Parking of two buses exceeding 3000 kilograms – Non Complying
Valuer General No: 3124030002
Zone: Rural Living Zone
Category: Category Three

Background

Two buses in excess of 3,000 kilograms are currently being unlawfully parked on the subject land; Councils planning staff became aware of the unlawful use whilst investigating another matter within the locality. The applicant was subsequently issued with a letter to either remove the two vehicles or pursue development approval; the current application was subsequently lodged with Council.

Proposal

The applicant seeks Development Plan Consent to park two (2) vehicles exceeding 3,000 kilograms including two (2) Toyota coaster buses (3,500kg each) located at Lot 1 Parkers Road, Gawler Belt.

The vehicles are proposed to be parked inside an existing shed. Access is to be gained via two existing crossovers onto Parkers Road; a 'U' shape driveway services the site and allows vehicles to leave in a forward direction.

The buses are used for the transportation of school children to the local primary and high schools and as such are only utilised during the school term. The applicant proposes to only have a single bus in use at a time, the second bus is used in the event of a breakdown or when the primary bus is being serviced.

Details of the application follow on [Appendix 6A](#).

Subject Land and Locality

The subject land is regular in shape and enjoys a frontage to Parkers Road to the north. The subject land is approximately 16,805 square metres in area with a depth of 155 metres and a frontage to Parkers Road of 127 metres.

The subject land is currently occupied by a single storey detached dwelling of 1960's appearance and a number of small outbuildings. Limited vegetation is present on the land in addition to landscaping to the front of the property.

The immediate locality is characterised by a number of rural living allotments occupied by dwellings and associated outbuildings. Limited small scale rural activities are noted within the locality in consistent with the Objective of the Zone.

Immediately north of the subject land is a similar sized rural living allotment flanked by the Xavier College grounds. Beyond which a mix of allotment sizes provides for further rural living allotments in addition to larger farming activities. Directly east of the subject land is a further rural living allotment beyond which is the Sturt Highway and residential allotments of the Gawler Township. Larger rural living allotments are present immediately south of the subject land beyond which continues the Sturt Highway and further residential development of the Gawler Township. East of the subject land further rural living allotments of a similar size are located which increase in size.

Aerial photography showing the subject land follows on page 1 of [Appendix 6B](#).

Processing

Principle of Development Control (PDC) 18 of the Rural Living Zone lists a number of land uses as Non Complying development. As the proposal incorporates the parking of a vehicle exceeding 3,000 kilograms in weight, the application has been determined to be a non-complying form of development.

In accordance with delegations, staff elected to proceed with an assessment of the application and, in accordance with Regulation 17 of the Development Regulations 2008, the applicant has provided a brief Statement of Support and a Statement of Effect to Council. A copy of the Statement of Effect forms [Appendix 6C](#).

If the Development Assessment Panel (DAP) support the proposal the concurrence of the Development Assessment Commission (DAC) is required. If the DAC concurs with the Panel and finds that the proposal has substantial merit and warrants approval the application is approved and a decision notification form is issued. If, however the DAC does not support the proposal the application is refused. For an approval of a non complying development, both the DAP and DAC must support the proposal. The applicant has no rights of appeal to a decision relating to a non complying form of development.

Zoning

The subject land is located within the Rural Living Zone of the Light Regional Council's Development Plan (Consolidated 5 February 2009 - Bushfires DPA - Interim Operation 10 December 2009).

Objective 1 of the Rural Living Zone generally seeks detached dwellings at low densities in association with a mix of small scale, part time rural activities. Zone Principle 1 provides further guidance defining types of development appropriate within the Zone; this includes farm buildings and the keeping of free range live stock, birds, poultry in association with a dwelling. Zone Principle 2 reinforces the low scale nature of the zone by seeking to ensure that development does not interfere with the residential function or rural-residential character of the Zone and that no commercial or industrial activity should occur.

The Objective and Principles referred to above describe that the intent of the zone is to accommodate development of a residential and semi rural nature. Heavy vehicle parking, by its very nature, can have detrimental impacts on residential amenity due to increased noise and dust levels and appearance issues which would detract from the residential - rural nature of the zone and locality.

The proposed vehicles are marginally higher than the 3000 kilogram threshold, the vehicles utilise a domestic vehicle sized engine and as such do not create a notable level of noise or odour emission. The infrequent use of the buses up to four movements per day during the school term, the proposal is unlikely to generate any nuisance dust or generally impact upon the locality. It is therefore considered that the proposed development does not strictly satisfy, however it does not offend Rural Living Zone Objective 1, PDC 1 and 2 as the proposal would not impact upon the level of amenity enjoyed within the locality.

Agency Consultation

The Development Regulations 2008 do not require consultation with any State Government Agencies.

Public Notification

The proposal has been identified and processed as a Category 3 form of development, accordingly public consultation has been undertaken.

A single representation was received in response to public notification, a copy of this representation forms [Appendix 6D](#). The representor identified that they were opposed to heavy vehicles in the area however they were not opposed to small commercial uses i.e. school bus service. Given the proposal is for the parking of two 3300kg Toyota Coaster buses it is therefore understood that the representation is not opposed to the proposed development.

The following representor wishes to be heard by the Panel:

Gregory Hill 5 Parkers Road, Gawler Belt

The applicant was given the opportunity to respond to the representation received, however the applicant did not deem it necessary given that the representation is generally in support of the proposed development.

Assessment

Relevant Development Plan provisions:

Council Wide

Objectives: 1, 2, 3, 5, 14, 15, 16, 18, 19, 20, 24

Principles of Development Control: 1, 2, 10, 11, 28, 29, 32, 57, 72, 74, 92, 93, 94, 119, 121, 122, 124, 126, 127, 133, 137, 138, 139, 140, 141, 144, 145, 152, 185, 243, 246, 247, 254, 258, 261, 262, 264, 269, 275, 276, 298, 321, 322, 324, 325, 327, 329, 332, 337.

Rural Zone

Objectives: 1

Principles of Development Control: 1, 2, 18

Heritage

The subject land is not located within a Historic Conservation Policy Area nor is it located near a Heritage Listed Item; as such no referral to Council's Heritage Advisor has been undertaken.

Parking, Access, Manoeuvring

Given that the proposed development is not of a residential nature, it is not unreasonable to apply commercial/industrial requirements to the proposal. It is considered that the vehicle hard standing/parking areas should be treated in accordance with Council Wide Principle 121 and 124.

The applicant intends to park the two vehicles in an existing shed located towards the rear of the property. Access is to be gained via two existing crossovers onto Parkers Road, a 'U' shape driveway services the site and allows vehicles to leave in a forward direction. The shed features a concrete floor and the driveway and hard standing areas are covered with a gravel surface. The proposal is therefore considered to satisfy the above principles.

Noise/Air Quality

The applicant has indicated that no maintenance or repair of vehicles will be undertaken on the subject land, instead all maintenance is undertaken off site at mechanical workshops. It is therefore considered that the proposed activity does not impact on the level of amenity within the locality and noise levels would not likely exceed the recommended noise levels provided by Council Wide Principle 253 and Design Technique 253.1.

Odour

It is understood that the Toyota Coaster buses utilise a conventional hydraulic braking system and as such no idling time is required prior to the bus leaving the site. Consequently any issues associated with the idling of the diesel engines / emissions are not considered to cause any impact in this instance. As such the proposal is considered to satisfy Council Wide Principle 268 which seeks to ensure that development does not create a hazard or nuisance to the surrounding area.

Conclusion

It is considered that on balance the proposed development **is considered to satisfy** the relevant provisions of the Development Plan such that it warrants approval.

The two buses are operational on an infrequent basis and as such will not have a detrimental impact upon the locality. The weight, limited number of vehicles and frequency of movements will not determinately impact upon the rural living character of the surrounding area and the local road network.

Albeit that the parking of larger vehicles is generally not supported within the Rural Living Zone, this case presents sufficient reasons to justify the parking of the two buses on the subject land and accordingly the application is worthy of Development Plan Consent.

Recommendation

That having regard to the relevant provisions of the Light Regional Council Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application Number 313/108/2010 by DI Petty which proposes to allow the parking of two buses exceeding 3,000 kilograms (non-complying), on the land located at Lot 2, Parkers Road, Gawler Belt, subject to the concurrence of the Development Assessment Commission (DAC) and the imposition of the following conditions, in addition to any conditions or requirements imposed by the Commission:-

1. The development shall proceed in accordance with the details of Development Application No 313/108/2010 and the approved plans and correspondence submitted, excepted when varied by the following conditions of consent.

2. This approval is limited to the parking of two Toyota Coaster Buses only with a maximum kerb weight of 3500 kilograms per bus. Should additional vehicles which to be kept on the land additional consents from Council will be required;
3. The site shall be maintained and operated in a serviceable condition and in an orderly and tidy manner at all times to the reasonable satisfaction of the Council or its delegate.
4. No servicing or wash down of the buses shall take place on the subject land.

NOTES:

1. The site shall be maintained in a neat and tidy condition to the reasonable satisfaction of the Council or its delegate.
2. The granting of this consent does not remove the need for the applicant to obtain all other consents which may be required by any other legislation or regulation. The applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
3. The applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.

6.2 Development Application - 313/68/2010 - K Weber

Reporting Officer: Chad King
Senior Development Officer - Planning

Development Application No: 313/68/2010
Applicant: K Weber
Subject Land: Parkers Road GAWLER BELT, Certificate of Title: Volume 5606 Folio: 873 Lot 1 DP 50803, Hd Mudla Wirra
Proposal: Temporary Parking of 6 vehicles in excess of 3,000 kilograms (until 30 June 2011) – Non Complying
Valuer General No: 312402805*
Zone: Rural Living Zone
Category: Category Three

Background

Six vehicles in excess of 3,000 kilograms are currently being unlawfully parked on the subject land; Councils planning staff became aware of the unlawful use through the complaints of neighbouring property owners. The applicant was subsequently issued with a notice to desist the activity pursuant to Section 84 of the Development Act 1993. The notice was appealed to the Environment Resources and Development Court where a stay of proceedings was issued in order for the applicant to lodge the current Development Application. An application was lodged on 9 February 2010 where an assessment of application was made and a report submitted to the DAP on 3 March 2010 electing not to proceed. The Panel resolved to proceed with an assessment of the proposal and the applicant was given three months from 5 March 2010 to provide additional information pursuant to Regulation 17(5) of the Development Regulations 2008. This additional information was required by Council on or prior to 5 June 2010, this information has not been received.

Public notification has not been undertaken as Council is unable to notify until all of the required information has been received, however a number of complaints have been received by residents within the locality highlighting issues associated with the proposed land use. It is evident that the applicant is undertaking truck maintenance activities on the subject land including tyre replacement. This is at variance with the advice submitted by the applicant and is creating notable noise emission through the use of 'rattle guns' and air compressors.

Proposal

The applicant seeks Development Plan Consent to park six (6) vehicles exceeding 3,000 kilograms including four (4) trucks and two (2) trailers on land located at Lot 1 Parkers Road, Gawler Belt on a temporary basis. The applicant has sought approval to undertake the land use for a period of 12 months concluding on 30 June 2011.

The vehicles are proposed to be parked behind the existing dwelling amongst two stands of trees at the rear of the property. Access is to be gained via an existing gravel driveway traversing the eastern boundary of the subject land; a second driveway is used to service the dwelling.

The applicant is yet to provide specific details of the six (6) vehicles however, it is understood that they are operated on a cyclical basis with the subject land used for the night storage of the vehicles in addition to a layover point during shift changes.

Details of the application follow on [Appendix 6E](#).

Subject Land and Locality

The subject land is regular in shape and enjoys a frontage to Parkers Road to the south. The subject land is approximately 4,899 square metres in area with a depth of 130.76 metres and a frontage to Parkers Road of 37.94 metres.

The subject land is currently occupied by a single storey dwelling of 1960's appearance and a number of small outbuildings. Limited vegetation is present on the land in addition to landscaping to the front of the property.

The immediate locality is characterised by a number of rural living allotments occupied by dwellings and associated outbuildings. Limited small scale rural activities are noted within the locality in accordance with the Objective of the Zone.

Immediately north of the subject land is a similar sized rural living allotment flanked by the Xavier College grounds. Beyond which a mix of allotment sizes provides for further rural living allotments in addition to larger farming activities. Directly east of the subject land is a further rural living allotment beyond which is the Sturt Highway and residential allotments of the Gawler Township. Larger rural living allotments are present immediately south of the subject land beyond which continues the Sturt Highway and further residential development of the Gawler Township. East of the subject land further rural living allotments of a similar size are located which increase in size.

Aerial photography showing the subject land follows on [Appendix 6F](#).

Processing

The applicant has sought to undertake the proposed land use on a temporary basis concluding on 30 June 2011. Section 42 (3) of the Development Act allows an application to be assessed on a temporary basis and a conclusion date set by way of condition.

The concept of 'temporary' approval has been considered by the Courts on numerous occasions with consistent results. As a matter of interpretation, the term 'temporary' is frequently used to designate something which lasts for a limited period of time. The term 'permanent' is conversely applied to things which, although they may not be expected to last forever, are not subject to any limitation of time.

Consequently the principal difference with respect to a particular development, between a permanent authorisation and a temporary authorisation is that the reasoning and assessment applicable to a permanent authorisation is materially different to that which is applied to a temporary authorisation with a consequent different result.

It is generally observed that applications for temporary consent relate to situations where a structure or land use can be easily discontinued or removed; for example a builder may seek temporary consent to establish a 'builders yard' within a Residential Zone whilst working on a large residential project. Although a Builders Yard may not necessarily be supported within a Residential Zone, a temporary yard required to facilitate a project may be entertained as it may aid in the achievement of the intent of the Zone, as such the consideration of temporary use is a matter of fact and degree.

In *Butterworth v District Council of Yankalilla* (EDLR 389 - 1994) the Court provided some further guidance by indicating, at p 8, that the appropriateness of granting a temporary approval is:-

... a matter of fact and degree to be assessed in all of the relevant circumstances of the case – the nature of the development involved, the relevant provisions of the Development Plan, the character of the locality in which it lies, the likely future rate of development of that locality, the length of time for which the authorisation is sought and a variety of other matters.

As highlighted earlier the Panel at the meeting of 3 March 2010 resolved to proceed with an assessment of the proposal, additional information was requested from the applicant on 5 March 2010 subsequently requiring a response on or before 5 June 2010. The applicant has not provided this information and as such staff have recommended the Panel refuse the application pursuant to Section 39 (3) (b) of the Development Act 1993. Council planning staff are required to attend the ERD court on Wednesday 21 July 2010 with respect to the matter before the Court. Given the failure of the applicant to provide additional information, staff will request that the Court issue an order to Mr Webber that prevents the parking of trucks on the land.

Zoning

The subject land is located within the Rural Living Zone of the Light Regional Council's Development Plan (Consolidated 5 February 2009 - Bushfires DPA - Interim Operation 10 December 2010).

Objective 1 of the Rural Living Zone generally seeks detached dwellings at low densities in association with a mix of small scale, part time rural activities. Zone Principle 1 provides further guidance defining types of development appropriate within the Zone; this includes farm buildings and the keeping of free range live stock, birds, poultry in association with a dwelling. Zone Principle 2 reinforces the low scale nature of the zone by seeking to ensure that development does not interfere with the residential function or rural-residential character of the Zone and that no commercial or industrial activity should occur.

The Objective and Principles referred to above describe that the intent of the zone is to accommodate development of a residential and semi rural nature. Truck parking, by its very nature, can have detrimental impacts on residential amenity due to increased noise and dust levels and appearance issues which would detract from the residential - rural nature of the zone and locality. It is therefore considered that the proposed development is at variance with Rural Living Zone Objective 1, PDC 1 and 2 as the parking of six (6) vehicles on the subject land would significantly impact upon the level of amenity enjoyed within the residential / rural locality.

Agency Consultation

The Development Regulations 2008 do not require consultation with any State Government Agencies.

Public Notification

Public notification has not yet been undertaken as the applicant has not provided the additional information as request by Council on 5 March 2010.

Council staff have received verbal and written complaints regarding the proposed land use sighting the noise and dust issues associated with the movement of vehicles on the site and general maintenance of the vehicles.

The Panel should note that public notification has not yet been undertaken and as such the public have not yet been given an opportunity to comment on the proposal. It is not recommended that the Panel resolves to grant an extension of time to the applicant to provide additional information as Judge Trenorden was clear at the last directions hearing that no further delay would be tolerated. Furthermore staff have received numerous and constant ongoing complaints with respect to the additional activities being undertaken on the land associated with the truck parking activity.

Assessment

Relevant Development Plan provisions:

Council Wide

Objectives: 1, 2, 3, 5, 14, 15, 16, 18, 19, 20, 24

Principles of Development Control: 1, 2, 10, 11, 28, 29, 32, 57, 72, 74, 92, 93, 94, 119, 121, 122, 124, 126, 127, 133, 137, 138, 139, 140, 141, 144, 145, 152, 185, 243, 246, 247, 254, 258, 261, 262, 264, 269, 275, 276, 298, 321, 322, 324, 325, 327, 329, 332, 337.

Rural Zone

Objectives: 1

Principles of Development Control: 1, 2, 18

Heritage

The subject land is not located within a Historic Conservation Policy Area nor is it located near a Heritage Listed Item; as such no referral to Council's Heritage Advisor has been undertaken.

Contamination

The subject land and adjacent land uses are characterised by detached dwellings on larger blocks in association with residential scale outbuildings. Given the temporary nature of the proposed truck parking the proposal may create future contamination issues.

Parking, Access, Manoeuvring

The applicant intends to park the six (6) vehicles on the subject land between an existing stand of large trees towards the rear of the property. Given that the proposed development is not of a residential nature, it is not unreasonable to apply commercial/industrial requirements to the proposal. As such it is considered that the vehicle hard standing/parking areas should be treated in accordance with Council Wide Principle 121.

Access to the site is provided via a cross over onto Parkers Road, the applicant has provided an indicative access plan detailing movements along Parkers Road, Kentish Road and Mallala Road. Initial consultation with Council's Engineering staff has indicated that the immediate road network is designed to carry local traffic flows.

Due to the lack of detail on the submitted site plan it is unclear if the proposed manoeuvring areas meet the relevant Australian Standards.

Noise/Air Quality

The applicant has indicated that no maintenance or repair of vehicles will be undertaken on the subject land; however it is evident that the maintenance of vehicles including the replacement of tyres is being undertaken. This process involves the use of a compressor and 'rattle guns' to remove and replace wheels and inflate tyres. Given the proximity of the dwelling to the east of the subject land, some 10 metres from the driveway used to access the property; the proposed activity is considered to impact on the level of amenity within the locality and would likely exceed the recommended noise levels provided by Council Wide Principle 253 and Design Technique 253.1.

Complaints received from the neighbours indicate that the trucks commence operation as early as 5 am and the noise associated with the trucks leaving the property is annoying and is impacting upon the lifestyle of adjoining property owners.

Odour

The applicant has not provided any details of required warm up or idling times on the subject land, however it is generally understood that the nature of braking systems of prime movers requires the engine to be run for approximately 10 minutes in order to provide appropriate air pressure to the system. Consequently the idling of the diesel engines throughout this period is likely to emit noticeable emissions which may settle within the immediate area. As such the proposal is considered to be at variance with Council Wide Principle 268 which seeks to ensure that development does not create a hazard or nuisance to the surrounding area. Furthermore given the relatively small allotment size it is not considered that the proposal satisfies Council Wide Principle 242 which seeks to provide appropriate buffering between odour emitting sources and nearby sensitive uses.

Conclusion

It is considered that on balance the proposed development **is considered to be seriously at variance** with the relevant provisions of the Development Plan such that it warrants refusal.

The four (4) trucks and two (2) trailers exceeding 3,000 kilograms in weight will be operational on a daily basis and as such will have a detrimental impact upon the locality. The weight, number of trucks and frequency of movements will determinately impact upon the rural living character of the surrounding area and the local road network.

The parking of larger vehicles is generally not supported within the Rural Living Zone and in this case no exceptional circumstances or reasons have been provided to justify the parking of four (4) trucks and two (2) trailers on the subject land and accordingly the application is not worthy of Development Plan Consent.

Recommendation

That pursuant to Section 39(3)(b) of the Development Act 1993, the relevant authority **refuse** to grant Development Plan Consent to Development Application 313/68/2010 by K Weber as three (3) months has expired since further information was requested in respect of proposal which seeks consent for the temporary parking of six (6) vehicles in excess of 3,000 kilograms at Lot 1 Parkers Road Gawler Belt, such being a kind of development that is described as a non-complying development under the Light Regional Council Development Plan (Consolidated 5 February 2009 – Bushfires DPA – Interim Operation 10 December 2009).

6.3 Development Application - 313/574/2009 - Aqua Reef Pty Ltd

Reporting Officer: Chad King
Acting Team Leader - Planning

Development Application No: 313/574/2009
Applicant: Aqua Reef Pty Ltd
Subject Land: 77 Clare Road KAPUNDA, Certificate of Title: Volume: 5304
Folio: 80 LOT: 11 FP: 160491 CT: 5304/80
Proposal: Temporary Information Sign for a period of five years (Non Complying)
Valuer General No: 3140004509
Zone: Residential (Kapunda) Zone
Category: Residential (Kapunda) Zone – Policy Area 13 – North West

Proposal

The applicant seeks Development Plan Consent to erect a freestanding sign on Lot 11 Clare Road, Kapunda measuring 1.2m x 2.4m and a maximum height of 2.4 metres for the purposes of identification and advertising of the approved 5 Shillings land division. The proposed sign will be clad with sheet metal on two sides and comprise a green background with a watermark of Sir Sidney Kidman, the name of the residential estate and include a directional arrow to direct the public towards the entrance of the estate along Moyle Road.

The proposed sign forms part of a larger advertising scheme for the residential estate comprising a directional sign on the Thiele Highway, three (3) finger board signs within the township and a directional sign on the corner of Maxwell and Kapunda Street. These finger pointing directional signs did not require a development approval, rather were endorsed by Council at its meeting held on 16 March 2010 through the following resolution:-

"Moved Cr Rohrlach

Seconded Cr Reichstein

That in relation to the request of Lou Fantasia Planning Pty Ltd who, on behalf of Aqua Reef Pty Ltd, has requested directional signage within the Kapunda township to assist the community in locating Five Shillings Estate, Council advises the proponent that it endorses the request to erect signage at the following intersections:-

- *Intersection of Adelaide Road/Kernow Place;*
- *Intersection of Main Street, Clare Road, South Terrace and Mildred Street; and*
- *Intersection of Mildred Street and Maxwell Street.*

Council endorses this request on the basis that:-

- *Aqua Reef Pty Ltd manufacture, erect and maintain all signage;*
- *Aqua Reef Pty Ltd seek the approval of the Department for Transport, Energy and Infrastructure;*
- *The signage shall be no greater than 600mm in length and 110mm in height; and*
- *The signage shall be removed within three (3) years of the date of this resolution.*

CARRIED"

Details of the application follow on [Appendix 6G](#).

Subject Land and Locality

The subject land is rectangular in shape and comprises 4100 square metres in area and is bound by Moyle Road (unsealed road) to the north west and Clare Road to the south. The land is currently occupied by a detached dwelling and a number of associated outbuildings, the property features extensive landscaping and a number of large native trees.

The immediate locality is characterised by open and undulating land to the north and west and low density residential development to the south and east. Primary production activities are located to the west of the subject and within the wider locality to the north and north west, the Kapunda Town Centre is located to the south east.

Aerial photography showing the subject land follows on [Appendix 6H](#).

Processing

Principle of Development Control 17 of the Residential (Kapunda) Zone lists advertisements as a Non Complying form of development; as such the proposal has been treated accordingly.

The applicant has sought to undertake the proposed land use on a temporary basis for a period of up to five (5) years. Section 42 (3) of the Development Act allows an application to be assessed on a temporary basis and a conclusion date set by way of condition.

The concept of 'temporary' approval has been considered by the Courts on numerous occasions with consistent results. As a matter of interpretation, the term 'temporary' is frequently used to designate something which lasts for a limited period of time. The term 'permanent' is conversely applied to things which, although they may not be expected to last forever, are not subject to any limitation of time.

Consequently the principal difference with respect to a particular development, between a permanent authorisation and a temporary authorisation is that the reasoning and assessment applicable to a permanent authorisation is materially different to that which is applied to a temporary authorisation with a consequent different result.

It is generally observed that applications for temporary consent relate to situations where a structure or land use can be easily discontinued or removed; in this example has sought temporary consent to erect a sign within the Residential (Kapunda) Zone whilst the estate is under construction and allotments are for sale. Although a sign of this scale may not necessarily be supported within the Residential (Kapunda) Zone, a sign to facilitate a large residential project may be entertained as it may aide in the achievement Zone objectives, as such the consideration of temporary use is a matter of fact and degree.

In *Butterworth v District Council of Yankalilla* (EDLR 389 - 1994) the Court provided some further guidance by indicating, at p 8, that the appropriateness of granting a temporary approval is:

“... a matter of fact and degree to be assessed in all of the relevant circumstances of the case – the nature of the development involved, the relevant provisions of the Development Plan, the character of the locality in which it lies, the likely future rate of development of that locality, the length of time for which the authorisation is sought and a variety of other matters.”

The Panel should therefore consider if the proposed development satisfies the Objectives and Principles of the Zone and Development Plan as a whole, to this end the argument for a temporary sign is juxtaposed to an argument for a permanent sign as the temporary sign.

Staff considered that the application displayed merit and was worthy of a full assessment. As such a Statement of Effect was requested of the applicant.

If the Development Assessment Panel (DAP) support the proposal the concurrence of the Development Assessment Commission (DAC) is required. If the DAC concurs with the DAP and approval will be issued. If, however the DAC does not support the proposal the application is refused. In order to gain approval of a non complying development, both the DAP and DAC must support the proposal. The applicant has no rights of appeal to a decision relating to a non complying form of development; however, third party representors do have rights of appeal.

Zoning

The subject land is located within the Residential (Kapunda) Zone and more specifically the Residential (Kapunda) Policy Area 13 – North West as identified on Map Lig/18 and 39 of the Light Regional Council's Development Plan (Consolidated 5 February 2009).

The Residential (Kapunda) Zone – Policy Area 13 – North West seeks residential development that comprises a range of dwelling types at low to medium densities. Medium density development should be located in close proximity to centres, public transport routes and public open spaces. The commentary for Policy Area 13 acknowledges that this portion of the Kapunda (Residential) Zone contains a number of greenfields sites that share boundaries with land that is used for primary production. The commentary also recognises the surrounding residential properties and the existing residential community and seeks development that has dwellings facing public streets and achieving a more co-ordinated and integrated residential area. The Policy area seeks to maintain a high standard of residential amenity and a pleasant living environment through proper consideration of appropriate built form. The Zone and Policy Area generally remain silent on the matter of advertising except where it is identified that the residential amenity should be maintained. The scale of the proposal and inclusion of a subtle colour scheme and design, the proposal does not offend Objective 4 of the Policy Area or the desired character statement as the advertisement is for a limited timeframe.

Agency Consultation

Consultation with State Government Agencies was not required as the proposed signage will not be located within 100 metres of a signalised intersection or pedestrian activated crossing and the advertisement is not internally illuminated and does not incorporate red, yellow, green or blue lighting and will not incorporate a moving display or message or flashing light.

Public Notification

The proposal has been identified and processed as a Category 3 form of development. Public consultation has been undertaken as a part of this process however no representations were received during the notification period.

Assessment

Relevant Development Plan provisions:

Council Wide

Objectives:	1, 2 and 5.
Principles of Development Control:	4, 22, 23, 209, 210, 211, 212, 213, 214, 216, 217, 219, 220, 221, 222, 223, 225, 226, 227, 257, 261, 263, 268, 269, 271, 288, 297 and 298.

Residential (Kapunda) Zone

Objectives: 3.
Principles of Development Control: 3, 6, 17 and 18.

Residential (Kapunda) Policy Area 13 – North West

Objectives: 4.
Principles of Development Control: 1, 2 and 5.

Appearance, Streetscape and Character

The Development Plan provides general guidance of the assessment of buildings and structures within townships so as to avoid any detrimental impacts upon the level of amenity enjoyed within an area, I comment on these matters as follows.

Council Wide Objective 5

“Development undertaken in a manner which:

- (e) does not have an adverse impact on the amenity of properties within the locality; and*
- (f) has a high standard of appearance.”*

Council Wide Principle 22

“Buildings and structures should be sited to conserve the surrounding character through optimum orientation, set-back, cut and fill, access and bushfire prevention measures.”

With regard to the above Objectives and Principles of Development Control the proposed sign will be constructed from painted steel sheeting mounted to a steel frame, the sign will be painted with subdued colours and feature limited text and a watermark of Sir Sidney Kidman.

The proposed sign will be located entirely within the subject land and setback 1 metre from the Moyle Street Road Boundary. The sign will primarily be visible when travelling east along Clare Road. Due to the topography of the area, the setback of the sign and location of street trees the proposed sign will not be readily visible from the majority of Clare Road. The sign will be generally visible when approximately 150 metres from the site.

As a result the proposed sign is not expected to have an adverse impact upon the level of amenity enjoyed within the locality.

The structural supports of the sign simply comprise three narrow galvanised posts; this approach satisfies Council Wide 225 which seeks to avoid unsightly support structures which may detract from the amenity of the locality.

Bulk and Scale

The proposed sign measures 1.2 metres in height and 2.4 metres in length and is mounted on top of a 1.2 metre galvanised posts providing a maximum height of 2.4 metres. Given that the proposed sign will be setback 1 metre from the property boundary and consequently located 10 metres from the closest dwelling the proposed sign is not considered to create any unreasonable overshadowing issues.

Heritage

The subject land is not located within a Historic Conservation Policy Area nor is it located near a Heritage Listed Item; as such referral to Council's Heritage Advisor has not been undertaken.

Safety

Council Wide Principle 209

"The location, siting, size, shape and materials of construction of advertisements should be:(a) consistent with the desired character of areas or zones as described by their objectives;(b) consistent with the predominant character of the urban or rural landscape; and (c) in harmony with any building or site of historic significance or heritage value in the locality."

Council Wide Principle 210

"Advertisements should not detrimentally affect by way of their siting, size, shape, scale, glare, reflection, or colour, the amenity of areas, zones, or localities, in which they are situated."

Council Wide Principle 211

"Advertisements should not impair the amenity of areas, zones, or localities, in which they are situated by creating, or adding to, clutter, visual disorder, and the untidiness of buildings and spaces."

Council Wide Principle 212

"Advertisements should not obscure views of attractive landscapes or particular trees or groups of trees."

Council Wide Principle 213

"Advertisements should be constructed and designed in a workman-like manner."

The overall size of the advertising portion of the sign will have an overall area in the order 2.88 square metres, a height of 2.4 metres and will be rectangular in shape. The sign is considered to be of a reasonable size and scale and will not negatively impact or affect the character or the appearance of the area in which it is proposed.

The proposed sign will not require the removal of any native vegetation or street trees, it is therefore considered that the proposed development will not offend Council Wide PDC 209, 210, 211, 212 and 213.

Council Wide Principle 217

"Advertisements should not create a hazard to persons travelling by any means."

Council Wide Principle 219

"Advertisements should not obscure a driver's view of other road vehicles, of rail vehicles at or approaching level crossings, of pedestrians, and of features of the road such as junctions, bends, changes in width, traffic control devices and the like, that are potentially hazardous."

Council Wide Principle 220

“Advertisements should not be so highly illuminated as to cause discomfort to an approaching driver, or create difficulty in perception of the road, or of persons or objects on it.”

Council Wide Principle 222

“Advertisements should not distract drivers from the primary driving tasks at a location where the demands on driver concentration are high.”

Council Wide Principle 223

“Advertisements should be simple in form and provide for easy recognition and should not dominate or obscure other advertisements or result in visual clutter.”

Council Wide Principle 226

“Lettering, colouring and other design work on any advertisement should be carried out in a competent manner, and relate to the activity carried out upon the site on which it is erected.”

Council Wide Principle 227

“Advertisements should be located so as not to require the lopping of street and site vegetation.”

The proposed sign will not create a traffic hazard as the sign does not include any illumination, the treatment of the sign is such that it will not cause any unreasonable glare and will not obscure views given it will be sufficiently setback from the property boundary in addition to the generous road side verge area. No other traffic signals or signs are located within the immediate area of the proposed sign. The location of the proposed sign will not cause driver distraction or cause confusion and as such it is considered that the proposed development will comply with the above Principles of Development Control.

It is considered that the sign satisfies Council Wide PDC 226 as the advertisement relates to the approved subdivision current over the Maxwell Street site.

Conclusion

It is considered that on balance that the proposed development is **not considered** to be seriously at variance with the relevant provisions of the Development Plan.

The Residential (Kapunda) Zone remains silent on the matter of advertising except to identify it as a Non Complying land use and to provide that a high level of amenity should be maintained within the area. The applicant has applied for the temporary approval a sign which will aid in the advertisement and location of a major land division approved over the subject land. The proposal does not include any illumination and will not pose a hazard to motorists. The proposal will help to achieve the primary Objectives and Principles of the zone by aiding in the location of the estate and the sale of allotments, further adding to the envisaged residential use of the land.

Recommendation

That having regard to the relevant provisions of the Light Regional Council Development Plan and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application Number 313/574/2009 by Aqua Reef Pty Ltd which is a proposal to erect a Temporary Information Sign for a period not exceeding five (5) years (non-complying), on the land located at Lot 11 FP: 160491 CT: 5304/80 77 Clare Road, Kapunda, subject to the concurrence of the Development Assessment Commission (DAC) and the imposition of the following conditions, in addition to any conditions or requirements imposed by the Commission:-

1. The development shall proceed in accordance with the details of Development Application Number 313/574/2009 and the approved plans and correspondence submitted, except where varied by the following conditions.
2. The advertisement and supporting structure shall be prepared and erected in a professional manner and maintained in good repair at all times (including the removal of any graffiti), to the reasonable satisfaction of the Council or its delegate.
3. The proposed sign shall be constructed wholly on the subject site and no part shall extend beyond the property boundaries.
4. The advertising message herein approved as part of this development application shall only refer to the advertising of land within the 5 Shillings Residential Estate in Kapunda and shall not be utilised to advertise any third party message.
5. The temporary third party sign herein approved shall be entirely removed from the subject land by Wednesday, 7 July 2015.

6.4 Development Application - 313/116/2010 - CM Anderson

Reporting Officer: Karen Mitrovic
Development Officer - Planning

Development Application No: 313/116/2010
Applicant: CM Anderson
Subject Land: Coad Road NAIN, Certificate of Title – Volume: 5290 Folio: 73, LOT: 1 FP: 2838
Proposal: Installation of ground mounted solar panels (10kw) in association with the existing farming use of the land (non-complying)
Valuer General No: 3150104001
Zone: Primary Industry (Barossa Valley Region)
Category: Category 3

Proposal

The applicant seeks Development Plan Consent to construct two banks of ground mounted solar panels. The proposed development is for small scale commercial solar power generation which will be used to generate clean and efficient power to the existing dwelling on the site. Excess electricity generated will be going back into the power grid.

One bank will measure 40 metres in length with the second bank measuring 45 metres in length. Each bank of solar panels will be 2 metres in width. In total, 165 solar panels will be oriented in an east to west row configuration with the panels facing due north so that they are exposed to the most amount of sunlight possible. The panels will generate 10kW of power and be connected to the existing mains power supply via an underground cable.

The panels will occupy 165 square metres of land approximately 600 metres from Coad Road and 80 metres from the right property boundary.

Details of the application follow on [Appendix 6I](#).

Subject Land and Locality

The subject land is irregular in shape and is presently occupied by a detached dwelling, three farm buildings and a dam. The property also contains a large area of native vegetation to the north west of the dwelling on the land. The south west portion of the land is used for broad acre farming and the keeping of livestock and horses.

The subject land has a frontage of approximately 368 metres to Coad Road, which is an unsealed rubble road, and a depth of approximately 1090 metres, totalling some 39.08ha. The land has a substantial slope from west to east towards the western property boundary which lessens towards Coad Road. Keane Road is located along the southern property boundary of the subject land however all access to the property is via Coad Road due to the terrain of the land.

The immediate locality is characterised by multi hectare allotments used for primary production purposes such as cropping and grazing and horticulture. All allotments to the north, south, east and west of the subject land are used for primary production purposes. Several large allotments in the locality contain dwellings in conjunction with the primary production use of the land.

Aerial photography showing the subject land follows on [Appendix 6J](#).

Processing

The proposed development is a non-complying form of development pursuant to Principle of Development Control 18 of the Primary Industry (Barossa Valley Region) as all forms of development are non-complying in the zone with the exception of those specified. The construction solar panels is not a listed form of development and, as such, the application has been assessed as a non-complying form of development.

In accordance with delegations, staff elected to proceed with an assessment of the application and, in accordance with Regulation 17 of the Development Regulations 2008, the applicant has provided a brief Statement of Support and a Statement of Effect to Council. A copy of the Statement of Effect forms [Appendix 6K](#).

If the Development Assessment Panel (DAP) support the proposal the concurrence of the Development Assessment Commission (DAC) is required. If the DAC concurs with the Panel and finds that the proposal has substantial merit and warrants approval the application is approved and a decision notification form is issued. If, however the DAC does not support the proposal the application is refused. For an approval of a non complying development, both the DAP and DAC must support the proposal. The applicant has no rights of appeal to a decision relating to a non complying form of development.

Zoning

The subject land is located within the Primary Industry (Barossa Valley Region) Zone of the Light Regional Council's Development Plan (Consolidated 5 February 2009 - Bushfires DPA - Interim Operation 10 December 2009).

Objective 1 of the Primary Industry (Barossa Valley Region) Zone seeks to encourage a zone primarily for farming, horticulture and associated winery development. Whilst the proposed development does not propose farming or horticultural activities, the development does support Council Wide Principles of Development Control (PDC) 300, 301 and 302 which encourage developments which provide renewable energy within the Council area.

- “300** *Renewable energy facilities, including wind farms, should be located, sited, designed and operated in a manner which avoids or minimises adverse impacts and maximises positive impacts on the environment, local community and the State.*
- 301** *Renewable energy facilities, including wind farms, and ancillary developments should be located in areas that maximise efficient generation and supply of electricity.*
- 302** *Renewable energy facilities, including wind farms, and ancillary development such as substations, maintenance sheds, access roads and connecting power-lines (including to the National Electricity Grid) should be located, sited, designed and operated in a manner which:*
- (a) avoids or minimises detracting from the character, landscape quality, visual significance or amenity of the area;*
 - (b) utilises elements of the landscape, materials and finishes to minimise visual impact;*
 - (c) avoids or minimises adverse impact on areas of native vegetation, conservation, environmental, geological, tourism or built or natural heritage significance;*
 - (d) does not impact on the safety of water or air transport and the operation of ports, airfields and designated landing strips;*
 - (e) avoids or minimises nuisance or hazard to nearby property owners/occupiers, road users and wildlife by way of:*
 - (i) shadowing, flickering, reflection and blade glint impacts;*
 - (ii) noise;*

- (iii) *interference to television and radio signals;*
- (iv) *modification to vegetation, soils and habitats; and*
- (v) *bird and bat strike."*

Zone PDCs 1 and 2 specify appropriate development within the zone as being for primary production purposes, wineries and other uses compatible with maintaining rural productivity which will maximise farm and horticultural productivity and prevent the erosion of the existing landscape character. Whilst the proposed development does not specifically support these provisions, it will have a minimal impact upon the existing use of the land for primary production purposes. The size of the proposed development will make up less than 0.05% of the total area of the subject land, therefore still providing a large area of land which will support the overall desire for the zone.

Agency Consultation

The Development Regulations 2008 do not require consultation with State Government Agencies.

Public Notification

The proposal has been identified and processed as a Category 3 non-complying form of development. Accordingly public consultation has been undertaken.

No representations were received in relation to the proposed development.

Assessment

Relevant Development Plan provisions:

Council Wide

Objectives: 2, 5, 12, 13

Principles of Development Control: 10, 11, 22, 23, 230, 243, 244, 247, 248, 257, 260, 261, 300, 301, 302

Primary Industry (Barossa Valley Region) Zone

Objectives: 1, 5

Principles of Development Control: 1, 2, 18

Renewable energy is supported by Commonwealth, State and Local Governments as an important source of energy for a sustainable future.

The proposal is consistent with Council Wide Objectives 12 and 13 and Zone PDCs 300, 301 and 302 which state that renewable energy facilities should be developed where appropriate and where they do not have adverse impacts on the environment and amenity of an area. It is considered that the proposed development is located appropriately on the site so that it will not have any adverse impacts on the environment and amenity of the area.

The proposed solar panels are situated appropriately on the subject land so that they will, in the majority, not be visible from the north, south, east and west of the land. Due to the topography of the subject land, one dwelling located to the north west will be able to see the development however it is located approximately 300 metres from the site and have raised no objections to the development through consultation with the applicant and the public notification period.

Glare from the panels may be an issue for this dwelling alone; however the impacts would be minimal due to the location of existing vegetation and the positioning of the panels in a natural dip in the subject land. The solar panels are constructed of black silicon and are designed to absorb sunlight for an optimum electricity generation. The angle of the panels towards the sky and direction which the panels face will also ensure that any glare visible from adjoining properties will be minimised.

The development is non-complying as it is not specifically envisaged within the Primary Industry (Barossa Valley Region) Zone. The construction of solar panels is not mentioned within this zone. The zone primarily envisages farming, horticulture and winery developments. The existing land use of broad acre farming and grazing are supported by the development plan and, in total, the proposed solar panels will occupy less than 0.05% of the total area of the subject land. It is therefore considered that the benefits of providing a renewable energy source outweigh the loss of a small area for farming.

Heritage

The subject land is not located within a Historic Conservation Policy Area nor is it located near a Heritage Listed Item; as such no referral to Council's Heritage Advisor has been undertaken.

Appearance, Streetscape and Character

It is not expected that the proposed development will have any detrimental effect upon neighbouring properties. The location of the development within a natural basin which will largely shield it from view from the north, south and east, whilst the development will not be visible from Coad or Keane Road due to the natural lay of the land and existing vegetation.

Trees – Mature, Street Trees and Native Vegetation

A large stand of native vegetation exists on the subject land to the west of the proposed development. The installation of the proposed solar panels will not result in the removal of any native vegetation from the site.

Conclusion

It is considered that, on balance, the proposed development **is not considered to be seriously at variance** with the relevant provisions of the Development Plan.

The proposed development supports Council Wide provisions of the Light Regional Council Development Plan which seek to encourage renewable forms of development in the form of renewable energy facilities which have minimal impact upon the character and landscape of the area.

The proposed development will provide a renewable source of energy to the existing structures on the property and wider community by contributing excess power back into the grid. The location of the proposed development on the site will provide natural screening so that there is minimal impact upon surrounding properties and roadways. Accordingly, despite the development being a non-complying form of development, it is considered that the application is worthy of Development Plan Consent.

Recommendation

That having regard to the relevant provisions of the Light Regional Council Development Plan (consolidated 5 February 2009 - Bushfires DPA - Interim Operation 10 December 2009) and pursuant to Section 33(1) of the Development Act 1993, Development Plan Consent be **granted** to Development Application No 313/116/2010 by CM Anderson which is a proposal for Installation of ground mounted solar panels (10kw) in association with the existing farming use of the land (non-complying), on the land located at Lot 1 FP: 2838 CT: 5290/73 Coad Road, Nain, subject to the concurrence of the Development Assessment Commission (DAC), and the imposition of the following conditions, in addition to any conditions or requirements imposed by the Commission:

1. The development shall proceed in accordance with the details of Development Application No 313/108/2010 and the approved plans and correspondence submitted, excepted when varied by the following conditions of consent.
2. The site shall be maintained and operated in a serviceable condition and in an orderly and tidy manner at all times to the reasonable satisfaction of the Council or its delegate.

NOTES:

1. The site shall be maintained in a neat and tidy condition to the reasonable satisfaction of the Council or its delegate.
2. The granting of this consent does not remove the need for the applicant to obtain all other consents which may be required by any other legislation or regulation. The applicant's attention is particularly drawn to the need to consult all relevant electricity suppliers with respect to high voltage power lines.
3. The applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause harm.

6.5 Development Application - 313/D010/09 - Mr BW Hamlyn

Reporting Officer Lisa Sapio
Team Leader - Planning

Development Application No: 313/D010/09
Applicant: Mr BW Hamlyn
Subject Land: 24 Borrow Street FREELING, Certificate of Title: Volume: 5788 Folio: 664
Proposal: Land Division - Torrens Title - Creation of 1 Additional Allotment
Valuer General No: 3120789003
Zone: Residential (Freeling) – Historic Conservation Policy Area 20
Category: Category 1

Proposal

The applicant seeks Development Plan Consent and Land Division Consent to create one additional allotment in the Residential (Freeling) Zone, Policy Area 20 – Historic Conservation.

Proposed allotment 300 will have a frontage of 25.21 metres and a depth of 60.35 metres, totalling 1,496 m² and contain the existing dwelling that exists on the land, whilst proposed allotment 301 will have a frontage of 14.63 metres and a depth of 60.35 metres with a total area of 880 m².

Details of the application follow on [Appendix 6L](#).

Subject Land and Locality

The subject land is regular in shape with a frontage of 39.63 metres and a depth of 60.35 metres, totalling 2,384 m².

The subject land is presently occupied by a single storey detached dwelling Circa 1970's. A pergola, residential outbuilding and small tool shed are also currently located on the subject land. The land slopes from the north east to the south western corner of the site and has a variation in levels of approximately 2.2 metres.

The subject land has a frontage to Borrow Street along with a driveway that is located adjacent the north western side property boundary and a secondary side access via Neindorf Lane. Neindorf Lane is a narrow unsealed lane.

The immediate locality is mixed in character however there are several Contributory Items in close proximity to the subject land.

The typical subdivision pattern of the locality is of large, wide allotments with dwellings sited on generous grounds and with generous side setbacks. Wide allotment frontage widths and deep allotments comprise the typical pattern in the locality and forms part of the character of this Historic Conservation Policy Area (HCPA).

The subject land is surrounded by residential allotments to the north, south, east and west. Contributory Heritage Items are located directly to the north, east, west and south of the subject land and [Appendix 6M](#) illustrates the location of the Contributory items within the locality.

In the wider locality the HCPA stretches to Kirchner Street to the north, Croser Street to the south, Leske Street to the east and includes a number of properties to the west of Gray Street. The boundary of the HCPA is located just to the east of the subject land and runs along Shepherd Street.

Aerial photography showing the subject land follows on [Appendix 6N](#).

Processing

Land Division is specifically listed as a Category 1 form of development via Zone Principle of Development Control (PDC) 8 of the Residential (Freeling) Zone and as such no public notification has been undertaken.

The proposed development is neither identified as being complying or non complying, and accordingly is required to be assessed on its merits having regard to the relevant provisions of the Development Plan.

Zoning

The subject land is located within the Residential (Freeling) Zone as identified on Map Lig/11 in the Light Regional Council's Development Plan (Consolidated 7 February 2008) and more specifically within Historic Conservation (Freeling Residential) Policy Area 20.

The Residential (Freeling) Zone seeks residential development that primarily accommodates detached dwellings, with other forms of low and medium density residential development, together with educational, recreational and community uses. The proposed land division can arguably be developed for its intended purpose, that being for the construction of a detached dwelling on proposed Lot 301 along with the retention of the existing dwelling on proposed Lot 300.

Both allotments proposed are regular and rectangular in shape. The applicant has provided an indicative dwelling floor plan and design that illustrates the type of dwelling that could be constructed on proposed allotment 301. It is not however considered that the width of the allotment proposed will be in keeping with the prevalent historic subdivision layout and character of the locality. This is expanded upon with the character and heritage sub heading of this report.

The allotment that will contain the existing dwelling (Lot 300) and proposed allotment 301 as proposed are of a sufficient size to accommodate the existing detached dwelling and that of a single storey detached dwelling on the vacant allotment along with outbuildings, an area that would contain sufficient private open space, ability for car parking on site as well as a waste control area on the individual allotments therefore satisfying the intent of Residential (Freeling) Zone Objective 1 and Principle of Development Control (PDC) 1 and Council Wide PDC 16 (c). Whilst both allotments could sustain a dwelling it is considered that the resultant development would be at the detriment of the locality.

Other provisions of the Development Plan discuss and acknowledge the provision of urban residential expansion, including the co-ordinated subdivision of larger allotments, rationalisation of roads, economic provision of services and integrated open space system and development having a high standard of design and appearance to enhance the amenity of the Zone.

Residential (Freeling) Zone Principle of development Control (PDC) 2 states:

"New allotments for residential purpose should be connected to a common effluent drainage scheme, be of a range of sizes and a minimum area of not less than 800 square metres."

Based on consideration of Zone PDC 2 both the proposed allotments within the land division would comply with the second part of this provision of the Development Plan with respect to achieving the minimum allotment size of 800m². The Panel should however be aware that case law exists that states that the relevant authority should consider the qualitative and quantitative provisions of the Development Plan when assessing an application and that if a development application meets the quantitative provisions of the policy framework that regard should also be had to the character of the locality amongst the qualitative and subjective aspects of a proposal. The proposal does meet the minimum quantitative provisions of the zone which requires a minimum of 800m² per allotment, however, it should be noted that allotment that adjoining the subject land vary in size with the average site area per allotment achieving an area of 1,460m². Attached is a print out of the closest allotments to the subject land and the respective allotment sizes. It is therefore maintained that the proposed allotment sizes do not comply with the predominant allotment sizes within the locality.

Agency Consultation

The Development Regulations 2008 requires that the Development Assessment Commission undertake the appropriate consultation with the various State Government Agencies. SA Water has provided standard conditions that should be imposed in the event the land division is approved.

Public Notification

The proposal has been identified and processed as a Category 1 form of development in. Accordingly no public consultation has been undertaken.

Assessment

Relevant Development Plan provisions:

Council Wide

Objectives: 1, 2, 5, 7.

Principles of Development Control: 1, 3, 10, 11, 13, 15, 16, 18, 50, 51, 61, 236, 274, and 286.

Residential (Freeling) Zone

Objectives: 1 and 2

Principles of Development Control: 1, 2, 8

Historic Conservation Policy Area 20

Objectives: 1

Principles of Development Control: 1

Appearance, Streetscape, Character and Heritage

As the subject land is located within the Historic Conservation Policy Area 20 and a number of Local Heritage and Contributory items are located within the general locality the application was referred to Council's Heritage Advisor, Mr Michael Queale. Mr Queale has provided the following comments in relation to the heritage aspects of the proposed land division and its impact upon the locality:

- The majority of the heritage dwellings within the locality comprise Circa 1870 – 1915 dwelling styles;

- The subject land is located within a “mixed character” area but several contributory items are located directly opposite and on the next corner;
- The dwelling on the subject land and dwelling directly adjacent to the east comprises dwellings that a Circa 1960’s;
- These dwellings are not in character with the Historic Conservation Policy Area;
- A typical subdivision layout and pattern exist within the immediate locality and this character comprises large, wide allotments with residences on generous grounds and side setbacks. This forms part of the character of the Historic Conservation Policy Area;
- The proposed allotment widths are narrow and out of character for the area. It is considered that any future dwelling on the vacant allotment would result in reduced side setbacks which would affect the that would alter the historic spatial pattern of the street (i.e. buildings, spacing and fencing); and
- The land division cannot be supported as proposed.

A copy of Mr Queale’s comments forms [Appendix 6O](#).

Council Wide PDC 13 states:

“When land is divided:

- (a) *the gradient and other physical characteristics of the land contained in each allotment resulting from the division should be suitable for the purpose for which the allotment is to be used;.....*
- (m) *any allotment(s) created should ensure the retention of a place identified in [Table Lig/2](#) on a single allotment and result in an allotment pattern which reinforces the integrity of and complements the historic character of the place and, where applicable, the character of the relevant Historic Conservation Zone or Policy Area within the locality of the place.”*

Historic Conservation (Freeling Residential) Policy Area 20 Objective 1 states that development should seek the:

“Retention and enhancement of the historic character of the Policy Area.”

Whilst PDC 1 of Policy Area 20 reinforces this objective as it seeks development which retains and where possible enhance the historic character of the policy area.

Council Wide PDC 58 states;

“The siting, design and appearance of development should be in accordance with the desired character for each zone or policy Area.”

The above listed provisions are of the most relevant when assessing this application as all of the provisions speak of development that has regard to the existing character of zone or policy area and that any new development should reinforce the integrity and complement the historic character of the Historic Conservation Policy Area.

The subject land is located within Policy Area 20 of the Historic Conservation (Residential Freeling) Zone and the immediate locality and wider locality contains a number of heritage listed places with the majority of the Places identified listed as Contributory Items. Contributory items are located at 4 Shepherd Street, 19, 22, 23, and 27 Borrow Street and 27 and 29 Peake Street. The properties referred to in the above sentence all have allotment frontages that range from 22.8 metres in width to 40 metres. The character of the allotment widths is such that they are generous which in turn have created generous side and front setbacks when considering the location of the dwellings on these properties. The wider allotment frontages have resulted in the majority of the instances of the dwelling being sited centrally on the allotment in question and displaying side setbacks that range anywhere from 4 to 6+ metres. Significant consideration was given as to how the land division may be able to be altered which may have enabled staff to be able to support a land division on the land, albeit in an amended form. Based on the smallest allotment width within the immediate locality staff advised the applicant that it would be willing to consider two allotments both with a frontage of 20 metres that fronted Borrow Street. In order to achieve this it would be necessary to demolish the non heritage listed dwelling on the land and create two allotments with an equal frontage. The applicant was not willing to support this idea but did suggest that they would be willing to amend the proposal to include a hammerhead allotment. The hammerhead proposals caused greater concern and the applicant was advised accordingly.

It was considered that given some of the allotments in the locality comprise a frontage of between 22 and 23 metres that the variation between 20 metres and 22 metres was not as significant as that between 14 metres and 22 metres. Accordingly staff were willing to support a proposal that created allotments with a wider frontage. Regrettably this is not the proposal before the Panel and an assessment is therefore to be made on the current plan of division.

The 14.63 metre frontage proposed for Lot 301 would not be conducive to a dwelling design in the future which was able to achieve generous side property setbacks which is part of the established streetscape pattern of the locality. As such it is considered that the proposed land division would impact upon the amenity of the locality and negatively disrupt the streetscape and character of the Historic Conservation Policy Area. [Appendix 6P](#) includes photographs of 16 and 18 Gray Street, Freeling. I have used this example to highlight the concerns raised in this report. Firstly, I would like to acknowledge that Gray Street does not form part of the locality and I do not imply that this is the case. The similarities however between this example and of the subject land should be considered. The Gray Street example clearly illustrates the Contributory Item located on 18 Gray Street along with a recent land division and newly constructed dwelling that does not in any manner emulate the generous side setbacks or characteristics of the heritage Item. The photos provided clearly illustrate the situation which is trying to be avoided on Borrow Street. Notwithstanding the existing dwelling on the subject land is not heritage listed the side setbacks and generous land holdings around these buildings along Borrow Street clearly create a pleasant character and well established streetscape. It is considered that if this land division is approved the character and streetscape will be negatively affected as a consequence.

It is therefore considered that the proposed land division with the minimal frontage would not contribute positively to the Historic Conservation Policy area and the character of the locality and as such the proposal would offend Historic Conservation Policy Area Objective 1, PDC 1, Council Wide PDC 58 as the proposed development would not be in accordance with the desired character for the Policy Area as it would impact upon the character of the locality as would any future dwelling. The issue of the future land use (dwelling) must be considered at this time so as to ascertain whether the proposed allotment is fit for its intended purpose. Whilst Lot 301 could contain a dwelling it would not be an allotment that would be wide enough that would enable a dwelling to be erected that would emulate the generous side setbacks that is clearly evident within the Borrow Street streetscape.

Stormwater

The application was referred to the Council's Project Engineer for comment and a summary of advice received is listed below:-

- A corner cut off of 4m x 4m will be required to the north western corner of the subject land to improve sight distances at the Neindorf Lane/Borrow street intersection;
- The subject land slopes to the south west corner and as such a drainage easement will be required to be provided along the southern boundary of lot 300. The easement would also contain sewer infrastructure and as such the easement should be 4 metres in width to accommodate both services; and
- A concrete protective encasing is required to be provided to the discharge outlet to Neindorf Lane.

Waste Water Management

Residential (Freeling) Zone PDC 2 states that new residential allotments should be connected to a common effluent drainage scheme. The application was referred to the Council Environmental Health Officer and it has been confirmed that proposed allotment 301 if approved would require the installation of a new Community Waste Water Management Scheme (CWMS) connection point and that the responsibility and cost associated with this being borne by the applicant. Given the slope of the land and depths of the CWMS infrastructure the new CWMS connection point would need to be contained in the south western corner of the proposed allotment and as such a four (4) metre easement would be required across the rear boundary of Lot 300 and be vested to Council. Given the slope of the land this easement would contain the necessary stormwater and sewer infrastructure that would emanate from Lot 301 and be directed to the easement at the area of proposed Lot 300.

The requirement of an easement would also necessitate the removal of the existing shed at the rear of Lot 300 as it is only located approximately 2 metres from the rear property boundary and within the area required for easement purposes. The applicant has indicated on the site plan that the shed would in fact be removed and that an easement could be accommodated.

Contamination

A review of the Council's valuation file relating to the subject land has not revealed any reason to suspect the land may be contaminated from a previous non residential land use.

Conclusion

It is considered that on balance that the proposed development is **considered to be sufficiently at variance** with the relevant provisions of the Development Plan. The plan of division in its current form is not able to be supported as it is considered that the narrow allotment frontage proposed for Lot 301 will create an allotment frontage that is vastly different from the predominant allotment pattern within the locality. The 14.36 metre frontage proposed for Lot 301 would not enable the appropriate siting of a dwelling on the land that would then emulate the generous siting characteristics displayed by other properties within the locality and prevent the attainment of generous side setback. This in turn would create an allotment that would be smaller in size, narrower and long in comparison to other allotment within the locality which would negatively impact upon the Historic character of the policy Area 20 and of the locality and streetscape.

The proposal is therefore not considered to be worthy of Development Plan Consent.

Recommendation

That pursuant to Section 33(1) of the Development Act 1993, Development Application 313/D010/09 by Mr BW Hamlyn which is a proposal for a Land Division - Torrens Title - Creation of 1 Additional Allotment upon Lot 150 FP 174051, Hd Nuriootpa 24 Borrow Street FREELING is considered to be sufficiently at variance with the relevant provisions of the Light Regional Council Development Plan (consolidated 5 February 2009) and Development Plan Consent is therefore **refused** for the following reasons:-

1. The proposed land division offends Council Wide PDC 13 as the narrow allotment frontage proposed for Lot 301 will not reinforce the predominant allotment pattern which reinforces the integrity and which complements the historic conservation policy area and the character of Borrow Street.
2. The proposed land division offends Historic Conservation (Freeling Residential) Policy Area 20 Objective 1 and PDC 1 as the proposed land division will not enhance the historic character of the Policy Area as the allotment sizes and allotment frontages proposed will not enhance the established character and desired character of the Policy Area.
3. The proposed land division will not create an allotment that will enable a future dwelling to be sited on Lot 301 which will emulate similar setbacks and generous siting characteristics as displayed within the immediate locality and in particular with those properties that contain heritage listed places and items. The narrower and smaller allotments proposed will detrimentally impact upon the character and streetscape of the locality and therefore offend Council Wide PDC 58.