Light Regional Council
Development Assessment Panel 2016 Annual Report

In September 2016 Council reinstated the existing Development Assessment Panel (DAP) membership (DAP) composition for an additional one (1) year term expiring on 12 December 2017 and comprises:

- Bruce Ballantyne
- Mike Canny
- Joel Taggart
- Robert Veitch
- Lynette Reichstein
- Peter Kennelly
- David Shannon

The Panel as established in 2015 was reappointed as the Planning, Development and Infrastructure Act 2016 (PDI Act) indicated a range of potential changes in the area of ‘relevant authorities’ and indications suggested that the membership composition of Council DAPs were to be altered, being potentially replaced by regional DAPs or otherwise affected by other proposed changes to only allow the involvement of one (1) Elected Member from such bodies. Therefore, given the impending transitional changes that are to occur over the next 5 years, Council considered it prudent to reinstate the current DAP Membership for an additional one (1) year term.

Council’s Chief Executive Officer is appointed as Public Officer for the Panel. Section 56A subsection (2) (b) of the Development Act 1993 outlines the role and responsibility of the Development Assessment Panel with respect to providing advice and reports to the Council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under this Act, as it thinks fit.

The following report provides information to the Council on:

1. The activities of the Panel including information on the number of applications brought to the Panel for determination and other relevant statistical information; and
2. Planning or development issues which the Panel wishes to bring to the attention of Council.

Statistical Data on Panel Activities and Development Applications

A total of 10 Development Assessment Panel Meetings were held during the 2016 calendar year.

Panel Member Attendance record:

<table>
<thead>
<tr>
<th>Name</th>
<th>Attendance</th>
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</thead>
<tbody>
<tr>
<td>Bruce Ballantyne</td>
<td>Attended 10 meetings</td>
</tr>
<tr>
<td>Mike Canny</td>
<td>Attended 9 meetings</td>
</tr>
<tr>
<td>Joel Taggart</td>
<td>Attended 10 meetings</td>
</tr>
<tr>
<td>Robert Veitch</td>
<td>Attended 10 meetings</td>
</tr>
<tr>
<td>Lynette Reichstein</td>
<td>Attended 10 meetings</td>
</tr>
<tr>
<td>Peter Kennelly</td>
<td>Attended 10 meetings</td>
</tr>
<tr>
<td>David Shannon</td>
<td>Attended 7 meetings</td>
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During the period, no complaint was lodged with Council’s Public Officer against a member of the Panel. No Code of Conduct matters were filed with the Minister.

1. **Number of development applications assessed or considered by the Panel**

A total number of 655 development applications were received by the Council in 2016, with 33 comprising land divisions. A total of 31 matters were considered by the DAP with two (2) matters withdrawn after the agendas were prepared and therefore not considered. Development applications comprised 28 of these matters with the remainder comprising the DAP Annual Report review, review of the DAP Operating and Meeting Procedures and comments provided to the Development Assessment Commission (DAC) on the Kapunda Supermarket as the DAC was the designated relevant authority. This equates to a total of 4.2% of the total applications lodged with the Council for the 2016 calendar year and represents the extent of delegations provided for by Council to staff. The previous reporting period saw the panel consider 25 applications which equated to 4.4% of the total applications lodged.
A total of ten (10) non-complying development applications were considered by the Panel, which were all supported by the Panel and Development Assessment Commission.

Provided below is a breakdown of decisions adopted by the Panel:

<table>
<thead>
<tr>
<th>DAP Decision</th>
<th>Number of Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved</td>
<td>23</td>
</tr>
<tr>
<td>Refused</td>
<td>5</td>
</tr>
<tr>
<td>Comments to DAC (DAC authority)</td>
<td>1</td>
</tr>
<tr>
<td>Review matters (Annual report and operating procedures)</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total Number</strong></td>
<td><strong>31</strong></td>
</tr>
</tbody>
</table>

2. Types of Development

- **Commercial/Industrial - 8 Development Applications**

These comprised of:

- **313/414/2015** Demolition of existing buildings and structures and construction of a retail fuel outlet with associated shop and diner, car parking, landscaping and advertising (non-complying)

- **313/465/2015** Winery expansion comprising an increase in the crush capacity of the existing winery from 450 tonnes per annum to 1000 tonnes per annum

- **313/499/2015** Grain research facility comprising administration and laboratory building, machinery shed, controlled environment buildings, glass house, four (4) hectare bird proof enclosure, dedicated agronomy area, plant nursery, rainwater tanks, stormwater detention basin and evaporation pond with associated landscaping, driveway and car parking areas

- **313/474/2015** Storage building for the purpose of storing hot air balloons and associated equipment ancillary to the existing dwelling

- **313/L006/2016** Demolition of a contributory heritage item and construction of a supermarket with associated parking, loading area, fencing, retaining walls, water storage tanks, wall mounted signage, landscaping and road works

- **313/321/2016** Service trade premises (Bridgestone tyre outlet) and associated landscaping and car parking - non-complying

- **313/327/2016** Change of land use to a portion of the existing dwelling to cellar door sales and two (2) freestanding signs (one retrospective) associated with horticultural use of land (non-complying)

- **313/261/2016** Cheese manufacturing facility in association with existing dwelling (non-complying)

- **Horticultural/Farming - 5 Development Applications**

These comprised of:

- **313/441/2015** Installation of one (1) frost fan in association with existing vineyard (horticulture) – retrospective

- **313/471/2015** Construction of a 22-mega litre turkey-nest dam and associated pump shed ancillary to the horticultural use of the land (non-complying)

- **313/26/2016** Construction of a 35ML turkey-nest dam ancillary to the horticultural use of the land (non-complying)

- **313/427/2016** Expansion of existing vineyard (6.0 ha to 25.7 ha) and two (2) vineyard identification signs

- **313/309/2016** Expansion of existing intensive animal keeping use comprising the construction of four (4) additional broiler sheds which will result in an increased capacity to a maximum of 250,000 birds and associated stormwater retention basin
Residential - 7 Development Applications

These comprised of:
313/416/2015 A retrospective change in land use to Horse Keeping for the keeping of two horses, one pony (with limitations) and the temporary keeping of an additional horse for Veterinary care, in association with, and ancillary to, the residential land use
313/533/2015 Fence in association with Contributory dwelling
313/418/2015 A retrospective change in land use for the keeping of two (2) cows in association with the residential use of the land
313/62/2016 Single storey detached dwelling with verandah and garage under main roof with associated earthworks and retaining walls to both side and rear boundaries (maximum height 1.4 metres)
313/288/2016 Construction of retaining walls and boundary fence, relocation and extension of external privacy screen and alterations to landscaping
313/434/2016 Single storey detached dwelling and ancillary carport (non-complying)
313/503/2016 Variation to condition 4 of DA 313/300/2013 (outbuilding ancillary to existing dwelling)

Land Division - 7 Development Applications

These comprised of:
313/D018/2015 Land Division comprising the creation of two (2) Torrens title allotments from one (1) existing allotment (non-complying)
313/D002/2016 Boundary Realignment
313/D022/2015 Land Division comprising the creation of two (2) Torrens title allotments from one (1) existing allotment (non-complying)
313/D002/2016 Boundary Realignment – Appeal Compromise Proposal
313/D019/2016 Torrens Title land division 1 allotment into 7 allotments
313/D004/2016 Boundary Realignment – Withdrawn from consideration
313/D017/2015 Boundary Realignment – Withdrawn from consideration

Other: – 5 Development Applications

These comprised of:
313/490/2015 Variation to existing Development Application 313/61/2011 to change the antenna configuration of the telecommunications facility from turret mounted panel antennas to hexagonal headframe mounted panel antennas
313/159/2015 Wastewater treatment system comprising the construction of a wastewater treatment lagoon and pump shed in association with an existing winery, vineyard and tourist accommodation (retrospective)
313/315/2015 The filling of land in the Gawler River Flood Plain (non-complying and retrospective)
313/346/2016 Variation to Development Application 313/591/2006 to remove condition 6 in order to enable the use of gas guns in association with the existing vineyard
313/348/2016 Variation to condition of consent of Development Application 313/414/2015 seeking to temporarily change the access to the facility from Murray Street to Old Sturt Highway for a maximum period of 3 months

Appeals to the Environment Resources and Development Court (ERD)

There were five (5) appeals lodged with the ERD Court during 2016. A total of four (4) of the Appeals were instigated by the Applicant whilst one (1) matter was a third-party appeal. Two (2) matters were withdrawn from appeal after the scheduled conferences and a third was resolved at the conference stage without the need to progress to an appeal. The remaining two (2) appeal matters are still ongoing.

Planning and Development Issues and Relevant Matters

During the year, the Panel considered several development applications of varied nature and complexity and there were matters which arose in the opinion of the Panel, which should be brought to the attention of the Council. These matters raised will be reported to the Council within this component of the report:
Land Divisions in Primary Production Areas and Interface Issues

Over the last 5 years the Panel has seen a reoccurring theme of land division applications being lodged within the Primary Production Zone. Applicants have either sought to undertake boundary realignments with the intent of creating rural living type, under sized allotments where farmhouses are excised away from the farming land or propose land divisions that seek to create additional allotments that are akin to more rural living zone standards.

The pattern continues to emerge whereby applications are being considered by the Panel that involve the division or boundary realignment of farming land with the express purpose of creating a smaller rural living sized allotment. The applicants seek to create a form of rural living / lifestyle allotments outside of the Rural Living Zones or other designated residential areas. The applicants are seeking to excise the original farm dwelling and have it form part of the smaller allotment with the balance of the farming land no longer being held in association to the farm dwelling. The Panel has in the past reinforced the provisions of the Development Plan and consider that such land divisions are a clear misalignment from the policy intent as allowing small allotments comprising an ancillary dwelling with no viable opportunity for the land to be used for cropping, grazing and other primary production activities in the Primary Production Zone is counterproductive.

In all the instances considered by the Panel, whilst the larger of the allotments proposed seek to be retained for primary production purposes, the smaller allotments that contain the original farm dwelling would enable permanent residential occupation on an allotment that would no longer be in association with the farming use of the land. The provisions of the Primary Production zoned land within the Development Plan policy supports ancillary accommodation when in association with primary production activities. The excising of the farm house from the farming land are likely to lead to future applications for a farm dwelling to be constructed on the large farming allotment, which would further result in the loss of productive farming land. Smaller rural life style sized allotments within Primary Production Zones also leads to the creation of interface issues between farming and residential land uses due to spray/chemical drift, dust, noise from farming practices and frost fans etc. which in turn threatens a farm's viability.

It is suggested that the Council consider as part of its Development Plan Policy review to introduce non-complying provisions that require minimum allotment sizes within the Primary Industry Zone. The Policy could prohibit a land division or boundary realignments that creates an allotment less than the stipulated existing areas (i.e. 33 or 60 hectares as exists within the Development Plan) so as to restrict the ability to further erode the functionality and viability of farming land and ensure that incompatible land uses are not introduced to an area designated for farming purposes. This would also align with the Minister’s Character Preservation District legislation introduced in 2011, which seeks to prohibit land division and residential land uses outside of designated residential and township zones.

Dams

The Panel considered a few turkey nest dams ancillary to the viticultural use of the land within the Primary Production, Policy Area 2 – Barossa Valley Region during the reporting period. These applications are deemed non-complying forms of development within Policy Area 2 of the Primary Production Zone and are required to undergo the non-complying category 3 assessment path. It is unclear why dams in Policy Area 2 are assigned quite specifically as non-complying forms of development, given dams are considered a merit form of development within the reminder of the Primary Production Zone. There is potential that this could be due to the recognition of undulating nature of the land and many watercourses within the Policy Area which may restrict the development of dams. These considerations form part of an assessment of every dam application and requiring a non-complying assessment for this purpose is not deemed necessarily appropriate on these grounds. The Panel suggest that, the non-complying designation of dams within the Primary Production Zone should be considered by Council as part of its Development Plan Policy Review.
Land bound by Sturt Highway, Old Sturt Highway and Murray Street Nuriootpa and suggested change to zoning

The Panel considered three (3) development applications within the reporting period that were located along the Old Sturt Highway Nuriootpa. The parcels of land abutted the boundary of the Barossa Council. The applications comprised a Caltex petrol filling station associated shop and diner, Bridgestone Truck tyre outlet (service trade premises) and construction of speculative service trade premises over a number of allotments. The allotments and location are quite unique as the locality is characterised by a range of land uses due to their siting at the junction of a number of zone boundaries and a primary (Sturt Highway) and secondary arterial road (Murray Street). The Sturt highway forms a significant barrier in the form of infrastructure which divides primary production to the north from the more commercial activities to the south on the approach to Nuriootpa. The south eastern boundary of the subject land forms the zone boundary between the Primary Production Zone of the Light Regional Council and the Commercial and Residential Zones of the Barossa Council. Whilst the area/allotments identified in the image below are located within the Primary Production Zone, the allotments do not reflect the zoning as they are relatively small allotments and a significant departure from the 33-hectare minimum allotment size and farming land uses envisaged by the zoning.

The assessment of all three (3) development applications revealed that the land would be more appropriately zoned for commercial purposes due to its proximity to the adjacent Commercial Zone (Barossa Council) and the fact that the Sturt Highway, forms a significant physical barrier which divides the Primary Production Zone from commercial land uses located to the south of the Sturt Highway. The development applications were all supported by the Panel and concurrence from the Development Assessment Commission was also granted, notwithstanding their non-complying designation. The Panel are of the view that the land should be rezoned to reflect what has been approved and constructed on the land so as to resolve the anomaly within the Development Plan, which illustrates a Primary Production zone.
Land adjacent Templers Road and Horrocks Highway, Templers and suggested change to zoning

The Panel also suggests a change to the zoning of several allotments within Templers. Like the matter raised directly above, the area highlighted in the green polygon in the image below illustrates a locality that reflects a Settlement Zone rather than a Primary Production Zone. More than 20 properties are located within the area highlighted which are largely rural living lifestyle allotments that contain dwellings and other rural pursuits such as horse keeping. The current zoning of the land is that of Primary Production with land holdings in the identified area ranging from 3000 m² to 2.7 hectares in area. The Primary Production Zone seeks minimum allotment sizes of 33 hectares with farming land uses. The 20 odd allotments contained within Templers do not reflect a Primary Production Zone and the Panel recommends that the Council consider re-zoning this locality to a Settlement Zone or similar to reflect what exists ‘on ground’.

Frost Fans

The Panel considered applications for frost fans during the previous and current reporting period, whilst planning staff assessed several development applications under delegated authority for the erection of frost fans in association with the viticultural use of the land.
Applications considered by the Panel over the last 2 years involved the placement of frost fan(s) for periodic seasonal use. Applicants sought to construct frost fans to limit the significant crop yield losses suffered in previous years due to localised frost in the locality. Applicants have reported that vineyard operators had experienced crop losses attributed to frost incidents in recent years of between 40-90% over the last few years.

Applications were identified and processed as a merit form of development by virtue of the fact that frost fans are not listed as either complying or non-complying development in the procedural matters listing of the Primary Production Zone. The applications were determined to be Category 3 forms of development given that they could not be adequately categorised by the zone provisions of Council’s Development Plan nor Schedule 9 of the Development Regulations 2008. Because of this, the applications defaulted to Category 3 forms of development accordingly. Considering this categorisation, the relevant public notification process was undertaken. The public notification resulted in the lodgement of representations from adjoining land owners who resided on a rural life style allotment within the Primary Production Zone.

Frost fans are a vital part of vineyard management and one which will result in the continued economic viability and sustainability of viticulture (primary production) in the region. The intent of the zone objectives places a great deal of emphasis on sustainability and long term viability of primary production. Existing viticultural uses of the land is supported by the zone policy. The zone objectives indicate a direct intent to ensure the long-term future of these envisaged land uses are not jeopardised. Frost fans are an ancillary component to existing vineyards and are considered to be a tool that have the potential to secure and safeguard the primary land use against climatic impacts.

Frost fan structures are a common feature within the horticultural precinct of the Primary Production Zone and parts of the rural viticulture landscape within the Barossa Valley region. Given the primary intent of the zone is to accommodate horticultural land uses in the form of vineyards and the scattered rural lifestyle allotments are largely the anomaly, the Panel suggest to the Council that frost fan applications associated with the viticultural use of the land and should be listed as category 1 forms of development and not category 3 as currently exists within the Development Plan.

**Cellar door land uses associated with vineyards**

The Panel considered an application to introduce a new land use in the form of a cellar door to a property on Seppeltsfield Road, Nuriootpa. The land already contained a dwelling and 12 hectares of vineyard, small plantation of olive trees and associated farm buildings. The cellar door would sell wines that utilises grape product from the land. The current development plan policy identifies a cellar door as a non-complying land use, except when it achieves all the following:
- it is within, or is an addition to, a building existing as at 18 September 1990
- the gross leasable area for wine tasting and retail sales is less than 250 square metres
- it is located on the same allotment as, and ancillary to, a winery.

Despite the proposal meeting the provisions of (a) and (b), the application was required to be classified as non-complying, given that the cellar door would not be located on the same allotment as a winery.

Cellar door activities are envisaged in the zone as Policy Area: 2 – Barossa Valley Region PDC 2, as outlined below:

“Cellar door sales outlet and/or restaurant should only occur where it will achieve all of the following:
- it is located on the same allotment as, and ancillary to a winery
- it is sited within or as an addition to a building that existed as at 18 September 1990
- it is primarily for the sale and tasting of wine that is produced within the Barossa Valley Region
- it will not result in a gross leasable area greater than 25 square metres for the display and sale of any non-beverage or non-food items on the allotment
- it will not result in a gross leasable area greater than 250 square metres for wine tasting and retail sales (and this includes any retail sale of non-beverage or non-food items)
- it will not exceed a seating capacity for 75 persons.”
The proposed development adhered to all those provisions except for (a) however, Council staff acknowledged that the proposed development would be in association with the existing viticultural use of the land and therefore meets the fundamental intent of this provision of limiting additional buildings that do not have a direct link to the primary production use of the land. The Panel are of the view that the non-complying listing is somewhat short sighted and should allow small scale cellar door land uses if it is in association with a vineyard on the land. This would ensure a direct link between the viticultural land use and allow for value adding development to occur on the land. It is therefore suggested that the policy should be amended so that the cellar door should be in association with a winery or at least 6 hectares of vineyard. Providing the grape product that is grown on site will be used to produce the wine that is to be offered for sale in the cellar door, the absence of a winery is not deemed fatal or necessary as the properties should at least contain a vineyard and part of what is intended to support the establishment of a cellar door.

Conclusion

The Panel has endeavoured at all times to assist applicants, persons making representations, and the general public in understanding the decision-making process and how the final outcomes were arrived at.

The Panel expresses its appreciation to Council Members, Council’s management team and planning staff for their support and assistance.

This report is submitted to Council for noting purposes by the Presiding Member on behalf of the Members of the Light Regional Council Development Assessment Panel.

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Bruce Ballantyne, Presiding Member