

COUNCIL ASSESSMENT PANEL MEETING

10 June 2020

AGENDA – 9.1

Applicant: Mark Musolino	Landowner: M A Musolino & R P Musolino
Agent: James Levinson – Botten Levinson	
Development Application: 13/30/473	Originating Officer: Melanie Scott
Application Description: Filling of land to a maximum depth of 6.2 metres (non-complying)	
Subject Land: Lot:100 Sec: P957 DP:63108 CT:5917/721; Lot:1 Sec: P957 FP:104215 CT:5141/301; Lot:101 Sec: P957 DP:63108 CT:6137/929	General Location: 24 & 28 & 32 Emmett Road Crafers West Attachment – Locality Plan
Development Plan Consolidated : 12 April 2012 Map AdHi/22	Zone/Policy Area: Hills Face Zone
Form of Development: Non-complying	Site Area: 1.7 hectares
Public Notice Category: Category 3 non complying Notice published in The Advertiser on 21 April 2017 & 10 May 2019	Representations Received: 2 Representations to be Heard: 2 (previously heard 10 July 2019) Application re notified Representations Received: 1 Representations to be Heard: 0

1. EXECUTIVE SUMMARY

The purpose of this application is to enable extensions to the existing apron of fill to the north and north-west of a dwelling at 28 Emmett Road Crafers West. The works will also enable better access to the northern portion of the land for management purposes and enable the applicant to meet CFS access requirements for fire-fighting purposes. The fill also extends onto two adjoining properties at 24 and 32 Emmett Road, which are owned by others.

The application was submitted to the Council Assessment Panel (CAP) at its meeting of 10 July 2019.

At the 10 July meeting, CAP resolved to DEFER consideration of the application to allow the applicant to:

- Provide clean fill certificates or undertake soil samples, surface and ground water testing and analysis by a suitably experienced and qualified site contamination consultant to provide evidence that the fill placed on the site is not contaminated and suitable for a private open space area associated with a dwelling, and that there is no risk of pollution to surface or underground waters.
- Provide clarification of the pre 2010 land form, the existing land form with the fill in situ and the final form of the land proposed following the landscaping shown in the landscape concept plan.

The CAP report, attachments and minutes from the 10 July 2019 CAP meeting will be provided again electronically (as separate attachments indicated as “previous”) for your reference, together with this report and associated attachments.

Following the above resolution, the applicant has responded with an Environmental Soil Investigation from MUD Environmental dated 23 April 2020 and drawing **ME-296 Revision 1 figures 1, 2 & 3**. The report details seven comments regarding the suitability of the fill for residential use and a private open space area, and notes all results were below the adopted Tier 1 health based and ecological screening levels for residential land use. The report concludes that “the fill materials are not considered to present an unacceptable risk to human health or to the environment in the context of residential land use, including private open space areas.” The same consultant has also clarified the actual fill levels on the site through the provision of information from the eleven (11) test pits excavated across the site. With regards to proposed landscaping the concept plan submitted with the previous CAP report has been withdrawn. There is no intent at this time to undertake “landscaping”. As previously noted the fill has been in situ for some time and has revegetated naturally so weed management only is proposed at this time.

Following an assessment against the relevant Zone and Council Wide provision within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

2. DISCUSSION/ASSESSMENT OF THE APPLICANT’S RESPONSE

1. Evidence the fill is not contaminated

The applicant’s chosen path to address the CAP requests mirrors that requested in part 2 of resolution 1 of the CAP minutes, namely to undertake soil samples, surface and ground water testing and analysis by a suitably experienced and qualified site contamination consultant. MUD consultants advised the following documents were used as their guideline in undertaking the analysis:

1. EPA ‘*Guidelines for the assessment and remediation of site contamination*’ updated November 2019, herein referred to as the ‘GAR, 2019’;
2. *National Environment Protection (Assessment of Site Contamination) Measure, 1999 as amended 2013* (ASC NEPM, 2013); and
3. Australian Standard AS4482.1-2005 *Guide to the investigation and sampling of sites with potentially contaminated soil, Part 1: Non-volatile and semi-volatile compounds*.

The following table and other excerpts provides a summary of the materials encountered across the 11 test pits in the fill area and from the five (5) samples taken from natural ground level areas.

Table 7 – Materials Encountered

Layer	Description
FILL 1	SAND, silty, fine to coarse grained, gravelly, orange-brown to light brown, dry to low moisture, trace oversized (>100mm) mudstone / siltstone cobbles up to 100mm, trace inclusions of combinations of bitumen / paving bricks / red bricks / concrete fragments / ash + cinders / ceramic tiles / black or orange plastic / PVC pipe (possibly from adjacent building structure).
FILL 2	GRAVEL, sandy, blue-grey sub-base materials, angular gravels to 50mm, moist.
FILL 3	SAND, silty, fine to medium grained, orange, moist (sandy loam type soils).
FILL 4	CLAY, sandy, gravelly, medium plasticity, brown to dark brown, trace oversized (>100mm) inclusions of combinations of bitumen / paving bricks / cinders / slag / red brick fragments , moist.
FILL 5	CLAY, sandy (coarse grained), gravelly, low plasticity, light-brown to brown, trace bitumen pieces up to 250mm, ultra-trace concrete pieces / bituminous tar , moist.
FILL 6	CLAY, silty, low-plasticity, orange-brown to red-brown, trace calcareous gravels up to 50mm, trace whole quartz gravels to 50mm, trace bitumen .
FILL 7	CLAY, sandy, gravelly, low plasticity, brown, trace oversized (>100mm) bitumen / concrete fragments, potential ACM fragments
FILL 8	CLAY, sandy, gravelly, low plasticity, brown, trace inclusions of combinations of bitumen / concrete / paving bricks / quartz cobble ballast up to 100mm , moist.
FILL 9	SAND, gravelly, clayey, trace oversized concrete / bitumen / trace steel reo , light brown to brown, moist.
FILL 10	CLAY, silty, trace gravels, medium plasticity, red-brown, trace oversized (>100mm) fragments of brick / pavers / concrete / bitumen .
FILL 11	SAND, clayey, coarse grained, orange-brown, trace gravels and cobbles throughout up to 150mm.
NATURAL 1	CLAY, silty, low plasticity, trace mudstone cobbles and gravels from 10mm-300mm, orange-brown to brown, moist.
NATURAL 2	SILT, organic matter present (twigs + roots), grey to grey-brown, low moisture.
NATURAL 3	SILT, calcareous, light-brown to orange-brown, low moisture.
NATURAL 4	CLAY, silty, low-plasticity, light-brown to orange-brown, trace calcareous gravels, moist.
NATURAL 5	CLAY, silty, low plasticity, yellow-brown to white, talc-like feel, moist.

The subsurface conditions across the site were highly variable, with 11 distinct layers of fill materials and five distinct layers of natural materials observed within the test pits excavated across the site. In total, 10 out of 11 test pits contained fill materials, with only test pit TP8 containing natural materials only.

The vertical extent of fill materials encountered from the surface ranged between 0.5m depth (TP2) and 3.8m depth (TP10), with underlying natural soils confirmed at all test pit locations with the exception of test pit TP07 where fill materials existed to the maximum depth of investigation of 3.3m below ground surface.

Non-mineralogical inclusions were identified within all test pits except for TP8 (natural soils only), were present in 8 out of the 11 distinct layers of fill materials encountered, and were observed in the form of the following materials:

- Bitumen wastes ranging in size from small fragments of ~10mm up to large pieces ~400mm width (10 out of 11 test pits);
- Concrete, bricks and / or pavers (10 out of 11 test pits);
- Construction and demolition waste / building wastes including ceramic tiles / black or orange plastic / PVC pipe (5 out of 11 test pits);
- Trace ash and cinders (5 out of 11 test pits);
- Trace small fragments of slag (2 out of 11 test pits); and
- Trace remnants of partially solidified bituminous tar (1 out of 11 test pits);
- Potential asbestos containing materials (ACMs) in the form of trace grey fibre cement fragments in test pit TP07 at depths of between 1.9m-2.7m within materials designated as the 'FILL 7' layer. No other potential ACMs were encountered in any of the other test pits excavated at the site, with the 'FILL 7' layer also only observed within soils at test pit TP07.

No other observations of potential chemical impacts (i.e. odours, staining) were observed during test pitting or soil sampling activities.

PID results were recorded up to a maximum of 0.3ppm, indicating that the potential for volatile contaminants was low within the test pits excavated across the site.

1. Suitability of fill for residential and private open space uses:

- a. The materials encountered in the filled area are heterogenous, with various layers of fill materials and natural soils observed within the test pits excavated across the inferred filled area at the site.
- b. The depth of fill materials ranged between 0.5m and 3.8m depth below the current surface, with underlying natural soils confirmed at all test pit locations except for test pit TP07, where fill materials were present to the maximum depth of investigation of 3.3m.
- c. Photoionisation detector (PID) results were recorded up to a maximum of 0.3ppm, indicating that the potential for volatile contaminants was low.
- d. In addition to the soil materials, non-mineralogical inclusions were observed within most fill layers, primarily in the form of construction and demolition materials including concrete, bitumen, bricks, pavers, ceramic tiles, plastic sheeting and PVC pipe. Trace inclusions of tar, ash, cinders and slag were observed at some locations.
- e. Asbestos containing materials (ACMs) were confirmed in the form of grey fibre cement fragments within test pit TP07 at depths of between 1.9m-2.7m (FILL 7 layer). No other potential ACMs were encountered in any of the other test pits excavated at the site.
- f. No significant indicators of potential contamination (i.e. odours, staining) were observed during test pitting or soil sampling activities.
- g. All results were below the adopted Tier 1 health based and ecological screening levels for residential land use, except for two individual benzo(a)pyrene concentrations in near surface soils (0.1-0.2m) at locations TP3 and TP6. A Tier 2 risk assessment comprising statistical assessment and review of toxicological data for benzo(a)pyrene was undertaken, which confirmed that these concentrations do not present a risk to human health or ecological risk in the context of residential use. On this basis, the fill materials are not considered to present an unacceptable risk to human health or the environment in the context of residential land use, including private open space areas.

2. Risk to surface or underground waters from the fill:

- a. No significant soil concentrations were identified in soils at the site that are considered to threaten surface or groundwater. As stated in the ASC NEPM, *'Groundwater protection may be a particular concern where contamination occurs in sandy soils containing naturally low levels of organic matter, clay and trace elements. In most situations, soil contaminants at levels below appropriate EILs or HILs do not pose a threat to local groundwater sources.'* On this basis, no risk to surface or underground waters has been identified.

In a very brief summary of the report excerpts provided here, the fill is suitable for residential use and is not contaminating ground water. The report recommendations detailed below are proposed as notes should Development Plan Consent be granted.

2. Pre 2010 Land Form and Final Land Form

With regard to the second request from the CAP, drawings have been provided to demonstrate the level of fill. But it should be noted each of the test pits were dug until natural ground was reached and the fill level across the site ranges from nothing (natural ground level) up to a maximum of 5 metres (the maximum depth able to be excavated). All but one test pit was dug to natural ground level (the exception being test pit 7). Of further note, non-mineralogical inclusions were identified in all test pits except test pit 8 where natural soils only were found.

Four recommendations were made by the site contamination consultant:

1. Any soil imported to the site should be sourced from a commercial supplier where possible. Should waste soils be generated from another site to be imported to this site, the soils should be classified and imported in accordance with EPA requirements.
2. All surplus soils to be removed from the site must be managed in accordance with relevant EPA guidelines and/or requirements of waste or recycling depots authorised by the EPA.
3. Construction and demolition waste materials should be disposed off-site in accordance with the requirements of waste or recycling depots authorised by the EPA.
4. Should any unforeseen materials (including asbestos containing materials) be identified during any excavation works and/or soil handling and management activities, it is recommended that these soils are quarantined, and further advice is sought from an appropriately qualified environmental consultant.

It is suggested these recommendations be added as notes to any approval for the development (refer notes 5 - 8 of report recommendation).

No landscaping is now included in the proposal. The landscaping previously proposed was aesthetic and included small rock retaining less than a metre in height and which in my opinion made no contribution to stabilising the fill. Zone PDC 4 requires development not to occur on land where the slope poses an unacceptable risk of soil movement, land slip or erosion. There has been no reported soil movement occurrences in the six years or more that the fill has been on site, including the above average rainfall year of 2013. The removal of the proposed landscaping has not altered staff's assessment of the proposal being in accordance with PDC 4.

Further, staff have referred to the document provided by the applicant in the original CAP attachments from Ecological Associates Pty Ltd dated 23 November 2017 which details the level area of fill as 750m² and the battered slopes as being some 650m². Noting the fill has been in place for at least six years without movement and, the aforementioned report identifies the battered slope has naturally revegetated with exotic shrubs, grasses and herbs (page 112 of previous CAP attachments) there is no intention to undertake any formal landscaping of the area. Maintenance in the form of weed management will be undertaken in accordance with the recommendations of the aforementioned report. An advisory note is included in the recommendation reminding the applicant further earthworks greater than 9 cubic metres on the subject land require separate development approval.

3. SUMMARY & CONCLUSION

This application was presented to CAP in July 2019 and deferred pending the provision of further information. That information was provided in April and May 2020 and details that the fill is suitable for residential use and is not impacting on groundwater quality.

The application is retrospective for extensive filling of land in the Hills Face Zone. Because of the age of the existing dwelling there are poor records surrounding the associated access and earthworks arrangements and, with the time elapsed since the fill was undertaken, there is speculation regarding the form of the land prior to the works. The extent of the works has now been verified through bore logs. There is no doubt when the work was first undertaken it was a very visible scar on local visual amenity. The fill extends onto two neighbouring properties which are now included as part of the subject land. The MUD report reveals the extent of fill on 32 Emmett Road is minimal as evidenced on site survey drawings on pages 68, 69 & 70 of the MUD Report. Furthermore the findings for test location pit 5, shown on page 27 of the MUD Report, demonstrated 0.7m of fill only and supporting the applicants assertion and the plans provided that there is little to no fill in the vicinity of the boundary with 32 Emmett Road. Page 82 of the report records the bore log findings for test location pit 5.

In considering the merits of the proposal, Council staff have noted that there are many properties in the locality with extensive land modification to accommodate recreational uses. The surface area of the fill is 1,400m² or approximately 12% of the 176,000m² site area. Thus in the context of the locality this proposal is considered modest. The proposal retains much of the land in its natural character, particularly on the steeper parts of the land. Whilst the proposal does not return the land to its natural form, it does seek to minimise the visual impact through managing the weeds and revegetation on the banks of the fill and creates opportunities for improved vegetation and fire management for the balance of the subject land. The CFS has confirmed there is no increased fire risk as a result of this proposal and that the proposal assists in emergency vehicle access to the dwelling on the site.

It is considered that the proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and variance with some provisions. These variances are not viewed to be significant 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 **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

4. RECOMMENDATION

- A. 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 seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent to Development Application 13/30/473 by Mark Musolino for Filling of land to a maximum depth of 6.2 metres (non-complying) at 24, 28 & 32 Emmett Road Crafers West 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:

- **Statement of support prepared by Mark Musolino dated 17 January 2013**
- **Statement of effect prepared by Botten Levinson dated March 2017**
- **Vegetation Restoration Report prepared by Ecological Associates Pty Ltd dated 23 November 2017**

- Survey plans (sheets 1, 2 and 3 of 3 reference 3856 plan 3856XI) titled site levels & contour plan and enlargements prepared by Olden and Van Senden Pty Ltd dated 4 October 2012 and 1 August 2014
- Tree Management Plan prepared by Gordon Sykes dated 23 July 2014 and received by Council 25 February 2016
- Site Location and Layout Plan, Site Elevation & Topographic Contours plan and Inferred Extent of Imported Fill Materials & Test Pit Locations (October 2019) prepared by MUD Environmental reference ME-296 Revision 1 figures 1, 2 & 3 received by Council.

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

NOTES

(1) 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.

(2) Requirement For Further Applications

The applicant is reminded any fencing and earthworks greater than 9 cubic metres requires development approval and will be the subject of separate application.

(3) Existing Encroachment Identified

The fill which encroaches over the side boundary into 24 Emmett Road remains unresolved. This development authorisation in no way implies approval from Council for this encroachment. The applicant is encouraged to continue negotiations with 24 Emmett Road to resolve this new and historical encroachment which will likely require a further application to Council to rectify this situation.

(4) Works On Boundary

The development herein approved involves work within close proximity to the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a survey being carried out by a licensed land surveyor prior to the work commencing.

(5) Any soil imported to the site should be sources from a commercial supplier where possible. Should waste soils be generated from another site to be imported to this site, the soils should be classified and imported in accordance with EPA requirements.

- (6) All surplus soils to be removed from the site must be managed in accordance with relevant EPA guidelines and/or requirements of waste or recycling depots authorised by the EPA.
- (7) Construction and demolition waste materials should be disposed off-site in accordance with the requirements of waste or recycling depots authorised by the EPA.
- (8) Should any unforeseen materials (including asbestos containing materials) be identified during any excavation works and/or soil handling and management activities, it is recommended that these soils are quarantined, and further advice is sought from an appropriately qualified environmental consultant.
- (9) Erosion Control During Construction
Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.
- (10) 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.
- (11) Department of Environment, Water & Natural Resources (DEWNR) – Native Vegetation Council Note
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.

- B. Should Development Plan Consent be granted to this application, staff recommend the CAP provide delegation to the Assessment Manager to resolve any further application to vary the proposal.

6. ATTACHMENTS

Locality Plan
CAP Report – 10 July 2019
Minutes – 10 July 2019 CAP Meeting
Additional Information- MUD Environmental Soil Investigation

Respectfully submitted

Concurrence

Melanie Scott
Senior Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
10 June 2020
AGENDA – 9.2

Applicant: Richard Whitehead	Landowner: M M Whitehead
Agent: Gregg Jenkins – Heynen Planning Consultants	Originating Officer: Melanie Scott
Development Application: 19/1021/473	
Application Description: Change of land use to include horse keeping (maximum 5 horses), construction of a horse keeping & farm building, outdoor arena, associated lighting & earthworks	
Subject Land: Lot:203 Sec: P3319 DP:38413 CT:5478/835	General Location: 163 Taminga Grove Bridgewater
	Attachment – Locality Plan
Development Plan Consolidated : 8 August 2019 Map AdHi/3	Zone/Policy Area: Watershed (Primary Production) Zone - Watershed Protection Policy Area
Form of Development: Merit	Site Area: 16.34ha
Public Notice Category: Category 3 Merit - Notice published in The Advertiser on 6 March 2020	Representations Received: 1 Representations to be Heard: 1

1. EXECUTIVE SUMMARY

The purpose of this application is to seek approval for the keeping of five horses on the subject land, install lights on an existing arena and build a multi-purpose building for farming and horse keeping purposes adjacent to the arena. The proposed farm and horse keeping building is 384m² in area and is to contain four stables, a wash bay, two small storage/facility rooms in one half of the building, with the remainder of the building being for hay and machinery storage.

A previous application for a large building (2520m²) received Development Approval in early 2016 which included horse keeping, an indoor arena and more extensive “facilities” for people in the building. The previous application was never enacted aside from some associated drainage works (i.e. a diversion drain).

This application is for a more modest building and proposes lighting on the existing horse arena. Of note a horse arena is not considered development. Only associated light poles or some other structure (for example retaining walls which may have been required to create a level area) triggers development.

The subject land is located within the Watershed (Primary Production) Zone and the Watershed Protection Policy Area, and the proposal is a merit form of development. One representation in opposition to the proposal was received during the Category 3 public notification period. The representor, being the adjacent eastern neighbour, also opposed the previous application. The representor raised four conditions of approval from the previous application as issues which have not been actioned. These conditions could not be enacted nor enforced as the applicant has not enacted their approval. The representor has raised objections to the proposed lights on the arena. The applicant has mitigated these objections to the satisfaction of Council with the provision of lumen plans demonstrating limited lux levels at the adjacent boundary, offering to limit the hours of use of the lights to 9pm and additional landscaping. The representor has objected to the location of the building, however noting its closet point to their shared boundary is 19 metres and that the Council development plan provides a guideline of 2 metres, this is considered acceptable.

The representor has also mentioned surveillance cameras which are not a planning matter. The applicant has responded to this issue.

As per the CAP delegations, the CAP is the relevant authority for Category 3 applications where representors wish to be heard.

The main issues relating to the proposal are the amenity impacts particularly from light spill, stormwater management, on-site waste management and landscaping.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Horse keeping for a maximum of 5 horses.
- Construction of a horse keeping and farm building, for horse stabling and farm implements (24m x 16m x 4m wall height). The walls are proposed to be Colorbond Woodland Grey and roof Colorbond Basalt.
- Two water storage tanks with a 22,500 litres capacity. Both are poly-tanks in pale eucalypt.
- New onsite waste system to service the wet-area facilities and the proposed horse wash bay in the building.
- Installation of 10 light poles on the existing horse arena to enable night use up to 9pm at times
- Landscape screening of 40 plus plants of various heights and density along the eastern boundary adjacent the arena.

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
6 December 2016	15/556/473	Horse keeping (maximum 5 horses) and a horse keeping building (90m x 28m x 9.4m) including stables, studio & associated earthworks
1 February 2008	08/132/473	Inground swimming pool
12 December 2001	01/1197/473	Garage
9 October 1998	98/755/476	Detached dwelling

More detailed lumen plans and a landscaping plan were provided to Council as part of the response to representations on 5 May 2020 and can be found in the CAP attachment documents.

4. REFERRAL RESPONSES

- **AHC EHU**

Council's Environmental Health Officer has granted an extension of time to the previous approval to install a waste water treatment system and accepted the amended underfloor plumbing plan (refer 15/W129/473).

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. One (1) representation was received. The representation is opposing the proposal and is from an adjacent property owner.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Bradley Nunn & Lucia Balogh	135 Taminga Grove Bridgewater	Self

The applicant or their representative – Gregg Jenkins (Heynen Consulting) may be in attendance.

The issues contained in the representation can be briefly summarised as follows:

- Light spill
- Previous planning conditions not enacted
- Landscaping
- Stormwater management
- Appropriateness of the land use

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant's Response to Representations**. Copies of the plans which were provided for notification are included as **Attachment – Publically Notified Plans**

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

- i. The Site's Physical Characteristics

The subject land is 16.34 hectares of undulating land and is one of the larger parcels in the area. The two storey dwelling on the subject land is not visible from the road due to the undulating nature of the parcel of land. The land is low in the north-east corner and high in the south-western corner. There is good arable pasture in the eastern two thirds of the land and the remainder is "woodland" which is grazed by cattle. The land is fenced into eight permanent horse paddocks, a house paddock and the woodland paddock. The section of the subject land selected for use as an arena

and to site the proposed horse keeping and farm building has previously been levelled sometime prior to 1986 according to the Council's aerial photography. There is a small dam in the south-eastern corner of the land. The house and the proposed building are accessed by existing separate access points to the land from Taminga Grove.

ii. The Surrounding Area

Properties to the north-east and south-east appear to be horse keeping properties with outdoor arenas. The direct eastern neighbour lives on a smaller rural residential parcel. The subject land is bounded to the south-west by Cox Creek and neighbouring properties on the western side of Cox Creek access their land from the west, namely from Strathalbyn Road, and will have no view of the proposed development. These south western neighbouring properties vary in size and use. To the north-west on the far side of Taminga Grove are two large parcels (greater than 40 hectares each) of undeveloped rural land which is undulating to steep. To the south-east are neighbouring properties in the District Council of Mount Barker. The south-eastern parcels are undulating and all gently slope towards the Onkaparinga River and some are flood prone.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Watershed (Primary Production) Zone and the Watershed Protection Policy Area and these provisions seek:

Watershed Protection Policy Area

- An area primarily for natural open space for non-intensive farming on large holdings minimising pollution of surface and underground water resources.
- Maintenance of a pleasant, attractive landscapes characterised by verdant undulating pastures, clumps of gum trees, with the occasional cluster of farm buildings.

The following are considered to be the relevant Policy Area provisions:

Objectives: 1 & 2

PDCs: 1, 2, 4 & 5

The applicant proposes to keep five horses on the land and rotationally graze them with other animals. Along with proposed pasture management techniques such as harrowing manure and weed management, the proposal represents low intensity farming which should minimize environmental impairment and not pollute surface or underground water resources in accordance with PDC 1. Further, the applicant has installed extensive stormwater controls as proposed for the previously approved larger building to manage the roof run and overland water flows further supporting the intent of PDC 1.

The keeping of five horses is well within the suggested rate of one horse per hectare detailed in PDC 2 (approximately 1 per 1.8 Ha) and the planned horse and land management practices will assist with the proposal not contributing to pollution of watercourses in accordance with PDC 2.

The proposal will not be seen from the freeway as sought by PDC 4. The building is 384m² and is of a scale and design to complement the topography of the area. The chosen site is on a low portion of the subject land which has been previously levelled. The building is a large building nestled into a low portion of the subject land with existing screening on its eastern elevation. The chosen colours (Colorbond Woodland Grey and Basalt) minimise the proposed building's visual impact from the public realm. The proposed arena lighting is designed with modern light technology which will minimise light spill, noting 10 metres from the arena the amount of light is between 13 and 43 lumens, noting 1 lumen is the equivalent of 1 candle per square metre. The nearest boundary is the eastern boundary (approximately 35 metres to the nearest light pole and the nearest dwelling (the representor) is more than 150 metres to the east. Sited anywhere else on the subject land, the building and lighting would be quite prominent and the earthworks extensive. The chosen site ensures best compliance with the guidelines of PDC 4 in relation to building scale, topography and visual impact from roads.

There is no native vegetation in the chosen site which is a previously levelled area in an improved pasture paddock ensuring the proposal is in accordance with PDC 5.

Watershed (Primary Production) Zone

The following are considered to be the relevant Zone provisions:

- Maintenance and enhancement of natural resources and the quality of water
- Long term sustainable rural production
- Enhance amenity and landscape for visitors and residents whilst increasing sustainable tourism

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2, 3, 4 & 5

PDCs: 1, 2, 3, 4, 8, 9, 11, 14, 15, 16, 17, 29, 36, 37, 38, 39, 40, 42, 43, 46, 47 & 70

Accordance with Zone

Horse keeping is envisaged in the Watershed (Primary Production) Zone and the proposal is considered to be at a low intensity being five horses on approximately 9 hectares of the parcel of land, with proposed stabling further minimising the impact on the subject land. Further PDC 70 describes four triggers for horse-keeping and associated buildings which make the activity non-complying. The proposed building is not in a flood mapped area, no part of the land proposed for horse-keeping has a slope greater than 12 degrees, the average rainfall is 901mm annually and the building is not proposed within 25m of a watercourse. Consequently the proposal is a merit form of development. The representors have contended that the building is within 25 metres of a watercourse. However this is not the case, based on mapping as well as ground proofing. The photos provided by the representor showing water flowing adjacent the proposed building are of the "diversion" drain installed in response to the representor's request in relation to the 2015 application.

Further, the applicant has recognised the requirements of PDCs 46 and 47 by proposing only five horses and various land management techniques, along with stormwater and waste management engineered solutions to minimise the potential for water pollution from activities within the proposed horse keeping building. The representors have identified the dam on their land as part of a watercourse. The building is 50m from a dam which is not on mapped watercourse, and on balance given the potential for significant land disturbance if the building was to be sited in another location, a 50m building setback is considered to meet the intent of PDC 46.

Further, by proposing not just horses but other stock and various land management techniques, including an extensive manure management plan, the applicant has considered PDCs 42 and 43 in continuing other primary production uses. With regards to PDC 40, the intent of discouraging stables is unclear as horse keeping is clearly contemplated as PDC 46 makes reference to it. The proposal includes five stables and is not considered intensive in the context of the relative size of the subject land, the number of horses proposed and that it is for private enjoyment of the land, not a commercial enterprise.

Form of Development

The proposed building is located below the ridgeline, in a valley and will not be visible on the skyline. It is set back a minimum of 25 metres from the property boundary with Taminga Grove. The proposed building is on a previously largely excavated site which means there will be no disturbance of native vegetation and along with proposed screening the proposed building is considered to be in accordance with PDC 1.

The proposed building is approximately 20 metres from the representor's boundary at its closest point. The wall height of 4 metres and total building height of 5.4 metres along with the chosen colours ensure the proposed building is in accordance with PDC 2. In addition the "shorter" length of the building faces the representor's property.

The proposal includes water tanks and an approved waste disposal system so it is considered to be in accordance with PDC 3. Further, the applicant has demonstrated the proposed building is 50m from the nearest watercourse in accordance with PDC 4.

Proposing a large building incorporating a number of uses, for example, stables, fodder store and vehicle storage has met the requirements of PDC 8 by limiting the number of buildings and the chosen location has minimised the need for a long driveway supporting the intent of PDC 9.

Arguably the eastern neighbours will be most affected by the proposal, particularly the proposed arena lighting. It is noted that eastern neighbour's dwelling is some 150 metres distant from the proposed building and lit arena, and is sheltered from the impact of the proposal largely by existing outbuildings on their own land but also by existing landscaping on their own and the subject land. The applicant has provided a lumen plan which demonstrates the light spill at 10metres from the arena to be between 13 and 43 lumens. Based on this, the lux level at the shared boundary with the representor is likely to be zero (completely dark) or close to it. The applicant has proposed some additional landscaping to address the representor concerns regarding

the dynamic nature of the existing plantings on the applicants' property boundary. Given due consideration of the limited hours of operation of the lights, the lumen plan and the proposed landscaping, the proposal, on balance, is considered to meet the requirements of PDCs 11, 14 and 15.

By making use of an existing level area and confirming their intention to cross graze the property, the proposal is considered to be in accordance with PDCs 16 and 17 as the proposal does not prejudice the use of the land for primary production purposes.

Appearance of Land and Buildings

The chosen site, colours and orientation of the building minimises visual intrusion from the road. The proposal is not clustered with other buildings on the site and this is not considered practical in this case as it would involve extensive earthworks and potentially disturbance of native vegetation on the site. Further, the proposal retains existing vegetation and proposes further vegetation planting to minimise visual impact thus is considered on balance to be in accordance with PDCs 37, 38 and 39.

Conservation

The representor has expressed concern regarding the impact of the proposal on the dam on a neighbouring allotment which is 50 metres from the proposed building. The proposed stormwater and waste water management solutions for the new building ensure water quality and natural systems are protected, in accordance with PDC 36. Further, no native vegetation removal is required in accordance with PDC 29.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- Orderly and economic development.
- Buildings should seek to minimize visual intrusion whenever possible.
- Protection of the Watershed from pollution and contamination.

The following are considered to be the relevant Council Wide provisions:

Animal Keeping and Rural Development

Objectives: 1, 2, 6, 7 & 8

PDCs: 1, 4, 5, 6, 7, 8, 9 & 10

The proposal does not change the amount of land retained for agriculture nor impact on native vegetation and is considered in accordance with PDC 1.

The application sufficiently addresses stormwater management, onsite waste disposal of both human and animal waste to protect water quality and proposes additional vegetated buffers and good land management (such as rotational grazing) to ensure the proposal is in accordance with PDC 4.

The animal keeping at 5 horses on approximately 9 hectares of land together with proposed good land management practices is unlikely to create an adverse impact on the amenity of the area, noting also that many other properties in the locality are horse keeping properties. Arguably the lighting of the arena is an associated activity which could cause an adverse impact on amenity. However, the lumen details and additional proposed plantings combined with separation distances result on balance with the proposal being considered in accordance with PDC 5. The proposed manure management plan is in accordance with PDC 6.

PDCs 7, 8, 9 and 10 are provisions that directly relate to horse keeping. The proposed stables are 50 metres from a watercourse and on a previously levelled portion of land ensuring the proposal is in accordance with PDC 7. The proposed wash down bay is internal to the proposed building, on a graded and sealed floor and the water is proposed to be treated through a silt trap and the approved on site wastewater system, ensuring the proposal is in accordance with PDC 8. PDC 9 requires stables, horse shelters or associated yards to be at least 30 metres from any dwelling on the site and from the nearest allotment boundary to avoid adverse impacts from dust, erosion and odour. The proposed building and arena are approximately 20 metres from the eastern boundary, however given the intensive horse keeping activities will be contained in the building at this location the opportunity for dust, erosion and odour is considered limited. Also noting that the neighbouring dwelling is some 150 metres from the proposed building the proposal is considered on balance to be in accordance with PDC 9. The proposed septic tank drainage area is not in a horse accessible area in accordance with PDC 10.

Design and Appearance

Objectives: 1

PDCs: 1, 2, 3, 7(c), 9, 28 & 29

In the context of a rural area, the size of the proposed building at 384m² is not unexpected, nor is the wall height of 4 metres or the proposed maximum height of 5.4 metres. Further, as the building is set back 25 metres from the road and 20 metres from the nearest boundary, in an excavated site, with natural colours being Colorbond Woodland Grey and Basalt for external cladding, the proposal is considered to be in accordance with PDCs 1, 2 and 3. PDC 7 requires development to not cause an adverse alteration to the character of the area. The proposed lighting could arguably cause an adverse alteration. However, the applicant has demonstrated through the provision of lumen plans and landscaping, the impact on the character of the area will be minimised. Further the proposed lit arena is behind the proposed building which will further screen the lighting from the public realm.

The proposal is using an existing level area which appears to have been in place since the mid-1980s, so the proposed minimal earthworks is in accordance with PDC 9.

The proposal exceeds the minimum setback expectations in accordance with PDCs 28 and 29.

Hazards

Objectives: 4 & 7

PDCs: 1, 2, & 4

Given the use of an existing excavated site and the proposal not being in a flood mapped area, the proposal is considered to be in accordance with PDCs 1 and 3. Further, the already installed diversion trench and the proposed on site waste system will ensure the proposal is in accordance with PDC 4.

Interface between Land Uses

Objectives: 1 & 3

PDCs: 1 & 2

The applicant has proposed adequate utilities for the proposed development including stormwater and on-site wastewater management. Further, the applicant has proposed to limit the use of the proposed lights to 9pm which when combined with the lumen plan, proposed screening and separation distances ensures the proposal is in accordance with PDCs 1 and 2. The representors have expressed concern their star watching activities will be impacted by the proposed lights. However, taking into consideration the potential lumen reading at the boundary, the proposed landscaping and the representor's dwelling being a further 120 metres or more from the boundary, it is considered that their concerns have been adequately addressed.

Natural Resources

Objectives: 2 & 10

PDCs: 1, 2, 3, 4, 6, 10, 11, 13, 14, 15, 16, 17, 37 & 38

The chosen site being already level, in a low lying area on the subject land combined with good land management practices proposed, is considered to be in accordance with PDCs 1, 2, 3 and 4, which are all concerned with being sensitive towards the natural environment. As mentioned elsewhere in this report, based on the discreet location of the proposal, it is considered that it will have minimal impact on the rural character and scenic amenity of the locality, and have no impact on bushland of the South Mount Lofty Ranges. The lit arena has the potential to impact on the rural character but appropriate mitigation measures are proposed to minimise those impacts. Consequently the proposal is considered to accord with PDC 6. The applicant has installed measures to manage overland water flows in accordance with a previous development approval (now lapsed) which was in accordance with the representor's request at the time. With the addition of the proposed building and associated tanks the applicant will connect to the existing stormwater management system which was designed for a much larger building and accordingly the proposal is considered to accord with PDCs 10, 11, 13, 14, 15 and 16. Further, water to be used in the building will be harvested from the building's rainwater runoff in accordance with PDC 17.

There is native woodland on the western portion of the land. However, the proposal has been designed to minimise the impact on that portion of the land. In particular, horses will not be grazed on this portion of the land, thus ensuring the proposal is in accordance with PDCs 37 and 38.

Orderly and Sustainable Development

Objectives: 1, 3 & 4

PDCs: 1, 2 & 9

As previously discussed in this report, the proposal is not considered to be at odds with the purpose of the Watershed (Primary Production) Zone and accords with PDC 1 as primary production on adjoining land will not be impacted by the proposal. Further, the proposal ensures the subject land can still be used for primary production purposes as envisaged in PDC 2.

Given the general slope of the subject land and the native woodland on its western portion, the proposal, using a historically cut area of the site is considered appropriate and makes the best use of the site location in relation to neighbours and the condition of the subject land. The proposal is therefore considered to be consistent with PDC 9.

Siting and Visibility

Objectives: 1

PDCs: 1, 2, 3, 4, 6, 7 & 10

As mentioned above, the proposed building and lit arena are at the end of a quiet road, without adjacent public reserves. However, given this discreet nature of the illuminated site, the proposal is considered to be in accordance with PDC 1. Whilst the proposed building is not grouped with other buildings on the site it is located to minimise visual intrusion to the surrounding landscape in accordance with PDCs 2 and 3. The proposal uses an existing cut site as envisaged in PDC 4. Given the proposed building has a wall height of 4 metres and an overall height of 5.4m and the applicant has chosen more recessive colours which blend in with the natural environment, namely Colorbond Woodland Grey and Basalt, the proposal is considered to accord with PDCs 6 and 7. The applicant has responded to the representors concerns and addressed the requirements of PDC 10 by proposing some additional landscape screening on the western boundary, being between 40 to 50 plants of five different species with varying height and density in addition to that which currently exists.

7. SUMMARY & CONCLUSION

This application is for horse keeping for a maximum of 5 horses, a farm and horse keeping building of 384m², a size not unexpected in the Zone, and lighting on the existing horse arena. The building is on an existing level excavated area and will have minimal visibility in the locality because of the chosen site, its relatively low profile and dark natural colours. The proposed building is appropriately setback from all boundaries and is finished in low light reflective colours in accordance with Council Wide Design and Appearance principles of development control. The applicant has demonstrated that the illumination of the existing horse arena will not detrimentally affect the amenity of the locality by way of light spill. The provided lumen plans demonstrate that

the lumens reading is only between 13 and 43 lumens at 10metres from the arena. Even though there is likely to be no light spill onto the representors' property, the applicant has offered to limit hours of use of the lights to 9pm and to provide additional landscaping along the common boundary. This will further mitigate the risk of potential lighting impacts for the neighbour.

Water quality impacts have been addressed by appropriate land management practises and the inclusion of stormwater and wastewater management systems. Given Cox Creek on the property's western boundary is 100 metres from the nearest proposed horse keeping on the subject land, the proposal is considered to accord with PDC 46 in the Watershed Primary Production Zone.

The proposal is considered to be 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.

8. 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 19/1021/473 by Richard Whitehead for a change of land use to include horse keeping (maximum 5 horses), construction of a horse keeping & farm building, outdoor arena, associated lighting & earthworks at 163 Taminga Grove 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:

- Plans from John C Bested & Assoc reference number 16934 drawing number 16934-ENG sheets 1, 2, 3 and 4 of 4
- Manure Management Plan date stamped by Council 17 February 2020
- Stables farm building plans – drawing number 16934 -10 rev 2, 16934 -11 rev 1, 16934 -12 rev 1, 16934 -13 rev 1, 16934 -14 rev 1 , 16934 -15 rev1 all date stamped by Council 17 February 2020 and amended Stormwater and runoff management plan 16934 -16 rev 1 dated 5 May 2020
- Landscape Plan prepared for client Melissa Whitehead and date stamped by Council 5 May 2020
- Exterior Scene 1/Planning Data from Dialux date stamped by Council 17 February 2020 and Horse Training Field dated 21.06.2019.

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

(2) Arena Lighting

All external lighting shall be directed away from residential development and, shielded if necessary to prevent light spill causing nuisance to the occupiers of adjacent properties.

REASON: Lighting shall not detrimentally affect the residential amenity of the locality.

(3) Arena Lighting Hours

The proposed arena lighting shall only be operated between 9.00am and 9.00pm and all lights shall be switched off no later than 9.00pm.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

(4) External Finishes

The external finishes to the building herein approved shall be as follows:

WALLS: Colorbond® Woodland Grey or similar

ROOF: Colorbond® Basalt or similar

REASON: The external materials of buildings should have surfaces which are of a low light-reflective nature and blend with the natural rural landscape and minimise visual intrusion.

(5) Maintenance of Stables and Surrounding Areas

The stables and manure receptacle shall be at all times maintained and kept in good order and repair. Manure from stables, yards and ménage areas shall be either stored undercover in an impervious surface protected from stormwater intrusion or in impervious containers prior to disposal from the land and in any case not within 10m of any property boundary. This does not, however, preclude use of the manure for domestic garden purposes on the land.

REASON: To ensure good land management practises, minimise smell and to ensure no adverse impacts on the water quality of any watercourse.

(6) Maintenance Of Horse-keeping Area

(a) The area where the horses are kept shall be maintained in a satisfactory condition at all times so as not to create any insanitary conditions or become a nuisance, be offensive or injurious to health.

(b) The horse/s shall not be exercised or ridden on the above land in such a manner as to annoy neighbours by way of dust, noise or otherwise.

(c) The horse/s shall be confined to sections of the horse yard on a rotation basis such that ground cover may regenerate in the unused sections. Where ground cover does not regenerate, the earth shall be covered with suitable material so as to reduce a dust nuisance.

(d) Horses shall not be grazed when paddocks are waterlogged, or when excessive soil pugging is caused.

REASON: To avoid dust nuisance to adjacent properties and adequate control of surface water run-off.

(7) **Maximum Number of Horses**

No more than five horses shall be kept on the subject land.

Yards or enclosures shall not be added to the stables without the prior written approval of Council.

The horses shall be contained at all times within a fenced area, as indicated on the approved plan.

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

(8) **Retention of Screening Trees**

The screen of existing trees and shrubs as shown on the various site plans and the Landscape Plan prepared for client Melissa Whitehead and dated stamped by Council 5 May 2020 shall be retained and maintained in good health and condition at all times with any dead or diseased plants being replaced as necessary in the next planting season.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated.

(9) **Overflow From Rainwater Tanks**

Overflow from rainwater tanks shall be treated on site to the satisfaction of Council in accordance with the amended Stormwater and runoff management plan 16934 -16 rev 1 dated 5 May 2020.

REASON: To minimise erosion and protect the environment and ensure that no ponding of stormwater resulting from development occurs on adjacent sites.

(10) **Management of Wastewater Treatment System**

Prior to the use of the wastewater treatment system associated with the Development, an audible and visible alarm connected to that treatment system shall be located within the existing dwelling located on the Land. Any additional alarm in the horse-keeping building must be non-audible.

REASON: To maintain the amenity of the area and protect the environment from an environmental hazard.

(11) **Landscaping**

Further landscaping, as shown on the Landscape Plan prepared for client Melissa Whitehead and date stamped by Council 5 May 2020, shall be planted prior to occupation of the Development and thereafter shall be maintained in good health and condition at all times to the Council's reasonable satisfaction. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased in the next planting season.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated.

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) Erosion Control During Construction

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

(3) 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.

(4) 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](http://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.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Referral Responses
Representation
Applicant's response to representations
Publically Notified Plans

Respectfully submitted

Concurrence

Melanie Scott
Senior Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
10 June 2020
AGENDA – 9.3

Applicant: Goodhouse Pty Ltd	Landowner: R D Routley
Agent: N/A	Originating Officer: Doug Samardzija
Development Application:	19/1054/473
Application Description: Two storey dwelling alterations & additions, deck (maximum height 3m)	
Subject Land: Lot:1 Sec: P88 DP:79759 CT:6031/117	General Location: 7 Beadnell Crescent Bridgewater Attachment – Locality Plan
Development Plan Consolidated : 8 August 2020 Map AdHi/1 , 30 & 74	Zone/Policy Area: Country Living Zone & Country Living (Bridgewater) Policy Area
Form of Development: Merit	Site Area: 3200m ²
Public Notice Category: Category 2 Merit -	Representations Received: 1 Representations to be Heard: 1

1. EXECUTIVE SUMMARY

The purpose of this application is to construct a two storey addition to an existing single storey dwelling. The proposal includes a two storey addition above the northern end of the dwelling. The addition will include alterations to the ground floor plan by changing one of the bedrooms into an entry point and a stairwell. The upper level will include a master bedroom, additional living area and a small balcony.

The subject land is located within the Country Living Zone and the Country Living (Bridgewater) Policy Area and the proposal is a merit form of development. One representation in opposition was received during the Category 2 public notification period.

As per the CAP delegations, the CAP is the relevant authority for Category 2 applications where representors wish to be heard.

The main issues relating to the proposal are overlooking, stormwater management and impact on the character of the locality.

In consideration of all the information presented, and following an assessment against the relevant Policy Area, Zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions:

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Two storey addition predominantly above the northern end of the existing single storey dwelling
- Maximum wall height of 6m with the overall height of 8.4m to the apex of the roof
- External finishes include a mixture of timber cladding and Hiland Tray cladding in Colorbond Monument for the walls and Hiland Tray cladding in Colorbond Monument for the roof
- Dwelling is set 30 m away from front allotment boundary, 19m from the northern boundary, 16m from the southern boundary and 35m from the rear allotment boundary
- North facing balcony with a maximum height of 3 metres
- Alteration to the ground floor layout with one of the bedrooms altered to become an entry point with a stairwell to the upper level. The upper level will include a master bedroom, additional living area and a small balcony

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

The Land Management Agreement registered over the land is included as **Attachment – Land Management Agreement**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
31 January 2018	17/1018/473	Masonry Front Fence (maximum height 2m) associated with existing dwelling
08 July 2014	14/442/473	Domestic outbuilding (garage and study) 12m x 9m x 2.6m wall height
16 September 2008	07/D33/473	Land division-boundary realignment

A Land Management Agreement (LMA) is registered over the subject land which relates to the retention of trees and a building envelope on 9 Beadnell Crescent, Bridgewater.

4. REFERRAL RESPONSES

No referrals were required for this application.

5. CONSULTATION

The application was categorised as a Category 2 form of development in accordance with Country Living Zone Public Notification table requiring formal public notification. One (1) representation was received opposing the proposal. The representation that was received was from an adjacent property.

The following representor wishes to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Helen Thompson	9 Beadnell Crescent, Bridgewater	Helen Thompson

The applicant and the owner may be in attendance.

The issues contained in the representation can be briefly summarised as follows:

- Excessive building height and visual impacts
- Overlooking
- Stormwater management

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant's Response to Representations**. Copies of the plans which were provided for notification are included as **Attachment – Publically Notified Plans**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

- The Site's Physical Characteristics

The subject land is an irregular shaped allotment of approximately 3,200m² in area located on the low side of Beadnell Crescent and sloping west to east. The property is service by SA Water mains water and sewer. Current site improvements include a single storey dwelling in the middle of the property, a large domestic outbuilding to the north of the dwelling, a masonry front fence, a small gazebo to the rear of the dwelling and a bitumised internal driveway and access track. With the exception of a small lawn area on the northern side of the dwelling, the remainder of the rear of the property is predominantly covered with trees and dense vegetation. Small portion of the rear allotment is also located in a 1 in 100 and 1 in 10 year flood plain due to Cox Creek traversing through the rear of the allotment.
- The Surrounding Area

The locality is characterised by a mixture of allotment sizes ranging from as small as 1,500m² to allotments as large as 6,300m². With the exception of the large recreation land to the north east of the subject land all of the other properties within the locality are used for residential purposes. The area is characterised by a wooded character with a mixture of single and two storey dwellings predominantly maintaining deep setbacks from the road. Cox Creek traverses through a number of properties within the locality with all of those properties being subject to a 1 in 100 or 1 in 10 year flood plain.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Country Living Zone and the Country Living (Bridgewater) Policy Area and these provisions seek:

- *Development that contributes to the desired character of the policy area and zone*
- *Residential development sensitive to the particular topography of the area and which has minimal visual and environment impacts*

The following are considered to be the relevant Policy Area provisions:

Objectives: 1

PDCs: 1 & 2

Objective 1 and PDC 1 of the policy area seek for development to be consistent with the desired character of the policy area. The desired character statement for the Bridgewater Policy area details that the design of buildings will vary considerably within the policy area and that the built form in residential areas will be characterised by relatively modest one or two storey dwellings. This statement also seeks that dwellings generally be of brick veneer construction with front verandahs and tiled or pre-coated metal pitched roofs. The proposed development is considered to be sufficiently consistent with the desired character statement in that it is a maximum of two storeys and whilst the walls of the addition are not of brick veneer, they will be of pre-coated dark tone metal finish and timber cladding which will blend into, and complement the locality.

PDC 2 of the policy area refers to the setbacks from property boundaries. Considering that the existing dwelling is well setback from all boundaries and the proposed addition is predominantly over the existing footprint of the dwelling it easily satisfies all of the setback requirements and is therefore consistent with PDC 2.

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2 & 3

PDCs: 6, 7, 9, 10 & 11

Objectives 3 and PDC 6 seek for development to contribute to the desired character of the zone. The desired character statement acknowledges that the zone contains traditional designs and materials but envisages that new dwellings will incorporate modern designs and building materials. Whilst this is an addition onto an existing dwelling it still satisfies the intent of the desired character statement in that it will incorporate modern design elements and materials which will still be of appropriate colours to complement the landscape. This statement also acknowledges that there a significant number of two storey dwellings scattered throughout the zone and as such the proposed two storey addition is considered to contribute to the character of the zone and is therefore in accordance with Objective 3 and PDC 6.

PDC 7 seeks for development to be designed and sited to relate to the slope of the land so that the bulk and scale of the built-form does not dominate the landscape, that the earthworks are kept to a minimum and the visual impact to adjoining dwellings and public spaces are minimised. As detailed above, the majority of the proposed works will occur above the northern section of the existing single storey dwelling meaning that there will be no additional earthworks required and as such the proposed development satisfies the desired character statement and PDC 7 (b). In relation to the bulk and scale, whilst it is acknowledged that the proposed works are going to increase the bulk and scale of the dwelling, it is important to note that the allotment is located on the lower side of the road and the ridge cap at 8.4m will still be below the road level. It will also be consistent with PDC 9 which states that maximum building height from natural ground level can be up to two storeys and 9 metres. As such, it is considered that the bulk and scale of the proposed addition is not going to dominate the landscape within the locality and is therefore consistent with PDC 7(a).

In relation to impacts on views from adjoining dwellings, it is considered that proposed development will have some level of impact as this is unavoidable due to the two storey nature of the proposed works. In taking into account the location of the neighbouring property to the south, the fact that it is below the floor level of the subject dwelling and also considering the separation distance of approximately 25 metres, it is considered that these visual impacts will be minimal. In addition considering the orientation and location of the adjacent dwelling and the majority of the private open space its predominant views are considered to be towards north-east, east and south-west. As such, the views that are being impacted upon are not the one's which are predominantly enjoyed by adjoining property. As such, it is considered that proposed development is not contrary to PDC 7(c).

PDC 10 seeks that existing vegetation should screen buildings and excavation from view. Whilst it is not considered possible to fully block all of the views of the proposed two storey addition, it is considered that existing vegetation along the front and rear of the property will provide some level of screening.

PDC 11 seeks that proposed two storey dwellings or additions to take into account the bulk and scale relative to adjoining dwellings by incorporating a stepping in the design in accordance with the slope of the land and where possible setting the upper level further away from the boundaries. Considering that the proposed addition is going to be set on the lower side of Beadnell Crescent and is going to be set 20m away from the front allotment boundary and 19m from the closest side boundary, it is considered to be sufficiently consistent with PDC 11.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- *Development of a high design standard and appearance that responds to and reinforces positive aspect of the local environment and built form*
- *Orderly and economic development that creates a safe, convenient and pleasant environment in which to live in*

- *A diverse range of dwelling types and sizes available to cater for changing demographics, particularly smaller household sizes and supported accommodation*

Design and Appearance

Objectives: 1

PDCs: 1, 3, 7, 8, 9 & 18

Objective 1 seeks that development is of a high design standard, whilst PDC 1 seeks for proposed buildings to reflect the desired character of the locality whilst incorporating contemporary designs which have regard for mass and proportion, external materials, roof pitch and façade articulations and detailing. It is considered that the proposed addition is of high design standard which incorporates the use non-reflective finishes and darker natural tones that will blend in with the locality. The use of darker tones in the finishes also ensures that it is consistent with PDC 3. Whilst the contemporary barn style design is not commonly seen in this locality it has become a common design style throughout the hills. The neighbour has raised concerns about the bulk and scale of the addition and from their perspective it will appear as a relatively large structure. In saying that, neighbouring property is located below the subject land and as such this is unavoidable. As mentioned earlier in the report, from a streetscape perspective the bulk and scale is acceptable and is also consistent with all quantitative requirements pertaining to setbacks and height stipulated in the policy area and zone. The proposal is therefore sufficiently consistent with Objective and PDC 1.

Concerns were also raised by the representor in regards to the impacts on the views from their property. It is considered that the addition is well setback (19m) from the shared boundary and based on the orientation of the neighbouring dwelling, and it being significantly lower, it is considered that the proposal will not have any significant impact on the views from this neighbouring property. As such, the proposal is considered to be consistent with PDC 7 (a).

Considering the design and style of existing dwelling in comparison with the proposed addition, it is considered that the addition does not fully complement the character of the existing dwelling, and is therefore inconsistent with PDC 8. However, noting the positioning of the addition is to one end of the existing dwelling, it could be argued that the two different designs/styles are to a degree separated and are therefore of less consequence. In addition considering the setbacks from the boundaries and the fact that the dwelling and proposed additions will be below the road level, the failure to satisfy PDC 8 is not considered to be detrimental to the proposal.

PDC 18 seeks that development minimises direct overlooking of the main internal living areas and areas of private open space of neighbouring properties by offsetting the location of balconies and windows so that the views are oblique rather than direct, by setting the building away from boundaries and incorporating screening where appropriate. Overlooking from the upper level living area was raised as a concern by the adjoining neighbour. It is acknowledged that there will be some views into neighbouring property from the upper level north elevation window of the living area to the north-eastern side of the neighbouring dwelling. However, the

Environment, Resources and Development Court generally refer to the Good Residential Design SA guidelines for further practical guidance on what is considered 'direct overlooking'. Noting that the proposed upper level window is approximately 25m (on an angle) away from the shared side boundary, it is considered that the view from this window would be sufficiently distant and oblique, and therefore not considered as direct overlooking into areas of private open space on the adjoining property. The proposal is therefore considered to be consistent with PDC 18.

Infrastructure

Objectives: 1

PDCs: 1

Objective 1 seeks that infrastructure be provided in an economical and environmentally sensitive manner whilst PDC 1 states that development should only occur where it has access to adequate utilities and services such as drainage and stormwater system. In the representation received the representor has stressed concerns with current stormwater management and trespass of stormwater from the subject land into their property. In the response to the representation, the applicant has outlined the changes that were made to the stormwater management system on the subject land and this has also been depicted on the amended site plan provided. Essentially, this indicates that all stormwater is being discharged to the watercourse located at the rear of the property. The applicant has also indicated that the proposal adds an additional 10m² of roof catchment area which is not considered to be of a scale which would result in significant increase in stormwater runoff from the site. As such it is considered that proposal is consistent with the Objective 1 and PDC 1.

Orderly and Sustainable Development

Objectives: 1 & 4

PDCs: 1 & 9

The subject land is located in Country Living Zone (Bridgewater) Policy area which anticipates residential use of land in the form of single and two storey dwellings. The proposal is therefore considered to be consistent with Objectives 1 and 4, and PDC 1. PDC 9 states that development should take place on land which is suitable for the intended use having regard to the location and the condition of that land. As mentioned earlier, this zone is designated for residential purposes and the land is currently being used for such purposes. Other issues which have been identified such as bulk and scale and overlooking have been considered and are not considered to be of significant considering the topography of the land and the distances from neighbouring properties. In addition, the proposed works will be above the footprint of the existing dwelling which would mean that there would be no additional earthworks required to accommodate the proposed works. The proposal is therefore considered to be consistent with PDC 9.

Residential Development

Objectives: 1 & 2

PDCs: 27

Objective 1 seeks safe, convenient, sustainable and healthy living environment whilst Objective 2 seeks a diverse range of dwelling types and sizes to cater for a changing demographic. The proposed addition is considered to achieve both of these objectives by ensuring continued residential use and also incorporating a contemporary dwelling addition design to provide a more modern open plan living. PDC 27 refers to visual privacy similar to the aforementioned provision and also seeks that upper level windows have a sill height 1.5m above the floor level or by having the windows installed with obscured glass up to that height if direct overlooking is created. As discussed earlier in the report, given the separation distance it is considered that there is no need for additional privacy measures.

Sitting and Visibility

Objectives: 1

PDCs: 3, 6, 7 & 10

PDC 3 seeks that that buildings outside urban areas and in undulating landscapes be sited in an unobtrusive location, be well setback from public roads, with a roof line below the road when located on the lower side of the road and constructed of materials and colours which complement the surrounding development. At the same time PDC 6 seeks that structures be designed to minimise their visual impact by having a low profile and by having the roofline complement the contours of the land. The subject land is located on the lower side of Beadnell Crescent with the existing dwelling set 29 metres away from the front allotment boundary. The proposed two storey addition will be located below the road level and is therefore considered to be unobtrusive in the locality. External colours are darker tones which will complement the locality. The proposal is therefore considered to be consistent with PDCs 3 and 7. As mentioned, the proposal is not entirely consistent with PDC 6 given the barn style design of the second storey addition and a 40 degree roof pitch and as such the profile of the dwelling is higher than it would have been with a traditional roof or skillion roof design.

PDC 10 states that development should be screened by the establishment of landscaping surrounding buildings and along property boundaries. As mentioned above, given the setback distances and the fact that addition is still going to be below the road level there will be no significant visual impacts when viewing the property from the road. There is significant vegetation along the southern boundary as well as the rear of the property. This vegetation will ensure that the second storey is well screened from passing traffic from the south and also from the immediate neighbouring property. Whilst the addition is still going to be visible from the representor's site, these views are significantly reduced by landscaping along the boundary. The only exception is the view towards the proposed two storey addition when standing directly in front of neighbour's house. Having said that, given the elevation difference between the two properties it would be hard to effectively plant landscaping along the boundary which would effectively block the entire two storey

addition. The proposal is therefore considered to be sufficiently consistent with PDC 10.

7. SUMMARY & CONCLUSION

The development proposal is to construct a two storey addition to an existing single storey dwelling. The proposal will not have an adverse impact on the locality or neighbouring properties, nor will it be readily visible from public realm.

The property is located on the lower side of the road with existing dwelling set well below the road level and a sufficient distance from property boundaries. The two storey addition which satisfies all of the quantitative requirements of the development plan will also be below the road level. Whilst some visual impacts are anticipated for the neighbouring property to the south-east, this is unavoidable due to this property being located below the subject land. However the addition is well setback from the property boundary and as such the visual impacts are reduced and are going to be distant.

Concerns in relation to overlooking have been carefully considered and based on the separation distance, existing landscaping along the boundaries, it was considered that the upper level addition will not create significant overlooking into the neighbouring property.

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.

8. 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 19/1054/473 by Goodhouse Pty Ltd for Two storey dwelling alterations & additions, deck (maximum height 3m) at 7 Beadnell Crescent 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 prepared by Goodhouse, drawing number A1.0, dated 18/05/2020
- Amended existing house floor plan prepared by Goodhouse, drawing number A1.1, dated 10/12/2019 and date stamped by Council 24/02/2020
- Amended proposed ground floor plan prepared by Goodhouse, drawing number A1.2, dated 10/12/2019 and date stamped by Council 24/02/2020
- Amended upper level floor plan prepared by Goodhouse, drawing number A1.2.1, dated 10/12/2019 and date stamped by Council 24/02/2020
- Amended roof plan prepared by Goodhouse, drawing number A1.3 dated 10/12/2019 and date stamped by Council 24/02/2020
- Amended north and east elevation drawings prepared by Goodhouse, drawing number A2.0, dated 10/12/2019 and date stamped by Council 24/02/2020

- **Amended south and west elevation drawings prepared by Goodhouse, drawing number A2.1, dated 10/12/2019 and date stamped by Council 24/02/2020**

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

(2) Residential Lighting

All external lighting shall be directed away from residential development and, shielded if necessary to prevent light spill causing nuisance to the occupiers of those residential properties.

REASON: Lighting shall not detrimentally affect the residential amenity of the locality.

(3) External Finishes

The external finishes to the building herein approved shall be as follows

WALLS: Mixture of timber cladding and Hiland Tray cladding in Colorbond Monument or similar

ROOF: Hiland Tray cladding in Colorbond Monument or similar

REASON: The external materials of buildings should have surfaces which are of a low light-reflective nature and blend with the natural rural landscape and minimise visual intrusion.

(4) Firefighting Water Supply - Mains Water Supply Available

A supply of water independent of reticulated mains supply shall be available at all times for fire fighting purposes:

- **A minimum supply of 2,000 (two thousand) litres of water shall be available for fighting purposes at all times; and**
- **The water supply shall be located such that it provides the required water; and**
- **The water supply shall be fitted with domestic fittings (standard household taps that enable an occupier to access a supply of water with domestic hoses or buckets for extinguishing minor fires); and**
- **The water supply outlet shall be located at least 400mm above ground level for a distance of 200mm either side of the outlet; and**
- **A water storage facility connected to mains water shall have an automatic float switch to maintain full capacity; and**
- **Where the water storage facility is an above-ground water tank, the tank (including any support structure) shall be constructed of non-combustible material.**

REASON: To minimise the threat and impact of fire on life and property as your property is located in a MEDIUM Bushfire Prone Area.

(5) Stormwater Overflow Directed To Water Course

All roof runoff generated by the development hereby approved shall be directed to a rainwater tank with overflow directed via a sealed system to the watercourse at the rear of the property to the satisfaction of Council within one month of the roof cladding being installed. Erosion protection shall be provided at the stormwater discharge point. All roof and hard paved water runoff shall be managed to prevent trespass onto adjoining properties.

REASON: To minimise erosion, protect the environment and to ensure no ponding of stormwater resulting from development occurs on adjacent sites.

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.

Please refer to page two (2) of this form (Notes for Applicant blue box) for information on changes to the planning system and potential changes to extensions of time requests.

(2) 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.

(3) Erosion Control During Construction

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

9. ATTACHMENTS

Locality Plan
Proposal Plans
Representation
Applicant's response to representations
Publically Notified Plans

Respectfully submitted

Concurrence

Doug Samardzija
Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
10 June 2020
AGENDA – ITEM 9.4

Applicant: Derek Grove	Landowner: D A Grove
Agent: N/A	Originating Officer: Sarah Davenport
Development Application:	20/37/473 20/D044/473
Application Description: Land Division (1 into 2) (non-complying) (SCAP relevant authority)	
Subject Land: Lot:2 Sec: P5028 DP:15312 CT:5317/735	General Location: 15 Tiers Road, Woodside Attachment – Locality Plan
Development Plan Consolidated : 8 August 2019 Map AdHi/18 & AdHi/57	Zone/Policy Area: Watershed (Primary Production) Zone & Woodside (Rural Surrounds) Policy Area
Form of Development: Non-Complying	Site Area: 2.84ha
Public Notice Category: 3	Representations Received: SCAP yet to determine to proceed with assessment Representations to be Heard: As above

1. EXECUTIVE SUMMARY

The purpose of this land division is to create one additional allotment.

The subject land is located within the Watershed (Primary Production) Zone and the Woodside (Rural Surrounds) Policy Area, and is a non-complying form of development. The land also falls within the Environmental Food Production Area, where land division is discouraged. The State Commission Assessment Panel (SCAP) is the relevant authority in accordance with clause 7 (b) of Schedule 10 of the Development Regulations (2008), as the land division seeks to create an additional allotment outside a designated township and two (2) habitable detached dwellings exist on the subject allotment. SCAP has not yet determined whether they wish to proceed with the assessment of this non-complying application and are awaiting Council's comments before doing so.

As per the CAP delegations, the CAP is the relevant authority to make comment to SCAP in this instance, as the proposal is for a non-complying land division.

The main issues relating to the proposal is that it involves creation of an additional allotment in a zone where the policy only envisages minor readjustment of boundaries for specific purposes. In addition, the subject land is flood prone as delineated on Figure AdHiFPA/17 and the proposed dividing boundary will potentially interfere with riparian land and native vegetation.

In consideration of all the information presented, and following an assessment against the relevant zone, policy area and Council Wide provisions within the Development Plan, staff are

of the view the proposal is seriously at variance with the Development Plan and recommend that the Council Assessment Panel **DO NOT SUPPORT** this application and advise the SCAP accordingly.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for a land division to create 1 additional allotment, as described in more detail below :

- Existing Allotment 2 measures in the order of 2.84ha and is proposed to be divided into two allotments, to create allotment 21 with an area of 1.417 ha and allotment 22 with an area of 1.42 ha

Existing Allotments

Allotment	Area (ha)	Currently containing
2 (existing)	2.84 hectares	Detached dwelling and associated outbuildings (Destroyed by Cudlee Creek Bushfire)

Proposed Allotments

Allotment	Area (ha)	Containing
21	1.417 hectares	Proposed Horticultural land use (market garden)
22	1.42 hectares	Dwelling and Outbuilding (to be rebuilt)

The plan of division includes:

- An aerial image of the subject land, overlaid by existing boundaries, the proposed dividing boundary, flood hazard areas, land contours and easements.

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information**

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
30 March 2020	473/289/2020	Replacement domestic outbuilding
10 November 2008	473/111/2006	Two Storey Detached Dwelling and Carport
8 August 1997	473/121/97	Carport
21 November 1995	563/236/1995	Farm Building
22 August 1982	4-338	Dwelling

It is worth noting that the subject land was affected by the Cudlee Creek Bushfire in December 2019.

4. REFERRAL RESPONSES

- **CFS**

- The proposed land division is on a site that is located within an area that is categorized as a HIGH Bushfire Protection Area in the Council's Development Plan.
- SA CFS notes that the proposed land division at 15 Tiers Rd, Woodside does not create any additional allotments intended for residential use. Therefore, SA CFS has no objection to the proposed land division.
- The above responses are included as **Attachment – Referral Responses**.

5. CONSULTATION

The application has been categorised as a Category 3 form of development pursuant to Regulation 33(1)(c) of the *Development Regulations 2008*. As SCAP have not yet made a decision as to whether to proceed with assessment of the development application public notification has not yet been undertaken.

6. PLANNING & TECHNICAL CONSIDERATIONS

Environmental Food Production Area

The subject land is located within the Environmental Food Production Area (EFPA) as defined by General Registry Office Map G17/2015. As of 1 April 2019, Section 7 (5)(d) of the Planning, Development and Infrastructure Act 2016 prohibited the granting of consent to land division applications for the purposes of residential development. Although the proposal does not indicate that the development is for the purposes of residential development, the statement of support mentions that the land owner intends to sell the residential block (proposed allotment 22) and retain lot 21 in his ownership to establish a market garden. In the absence of any agronomist report and development application for such a use and such a use being established if approval was granted, the establishment of such is considered quite theoretical. The proposal currently contains insufficient information to demonstrate that the divided allotment can and will only be used for primary/food production purposes and the overall productivity of such a use on a small parcel of land. In addition, there is no significant evidence to demonstrate that food production will be more viable on this land if it was to be divided as opposed to be being leased or farmed as is. The physical barrier of the Onkaparinga River is noted, but if only the eastern portion of the land is to be farmed, establishing shedding on this portion of the land would largely resolve these access issues. Staff are also concerned that many properties through the Council area have similar constraints. It is noted that Section 7 (5)(e) details that a relevant authority must impose a condition that the additional allotment created will not be used for residential development. Staff suggest it would need to more robust than just a condition and that a Land Management Agreement would need to be entered into.

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject land measures approximately 2.84ha and is a slightly irregular shaped allotment. Whilst the land has disrupted frontage to Tiers Road the land is accessed via a right of way over 25 Tiers Road. The land is relatively flat in nature, falling from the west down to the east and towards the river. The land is geographically fragmented by

the Onkaparinga River and is identified to be at risk of inundation in a 1 in 100 and 1 in 20 flood event. Native vegetation exists along and in close proximity to the riverbank.

ii. The Surrounding Area

The subject land is located on the interface with the township of Woodside and specifically the Town Centre Zone, and is therefore surrounded by a mixture of land uses. The land surrounds 13 Tiers Road which historically was used as a Council depot. Land directly to the south and west is being used for low scale primary production purposes (livestock grazing and hay), land to the north is being used for grazing and community recreation (bike track). The eastern boundary of the subject land abuts the Amy Gillett bike path, buffering the subject land from the commercial uses on the western side of Onkaparinga Valley Road. There are some examples of residential use on the south-eastern side of Onkaparinga Valley Road, which are historical and were evident on the 1949 aerial imagery in Council's mapping system.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Woodside (Rural Surrounds) Policy Area in the Watershed (Primary Production) Zone and these provisions seek:

Woodside (Rural Surrounds) Policy Area:

- The retention of the Policy Area mainly for farming or open space.
- Enhancement of the landscape quality and amenity of the Country Township of Woodside by additional tree planting.
- The exclusion of buildings which may intrude on the skyline of the prominent but sparsely vegetated valley face to the west of the Onkaparinga River.
- The exclusion of non-compatible uses.

The following are considered to be the relevant Policy Area provisions:

Objectives: 1

PDCs: 2

Objective 1 calls for the retention of the Policy Area for farming purposes and open space. Whilst the statement of support submitted as part of the application mentions future use of the land for horticulture (market garden), the viability of the existing allotment size for farming purposes is questionable. Further constraining the land is the existing native vegetation, flood plain area, easements and requirement for headland areas and buffers from boundaries, watercourses and sensitive uses in the locality. These constraints will effectively reduce an already undersized allotment, limiting any potential for a viable food production use.

PDC 2 is explicit in prohibiting the creation of additional allotments unless for the exact purpose of realigning or, consolidating existing allotments. The proposal is clearly at variance with PDC 2.

The subject land lies within the Watershed (Primary Production) Zone and Woodside (Rural Surrounds) Policy Area and these provisions seek:

- i. The enhancement of the Mount Lofty Ranges Watershed as a source of high quality water
- ii. Maintenance and enhancement of natural resources of the South Mt Lofty Ranges
- iii. Long-term sustainability of rural production
- iv. The enhancement of the amenity and landscape of the south Mt Lofty Ranges for the enjoyment of residents and visitors

The following are considered to be the relevant Zone provisions:

Objectives: 2, 3 & 4,

PDCs: 18, 19, 20, 21, 31, 33 & 34

Accordance with Zone

The Watershed (Primary Production) Zone (W(PP)) focuses on development which will enhance water quality, primary production and conservation in the Mount Lofty ranges. Though zoned W(PP), the existing allotment is a 'rural living' style property, constrained by the Onkaparinga Valley River and consequentially is flood prone. The land is not serviced by Council's Community Wastewater Management System (CWMS) or SA Water, with the destroyed dwelling previously managing wastewater via an on-site aerobic system. Should SCAP resolve to proceed with assessment, the EPA will be required to assess likely water quality and environmental impacts of the land division.

The proposal intends to create an additional allotment under the premise that the land is geographically separated in its current form. PDC 18 mandates that land division should only be undertaken where a dwelling could satisfy the provisions of Table AdHi/5. There is relatively level land more than 50 metres from the Onkaparinga River, outside the flood plain and 50 metres from bores (the last not being a Table AdHi/5 criteria). Whilst compliance with Table AdHi/5 could be demonstrated, particularly if a CWMS extension was constructed, this additional allotment must only be used for primary production purposes under the EFPA criteria. This would be a valid consideration for associated agricultural industry and other value adding uses if they require wastewater management. If on-site wastewater management was the preferred option, this would reduce the land area available for food production even further.

Whilst there has been no report presented with this application which investigates or demonstrates the viability of the land for primary production purposes, it is considered that the current potential for the land to be used for primary production purposes is limited. In accordance with Council's Buffers Policy (28 November 2017 revision), the establishment of a horticultural operation would require the implementation of buffers between the Onkaparinga River and also for protection of vegetation which exists along the riverbank and the adjoining township. It is worth noting that the land directly interfaces with the Township Zone, where horticulture is non-complying.

In accordance with PDC 19 and PDC 21 the proposed division is unlikely to result in a loss of any primary production land as the primary production value of the existing allotment is questionable. As mentioned above, it is also questionable how

dividing or fragmenting the subject land with already limited production capability will increase the primary production value or viability of the land.

In alignment with the Policy Area provisions, Zone PDCs 20, 33 and 34 explicitly discourage the division of land unless in the form of boundary realignment on the proviso that boundaries will not be in close proximity to native vegetation. The essential nature of the proposal, to create an additional allotment is at variance with these provisions.

Although the proposal does not conflict with provisions relating to protection of land for primary production, both the zone and policy area provisions are clear in discouraging the creation of additional allotments in the zone. If SCAP elect to progress the application, more detail should be provided around the potential impacts on water quality and how the new allotment will be used for horticulture.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- i. Development to be undertaken on land that is suitable for the intended purpose, whilst also having regard for the zoning of the land,
- ii. Protection of productive primary production land from conversion to non-productive or incompatible uses,
- iii. Retention of rural area for the maintenance of the natural character and rural beauty of these area, and
- iv. Protection of the Mount Lofty Ranges Watershed from pollution.

The following are considered to be the relevant Council Wide provisions:

Animal Keeping and Rural Development

Objectives: 1, 2 & 3

PDCs: 1 & 4

Objectives 1, 2 and 3 are concerned with the continuance of primary production in rural areas. The application is not at variance with the rural development objectives. However, PDC 1 calls for the retention of rural land in relation to native vegetation conservation. The proposed division aims to create a new boundary running between the centreline of the Onkaparinga Valley River which is lined with remnant vegetation, fragmenting the native vegetation. The vegetation and river should be contained on the one allotment to ensure its management is not delegated to multiple parties.

PDC 4 mandates that horticulture and other primary production activities should only be undertaken in association with appropriate site management measures, such as buffers, waste management, watercourse protection and vegetation management. In the absence of a detailed concept and agronomist report and a development approval for the proposed horticulture use, it cannot be determined whether all the necessary protection measures for natural resources and adjacent sensitive uses can be implemented in conjunction with a future primary production use. Based on the size of the land, it is unlikely that the land can be used for the proposed purpose without causing interface issues and undermining the natural resources on site.

Hazards

Objectives: 1 & 2

PDCs: 1, 3, 13, 14 & 22

The subject land is located within a High bushfire risk area pursuant to AdHi(BPA)/6 and is within a designated floodplain as shown on AdHiFPA/7.

Objectives 1 and 2 and PDC 1 designate that development should not be undertaken on land susceptible to natural hazard risk. The application proposes to create an additional allotment within both a flood plain and high bushfire risk area, essentially intensifying use of the land. Whilst the development does not incorporate built form or change in land use, intensifying the land use in high risk areas and at the edge of the township is something that would need to be carefully considered in a land use application.

PDC 3 discourages development on land susceptible to inundation unless it can be demonstrated that the proposal connects to a public stormwater system, buildings are constructed to inhibit the entry of flood waters and it will not result in the pollution of watercourses. The proposed division does not incorporate any land use or built form component so compliance with these requirements cannot be substantiated. The dwelling previously managed stormwater on site due to the distance from Tiers Road. The closest Council stormwater pipe is located on the opposite side of Tiers Road.

In alignment with PDCs 13 and 14, the CFS has indicated that they have no objection to the proposal based on the indication that the newly created allotment will not be for residential purposes. The land is of a suitable size that can accommodate on site manoeuvring and water tanks for fire-fighting purposes.

Unlike neighbouring allotments to the east, the land is not highlighted to be known for site contamination, nor does aerial imagery suggest the land has been used for potentially contaminating purposes.

Interface Between Land Uses

Objective: 1, 2 & 3

PDCs: 1 & 13

The subject land directly interfaces with the Township of Woodside and specifically the Town Centre Zone, with historical sensitive land uses (residential properties) to the south-east of the subject land. The subject land is some 26-31 metres from the rear boundaries of these allotments. Objectives 1, 2 and 3 call for development which does not conflict with existing adjoining land uses and does not disrupt amenity. The proposal indicates that the newly created allotment 21 is intended to be used for horticultural purposes, a non-complying use in the Town Centre Zone. Furthermore, as no change in land use has been submitted as part of this development, the overall impact and scale of the land use cannot be appropriately assessed. PDC 1 calls for development which will not cause off site amenity impacts with regard to spray drift, traffic or hours of operation, while PDC 13 specifically opposes the establishment of horticultural operations adjacent Townships. The proposed development does not satisfy the interface provisions by virtue of proximity to the township and residential uses. In the absence of a land use application and assessment of this, the proposal cannot quantify that a horticultural operation on the site would not detrimentally impact adjoining properties.

Land Division

Objectives: 2 & 5

PDCs: 1, 2,5, 7, 11(d), 14, 21, 22, 23

Objectives 2 and 5 envisage that the division of land will create allotments which are appropriate for their intended use but discourage land division in rural areas. The proposed division has not demonstrated that it will create an allotment suitable for primary production activity due to the number of overlays, and the existing nature of the allotment. PDCs 21 and 22 specifically address rural land division and retaining primary production land. The subject land in its current form is not a primary production style allotment, meaning the division is unlikely to prejudice primary production in the locality.

PDC 1 designates that land should only be divided where it can be appropriately serviced and can manage stormwater in a safe and environmentally sensitive manner.

The subject land is prone to inundation and currently manages waste water on site. There is no formalised access to proposed allotment 21 and no details have been provided to demonstrate that stormwater can be appropriately managed on site.

Both PDCs 2 and 7 discourage the division of land where the resulting allotment cannot be used for its intended purpose. As previously mentioned in this report, the necessity for buffering, the existing native vegetation and flood hazard all limit the suitability of proposed allotment 21 for market gardening purposes.

PDCs 5 and 11(d) envisage that land division will not undermine or conflict with native vegetation. The subject land contains vegetation along the river bed, which

would be separated as part of the division. Though there is no mention around tree removal in the proposal, the division of the allotments is not considered to align with these two PDCs.

PDC 23 prohibits land division which poses a risk to water resources. As the land is not connected to mains sewer or CWMS and is subject to inundation the further division of the land and intensifying the use of the site is deemed at variance with this PDC.

Natural Resources

Objectives: 1, 2, 6 & 8

PDCs: 24, 36, 37 & 38

The subject land contains a portion of the Onkaparinga River and native vegetation, which must be protected and enhanced pursuant to Objectives 1, 2, 6 and 8.

Whilst, the land division does not indicate that vegetation will require removal in alignment with PDC 37, the fragmentation of the river and separating ownership of the vegetation presents a potential risk for degradation through inconsistent land management by different landowners. PDCs 24, 36 and 38 call for the maintenance of watercourses and vegetation in their natural state.

As previously discussed in this report, the future change in use may pose a threat to the river and vegetation on site if appropriate buffers and land management mechanisms are not implemented. Based on the already limited size of the land it is unlikely that a primary production operation can be established without impacting on the existing natural resources on site and the proposal is considered to be at variance with these provisions.

7. SUMMARY & CONCLUSION

The purpose of this land division is to create one additional allotment in the Watershed (Primary Production) Zone and EFPA, and the proposal is a non-complying form of development. The State Commission Assessment Panel (SCAP) is the relevant authority and Council have been asked to provide comment on the proposal before a determination is made by SCAP as to whether or not to resolve to proceed to an assessment.

Whilst the application will not result in a loss or fragmentation of primary production land (currently a rural living lot), the proposal is considered to be seriously at variance with the overall intent of the zone and policy area, which deliberately speak against the creation of additional allotments in the Watershed (Primary Production) Zone. The subject land falls within the EFPA, where the creation of additional allotments for residential purposes is forbidden. Due to the unlikelihood of the remaining allotment (Allotment 21) being able to be used for primary production/horticultural purposes, the land division is not considered to satisfy the EFPA exemption and will fragment an already undersized and constrained allotment. The land is not connected to SA Water sewer or CWMS and in its current form is reliant on on-site waste water management. No details have been provided to prove the development will improve or enhance water quality. The Onkaparinga River, native vegetation and flood plain further constrain development potential on the property.

Staff therefore consider that the proposal is seriously at variance with the relevant provisions and policies in the Development Plan and recommend that the Council Assessment Panel **DOES NOT SUPPORT** this application and advise the SCAP accordingly.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and advise the State Commission Assessment Panel that it DOES NOT SUPPORT the proposed land division in Development Application 20/37/473 (20/D044/473) by Derek Grove for Land Division (1 into 2) (non-complying) (SCAP relevant authority) for the following reasons:

- **The proposal is inconsistent with Woodside (Rural Surrounds) Policy Area PDC 2 as it will create an additional allotment.**
- **The proposal is inconsistent with Watershed (Primary Production) Zone PDC 20 as it is for the purposes of creating an additional allotment and is not for the purposes of a minor readjustment of boundaries to correct anomalies nor is it to improve the management of land for the purposes of primary production and/or the conservation of its natural features.**
- **The existing allotment is not considered to be of a suitable size for primary production and no evidence has been provided to suggest that reducing its size further will increase its suitability for primary/food production purposes.**
- **The proposal seeks to justify the create of an additional allotment in order to establish a hypothetical primary/food production use when it is questionable whether it is a suitable site based on the size of the proposed allotment, its natural features and site constraints and that it abuts the Township of Woodside, directly at odds Council-wide Interface Between Land Uses PDC 13(a).**
- **The proposal will create an additional allotment within the flood plain area, contrary to Council-wide Hazards PDC 1.**
- **The land division will not improve or enhance water quality as the land is not connected to Council's CWMS and is therefore contrary to Watershed (Primary Production) Zone Objective 2.**
- **Existing natural resources on site are unlikely to be able to be suitably protected by buffers and land management strategies due to the limited size of the proposed allotments.**

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Referral Responses

Council Assessment Panel Meeting – 10 June 2020
Derek Grove
20/37/473

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Respectfully submitted

Concurrence

Sarah Davenport
Statutory Planner

Deryn Atkinson
Manager Development Services