

COUNCIL ASSESSMENT PANEL MEETING
9 October 2019
AGENDA – 8.1

Applicant: Shu-Mu Tseng	Landowner: Tseng No 1 Pty Ltd
Agent: Tract Consultants	Originating Officer: Marie Molinaro/Melanie Scott
Development Application:	18/668/473
Application Description: Change of use of grazing to include horticulture - tree and flower plantation (8 hectares/21.7 acres)	
Subject Land: Lot:17 Sec: P82 DP:89574 CT:6101/440	General Location: Lot 17 Mount Barker Road Bridgewater Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/31 & AdHi/75	Zone/Policy Area: Watershed (Primary Production) Zone - Rural Landscape Policy Area
Form of Development: Merit	Site Area: 79 hectares
Public Notice Category: Category 2	Representations Received: 11 Representations to be Heard: Representors heard at previous CAP meeting – 12 June 2019

1. EXECUTIVE SUMMARY

The purpose of this application is for change of use of existing grazing land to include horticulture comprising a tree and flower plantation.

The application was submitted to the Council Assessment Panel (CAP) at its meeting of 12 June 2019.

At the 12 June meeting, CAP resolved to DEFER consideration of the application to allow the applicant to consider in consultation with staff buffer distances, plant species, external professional input and CFS advice.

Please refer to the previous agenda document. The 12 June 2019 CAP minutes are included as **Attachment – Minutes From 12 June 2019 CAP Meeting.**

Following the above resolution, the applicant has responded with an amended landscaping plan for the tree and flower plantation. The applicant has also provided irrigation and land management details.

Following an assessment against the relevant Zone and Council Wide provision within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent subject to conditions.

2. DESCRIPTION OF THE AMENDED PROPOSAL

The amended proposal is for the following:

- Landscaping and irrigation plan prepared by Coromandel Native Nursery
- The landscaping plan is for the 'ornamental garden' plantation as annotated on the site plan. The 'ornamental garden' plantation is located near the north-western portion of the land, aligning with the residential properties adjoining the site, in the Country Living Zone
- The landscaping consists of the following plant species, which are to be grown in clusters by plant species and generally planted in informal row arrangements:
 - Magnolia 'Little Gem' – height 4m with 5m spacing between plantings
 - Pyrus 'Capital' – height 9m with 10m spacing between plantings
 - Chinese Elm – height 10m with 10m spacing between plantings
 - Kurrajong – height 10m with 10m spacing between plantings
 - Tuckeroo – height 5m within 10m spacing between plantings
 - Common Boobialla – height 7m with 10m spacing between plantings
 - Prunus – height 5m with 5m spacing between plantings
 - Crepe Myrtle – two species varying in height between 5-8m with 10m spacing between plantings
 - Crab Apple – height 3m within 10 spacing between plantings
- There is a 10-15m separation distance between each plant species cluster. The smaller shrub plant species are separated from the larger tree plant species
- The applicant has removed the invasive plant species Honey Locust (*Gleditsia*) and Chinaberry (*Melia*), which were included in the original proposal. Kurrajong has been included as a replacement for the Honey Locust trees.
- The applicant has advised that the existing planted area (2016 plantation) forming part of the overall plantation does not contain Honey Locust or Chinaberry
- No other parts of the proposal have changed. A 50m setback buffer to the residential properties to the west is maintained. There are no alterations proposed to the planting that has already occurred
- The irrigation plan details the location of the main irrigation line, irrigation controls and irrigation schedule – that being irrigation to occur 2 times per week between late Spring and Summer for 3 hours per session
- A 'Farm' (land management) plan has also been provided detailing the firebreak area (setback buffer), weed management, water and traffic management
- The plan details that the setback buffer is to be slashed prior to the declared Bushfire Season, and then maintained to a height of no more than 100mm during the Bushfire Season

The proposed plans are included as ***Attachment – Amended Proposal Plans.***

3. DISCUSSION/ASSESSMENT OF THE APPLICANT'S RESPONSE

Buffer Distances

PDC 4 of the Council Wide Module Animal Keeping & Rural Development is considered to be the most pertinent to the consideration of buffers.

The relevant criteria from PDC 4 relating to buffers are detailed below.

PDC 4

Planning, design and undertaking of primary industry, rural, horticulture, horse keeping or animal keeping development should minimise impacts that ensure acceptable outcomes relating to:

e) fire management

The amended proposal has been informally referred to the CFS as the experts on fire management – see **Attachment - CFS Referral Response**. The CFS advice for the original proposal was that a 50m separation to the adjoining residential properties to the west should be provided. The applicant has included a 50m setback buffer to the adjoining residential properties to the west. The applicant has demonstrated a commitment to managing the buffer as outlined in the 'Farm' (land management) plan. Recommended conditions 2 and 3 reinforce the requirement to manage the buffer, and also grass within the plantation to minimise bushfire risk – see **Recommended Conditions 2 & 3**.

The CFS advice for the original proposal was also that they had a:

“preference for an orchard like arrangement that is irrigated, with canopies of trees separated in rows, low hanging limbs trimmed not allowing them to touch the ground which also allows access to slash the grasses underneath. Shrubs and low lying plants may be located separately.”

The amended proposal is for the clustering of plant species in informal row arrangements, with separation distance between plant species clusters.

Council's Biodiversity Officer has advised that the selected plant species are fire retardant. Further discussion on the Council Biodiversity Officer advice is detailed below. Also, see **Attachment – Council Biodiversity Officer Referral Response**.

f) vegetation management

The amended proposal includes a detailed landscaping plan which details plant species, planting location and spacing. Based on the advice of Council's Biodiversity Officer, the plant species selection has been amended to delete the more invasive weed potential plant species Honey Locust and Chinaberry.

There is recognition that the planting proposed still includes four plant species noted in the Council Biodiversity Officer's advice as being invasive plant species. These plant species are the Ornamental Pear, Chinese Elm, Prunus and Crab Apple.

The site is nearby to the National Trust owned Engelbrook Reserve to the south-west of the plantation areas.

Advice from Council's Biodiversity Officer is that there is no defined setback distance for plantings to the Reserve. However, as a guide olive plantations are recommended to maintain a 100m buffer to reduce the spread of seeds into areas of native vegetation. Additional advice was also provided that:

“seeds are often spread by native and pest animals (birds and foxes), which swallow the whole fruit and defecate the seeds hours later. Birds that regurgitate the pit instead of swallowing it will generally disperse it no more than 100 metres, but starlings may regurgitate or defecate some seeds up to 40km away.”

The Ornamental Pear, Chinese Elm, Prunus and Crab Apple plantings are limited within the plantation and the 'ornamental' garden plantation portion of the land is setback approximately 240m north from the edge of the Reserve boundary.

g) use of appropriate buffers

See discussion above.

Plant Species

See discussion above regarding vegetation management. In addition, PDC 45 of the Council Wide Natural Resources section states that:

Development should be located and occur in a manner which:

- a) does not increase the potential for, or result in, the spread of pest plants or the spread of non-indigenous plants into areas of native vegetation or a conservation zone.*
- b) avoids the degradation of remnant native vegetation by any other means including as a result of spray drift, compaction of soil, modification of surface water flows, pollution to groundwater or surface water or change to groundwater levels.*
- c) incorporates a separation distance and/or buffer area to protect native wildlife habitats and other features of nature conservation significance.*

The applicant has deleted the most invasive weed potential plant species. There are still four plant species which the Council Biodiversity Officer has noted have invasive weed potential. These four plant species only comprise a small portion of the plantation, and the 'ornamental garden' plantation area is approximately 240m north of the edge of nearby National Trust site, Engelbrook Reserve.

External Professional Input

The amended proposal includes a landscaping plan. The landscaping plan has been prepared by Coromandel Native Nursery.

CFS advice

The applicant has designed the proposal so that it is consistent with the CFS recommendations for a setback buffer to the adjoining residential properties to the west.

The CFS have reviewed the amended proposal and has no objections, subject to maintenance of the grass areas within the 50m setback buffer to the adjoining residential properties and between plant spacings, and subject to a the provision of a 20m separation buffer between the 2016 plantation and the ornamental garden planting. The amended landscaping plan shows a 20m separation between the two planting areas.

4. SUMMARY & CONCLUSION

The applicant has provided an amended proposal which addresses the issues raised by the Panel at its meeting on 12 June 2019. The amended proposal is for a revised planting plan, which has been prepared by Coromandel Native Nursery. The plant species selection has been amended to delete the most invasive species.

A 50m separation buffer has been maintained to the adjoining residential properties, which is in accordance with the CFS recommendation. Based on these amendments, it is considered that the proposal should not unreasonably increase the potential for the spread of pest species, or bushfire risk to residential properties in the Country Living Zone adjacent.

It is considered that the applicant has demonstrated a willingness to effectively manage the land as indicated by the 'Farm' (land management plan) to maintain the plantation and to minimise bushfire risk.

As per the 12 June CAP report, the proposal is considered to be a form of low intensity horticulture that will make a positive contribution to the open and natural character of the locality as desired by the Rural Landscape Policy Area and Watershed (Primary Production) Zone.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

5. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 18/668/473 by Shu-Mu Tseng for change of use of grazing to include horticulture - tree and flower plantation (8 hectares/21.7 acres) at Lot 17 Mount Barker Road Bridgewater subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- **Amended site plan (sheet 1 of 3) by Coromandel Native Nursery, dated 18 September 2019**
- **Amended landscaping plan (sheet 2 of 3) by Coromandel Native Nursery, dated 18 September 2019**
- **Irrigation plan (sheet 3 of 3) by Coromandel Native Nursery, dated 18 September 2019**
- **Farm management plan document, received by Council 2 September 2019**

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Bushfire Protection – Buffer Zone

A fuel reduced buffer zone of at least 50 metres wide shall be established and maintained between the proposed tree and shrub plantings and the boundary of adjacent residential properties as identified on the landscaping plan dated 18 September 2019. The buffer zone shall comprise grassland or similar vegetation and be cleared of obstructions to allow mechanical slashing. The vegetation shall be slashed to a height no greater than 10cms prior to the declared Fire Danger Season each year and maintained to the reasonable satisfaction of the Council for the duration of the Fire Danger Season.

REASON: To minimise the bushfire risk to property and public safety.

(3) Bushfire Protection – Plantation Area and Surrounds

Grasses in and around the proposed plantation shall be slashed to a height no greater than 10 cms prior to the declared Fire Danger Season each year and maintained to prevent pest and weed infestation and to minimise the risk of bushfire, to the reasonable satisfaction of Council.

REASON: To minimise the bushfire risk to property and public safety and to prevent pest and weed infestation.

NOTES

(1) Chemical Spraying

The applicant is reminded that chemical use must at all times be strictly undertaken in accordance with the *Agricultural and Veterinary Chemical (Control of Use) Act 2002 and Regulations 2004*.

(2) Development Approval Expiry

This development approval is valid for a period of twelve months commencing from the date of the decision notification. However if the development hereby approved is substantially commenced within the twelve (12) month period then it shall be completed within three (3) years of the date of such notification. This time period may be further extended beyond the 3 year period by written request to, and approval by, Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee. Please note that in all circumstances a fresh development application will be required if the above conditions cannot be met within the respective time frames.

(3) Erosion Control During Construction

Management of the property during development shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

(4) EPA Environmental Duty

The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, 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, environmental harm.

(5) Department of Environment and Water (DEW) - Native Vegetation Council

The applicant is advised that any proposal to clear, remove limbs or trim native vegetation on the land, unless the proposed clearance is subject to an exemption under the Regulations of the Native Vegetation Act 1991, requires the approval of the Native Vegetation Council. The clearance of native vegetation includes the flooding of land, or any other act or activity that causes the killing or destruction of native vegetation, the severing of branches or any other substantial damage to native vegetation. For further information visit:

www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation

Any queries regarding the clearance of native vegetation should be directed to the Native Vegetation Council Secretariat on 8303 9777. This must be sought prior to Full Development Approval being granted by Council.

(6) The applicant is reminded of their duty to act reasonably in relation to the management of natural resources within the State, in accordance with Section 9 of the *Natural Resources Management Act 2004*.

(7) The development approval does not include the taking of any water from the Western Mount Lofty Ranges Prescribed Water Resources Area and its application to land in addition to that currently authorised under the *Natural Resources Management Act 2004*.

(8) Should it be intended to change any aspect of the current authorisation, the applicant should contact the Department for Environment and Water (DEW) to ascertain relevant requirements under the *Natural Resources Management Act 2004* and to determine appropriate water licensing arrangements. . For information regarding water licensing contact DEW Water Licensing Branch on telephone (08) 8463 6876 or visit: <http://www.environment.sa.gov.au/licences-and-permits/water-licence-and-permit-forms/adelaide-and-mount-lofty-ranges-water-licences-and-permits>.

(9) Section 144 of the *Natural Resources Management Act 2004* requires the occupier of the land on which a well is situated to ensure that the well (including the casing, lining and screen of the well and any mechanism used to cap the well) is properly maintained. A permit is required from the Department for Environment and Water (DEW) for any work to be carried out on a well or for new wells to be drilled. Information on specific wells can be obtained from www.waterconnect.sa.gov.au. For information regarding permit applications contact DEW on telephone (08) 8735 1134 or visit: <http://www.environment.sa.gov.au/topics/water/water-licences-and-permits/well-drilling>.

- (10) SA CFS recommends access to a dedicated fire-fighting water supply be provided at the entrance to the subject site in a concrete or metal tank with fire authority access. SA CFS is happy to provide further details regarding dedicated fire-fighting water supply, access to fire authority and a suitable location.
- (11) Managed bees are considered livestock and as such all persons keeping bees are by law required to register as a beekeeper and comply with the SA Apiary code of conduct – fines for non-compliance apply.

Registration as an Apiarist/Bee Keeper:

Person(s) keeping bee hives are requested to have a Certificate of Registration from the Department of Primary Industries and Resources SA (PIRSA) as a registered Apiarist. For more information on the keeping of bees contact the South Australian Biosecurity Apiary unit – 820777902 or 82077975 or visit: http://www.pir.sa.gov.au/biosecurity/animal_health/bees

Unregistered persons keeping bees and unmanaged hives put our state at risk of bee diseases. Fines may apply for not registering your bees.

6. ATTACHMENTS

Locality Plan
Minutes - From 12 June 2019 CAP Meeting
Amended Proposal Plans & Details
CFS Referral Response
Council Biodiversity Officer Referral Response

Respectfully submitted

Concurrence

Marie Molinaro
Statutory Planner

Sam Clements
Team Leader Statutory Planning

COUNCIL ASSESSMENT PANEL MEETING
9 October 2019
AGENDA – 8.2

Applicant: Dan Edwards	Landowner: Australian Executive Trustees Ltd
Agent: Access Planning	Originating Officer: Marie Molinaro
Development Application:	19/404/473
Application Description: Two (2) frost fans associated with horticulture (maximum height 13.7m)	
Subject Land: Lot:19 Sec: P6008 FP:155234 CT:5454/242	General Location: Lot 19 Forreston Road Forreston Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/3	Zone/Policy Area: Watershed (Primary Production) Zone
Form of Development: Merit	Site Area: 33 hectares
Public Notice Category: Category 3 Notice published in The Advertiser on 14 June 2019	Representations Received: 9 Representations to be Heard: Representors heard at previous CAP meeting – 14 August 2019

1. EXECUTIVE SUMMARY

The purpose of this application is to construct two frost fans associated with a vineyard. The fans are intended as protection for the vineyard from damage during frost events. Frost fans work by drawing down warm air from above and mixing it with cold air, which lifts temperatures at crop levels and assists in the prevention of frost damage.

The application was supported by an acoustic report by Marshall Day, which was commissioned by the applicant.

The application was submitted to the Council Assessment Panel (CAP) at its meeting of 14 August 2019.

At the 14 August meeting, CAP resolved to DEFER consideration of the application to allow the applicant to review the assessment and weather data that the acoustic report was based upon, and for Council staff to engage an independent acoustic engineer to undertake a peer review of the applicant's acoustic report.

Please refer to the previous agenda document. The 14 August 2019 CAP minutes are included as ***Attachment – Minutes From 14 August 2019 CAP Meeting.***

Following the above resolution, the applicant has responded with additional weather data and an updated Acoustic Report. Council staff engaged Sonus Acoustic Engineers to review the amended Marshall Day acoustic report.

Following an assessment against the relevant Zone and Council Wide provision within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent subject to conditions.

2. DISCUSSION/ASSESSMENT OF THE APPLICANT'S RESPONSE

The applicant presented frost event information at the 14 August 2019 CAP meeting sourced from the Bureau of Meteorology (BOM) weather station at Mount Crawford. This information showed that over the past 25 years there has been an average of approximately 14 frost events between September and November as measured at this weather station.

Representor information provided at the 14 August 2019 CAP meeting sourced frost event information from a weather station at Forreston.

The applicant has now sourced and reviewed data from the Adelaide and Mount Lofty Ranges Natural Resources Management Board (AMLR NRMB) website for frost event information as measured at the AMLR NRMB Forreston weather station – **see Attachment Applicant's Response.**

The Forreston weather station data is for the years 2017 and 2018. In 2017 there were a total of 8 days were the temperature was recorded at less than 2 degrees Celsius. In 2018 there were a total of 18 days were the temperature was recorded at less than 2 degrees Celsius.

The applicant acknowledges that the Forreston weather station data reports a higher number of days were the temperature was less than 2 degrees Celsius. However, the applicant contends that it is difficult to compare the two data sets as the Forreston weather station is not used by BOM.

An updated acoustic report by Marshall Day has also been provided by the applicant. Marshall Day has considered the Forreston weather station data, and this has not changed the assessment outcomes of their original report.

The updated acoustic report has provided external predicted noise levels for an additional three representor residential properties (18, 27 and 74 Norsworthy Road, Forreston).

The predicted external noise levels for each of these properties is within the *Environment Protection (Noise) Policy 2007* criteria applicable to frost fans, that being less than 55 decibels [dB(A)] as per the 'rural industry' land use category.. Specifically, the predicted external (outside the habitable room) noise levels are follows:

- 27 Norsworthy Road, Forreston – 41 dB(A)
- 18 Norsworthy Road, Forreston – 43 dB(A)
- 74 Norsworthy Road, Forreston – 46 dB(A)

There were no changes to the predicted noise levels for those properties already included in the original report. The predicted noise levels for properties already included in the original report were also all less than 55 dB(A). The predicted noise levels for those properties included in the original report are as follows:

- 480 Forreston Road, Forreston – 49 dB(A)
- 368 Martin Hill Road, Forreston – 47 dB(A)
- 127 Quinns Road, Forreston – 46 dB(A)
- 81 Quinns Road, Forreston - 47 dB(A)
- 404 Forreston Road, Forreston- 46 dB(A)

3. DISCUSSION ON THE PEER REVIEW OF THE APPLICANT'S ACOUSTIC REPORT

Council engaged Sonus Acoustic Engineers to review the Marshall Day acoustic reports, both the original and updated versions – see ***Attachment Peer Review of Applicant's Acoustic Report***.

The Sonus advice is that:

“Overall the assessment identifies appropriate criteria and comes to the correct conclusion that the noise criteria will be achieved.”

The Sonus review did reveal that there is an inconsistency between where frost fan 1 (closest to the northern boundary of the site) was shown to be located in the applicant's site plan and the location plotted by Marshall Day – a variation distance of approximately 50m. However, Sonus concludes this inconsistency would not change the conclusion of the assessment as the potential to increase the predicted noise level by approximately 2 (dB(A) at the nearest non-associated dwelling.

The nearest non-associated dwelling is located at 480 Forreston Road, Forreston. An increase in 2(dB(A) would result in the predicted external noise level increasing to 51 (dB(A) which is still below the 55(dB(A) acceptable threshold as set-out in the *Environment (Noise) Protection Policy 2007*.

4. SUMMARY & CONCLUSION

The applicant has provided revised frost event data sourced from a weather station at Forreston. The Forreston weather station frost data reveals a higher incidence of frost occurrence over the past two years as compared to the applicant's original data which was sourced from a more distant weather station at Mount Crawford.

Whilst it is acknowledged then that based on the additional information there may be increased potential for the frost fans to be used, the potential for increased operation has not altered the applicant's expert advice that the anticipated noise level of the frost fans will not exceed the quantitative noise levels for nearby dwellings as set out in the *Environment (Noise) Protection Policy 2007*.

The applicant's expert noise advice has also been verified by an independent Acoustic Engineer.

As per the August 14 CAP report, the compliance with the *Environment Protection (Noise) Policy 2007* criteria is considered to sufficiently demonstrate that the level of noise is within the accepted level for rural areas , despite the reduced setback distance to sensitive receptors, as set out in the EPA document Evaluation Distances for Effective Air Quality and Noise Management 2016.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

5. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 19/404/473 by Dan Edwards for two (2) frost fans associated with horticulture (maximum height 13.7m) at Lot 19 Forreston Road Forreston subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Amended site plan, received by Council 7 June 2019
- Amended elevation plan, received 7 June 2019
- Orchard Rite product information brochure, received by Council 22 May 2019
- Environmental Noise Assessments (ref. Rp 001 20190372) by Marshall Day Acoustics, dated 13 May 2019 and 20 August 2019

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Frost Fan Operation

The frost fans shall be set with a fan 'start' temperature of 1 degree Celsius and a fan 'stop' temperature of 2 degrees Celsius, except for daytime maintenance purposes (maximum 2 times per year).

REASON: To ensure the proposed development operation is limited to that which is necessary for efficient operation.

NOTES

(1) Development Plan Consent Expiry

This Development Plan Consent (DPC) is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced the date on which it is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the DPC, or a fresh development application will be required. The twelve (12) month time period may be further extended by Council agreement following written request and payment of the relevant fee.

(2) EPA Environmental Duty

The land owner is reminded of their duty, that the operation of the frost fan shall be in accordance with the provisions of the Environment Protection (Noise) Policy 2007 relating to frost fans.

6. ATTACHMENTS

Locality Plan
Minutes – 14 August 2019 CAP Meeting
Applicant's Response and Amended Acoustic Report
Peer Review of Applicant's Acoustic Report

Respectfully submitted

Concurrence

Marie Molinaro
Statutory Planner

Sam Clements
Team Leader Statutory Planning