



DEVELOPMENT ASSESSMENT PANEL

Notice of The Barossa Council Development Assessment Panel meeting to be held at the Council Offices, 43-51 Tanunda Road, Nuriootpa on Tuesday, 3 March 2015, commencing at 5:00pm

Martin McCarthy
CHIEF EXECUTIVE OFFICER
THE BAROSSA COUNCIL

A G E N D A

1. WELCOME

2. PRESENT

3. APOLOGIES

Nil

4. CONFIRMATION OF MINUTES

Development Assessment Panel meeting held on 3 February 2015.

5. BUSINESS ARISING FROM MINUTES

6. DECLARATION OF INTEREST BY MEMBERS OF PANEL

7. VISITORS TO THE MEETING

Nil.

8. APPLICATIONS FOR DECISION

DA/DAP/R1	960/639/2014	50B Penrice Road, Angaston	Detached Dwelling with Garage Under Main Roof, Outdoor Patio and Retaining Walls (Merit)
DA/DAP/R2	960/583/2014	Lot 11 Sale Yards Road, Nuriootpa	Bus Depot (Non-Complying)
DA/DAP/R3	960/679/2014	165 Kalimna Road, Light Pass	Winery Building, Cellar Door Sales Outlet, Administration, Associated Driveways, Car Parking, Rain Water tanks and Signage (Merit)

DA/DAP/R4	960/596/2014	178 Murray Street, Tanunda	Change of Use – Shop (Fruit & Vegetable Stall) (Non-Complying)
DA/DAP/R5	960/932/2008	Lot 892 Mengler Hill Road, Bethany	Request for Extension of Consent for Detached Dwelling and Associated Excavation and Fill (Non-Complying)
DA/DAP/R6	960/510/2014 (960/D024/14)	80 Basedow Road, Tanunda	Land Division (23 Allotments & Roads) (Merit)

9. OTHER BUSINESS

9.1	Development Assessment Commission Concurrence Applications
9.2	LATE ITEM – 8 Ferguson Court, Lyndoch – Appeal – Offer of Settlement Through Amended Proposal

10. CONFIDENTIAL AGENDA

Nil.

11. NEXT MEETING

7 April 2015 commencing at 5.00pm

12. CLOSE OF MEETING

PLEASE NOTE

Report attachments are not included in this Agenda due to copyright laws.

The full Agenda can be viewed at the Principal Office of The Barossa Council, 43–51 Tanunda Road, Nuriootpa, between 9.00am – 5.00pm, Monday – Friday.

For further information, please contact The Barossa Council on 85638 489.

DEVELOPMENT ASSESSMENT PANEL

3 MARCH 2015

DEBATE AGENDA

DA/DAP/R1

DEVELOPMENT APPLICATION NO:	960/639/2014 (Prop ID 113540)
APPLICANT:	Bartsch Homes
OWNER:	Ross & Sue Dawkins
SUBJECT LAND:	50B Penrice Road, Angaston (CT 5934/587)
PROPOSAL:	Detached Dwelling with Garage Under Main Roof, Outdoor Patio and Retaining Walls
ZONE/POLICY AREA:	Residential Zone (Map Baro/13)
PROCEDURE:	Merit
REFERRALS:	Not Applicable
PUBLIC NOTICE:	Category 3 – 2 Representations
KEY ISSUES:	Earthworks
DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE: 21 February 2013	Residential Zone Objectives 1 & 4. Residential Zone Principles of Development Control 1, 6 & 7. General Design and Appearance Objectives 1. General Design and Appearance Principles of Development Control 1, 2, 3, 7, 11, 12 & 17. Residential Development Objectives 1 & 2. Residential Development Principles of Development Control 6, 7, 12, 13, 15, 16, 19, 20, 21, 22, 23, 24, 34, 35 & 36. Sloping Land Objectives 1. Sloping Land Principles of Development Control 1, 2, 4, 5 & 7.
RECOMMENDATION:	Grant Development Plan Consent
OFFICER:	Philip Harnett

SUBJECT LAND AND LOCALITY

The subject land is currently vacant and slopes north-east, up from Penrice Road. The Residential Zone is situated parallel with and on either side of Penrice Road, with the Rural Living Zone situated behind.

The wider locality is characterised by a mixture of sloping allotment sizes primarily used for residential purposes.

A map showing the location of the subject land and Planning Zones are included in Attachment 1.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The applicant seeks approval for a detached dwelling with garage under main roof, outdoor patio and retaining walls. The 'Shed' as shown on the site plan does not form part of the application. The highest retaining wall would be 2.42 metres up from the floor level of the proposed dwelling (FL 12.69).

Details of the application form Attachment 2.

PUBLIC NOTIFICATION

A retaining wall exceeding 1 metre in height requires development approval. Retaining walls are not Category 1 or 2 for public notification purposes and so the application has been publicly notified as a Category 3 development pursuant to Section 38 of the Development Act 1993.

Two representations were received. A copy of the representations and response from the applicant form Attachment 3.

PROVISIONS OF THE DEVELOPMENT PLAN

The subject land lies within the Residential Zone of the authorised Development Plan, consolidated 21 February 2013.

PLANNING ASSESSMENT

Detached Dwelling, Garage Under Main Roof and Outdoor Patio

The dwelling, garage and outdoor patio area would be setback from all property boundaries in accordance with Residential Zone requirements. The scale, bulk, height, roof pitch, proportions, materials, finishes and articulation are appropriate to the locality and would not impose an unreasonable visual impact upon adjacent properties. Useable Private Open Space would exceed 20% of the total site area and sufficient space would be provided for vehicle access and parking, future domestic storage, outdoor clothes drying, future rainwater tanks and the storage of household waste and recycling receptacles.

The subject land is serviced by the SA Water sewer for waste disposal purposes. Storm water from all proposed roofed areas can be suitably directed to Penrice Road.

Dwellings and associated domestic structures are envisaged within the zone.

Retaining Walls

A number of retaining walls, of varying heights, are proposed to accommodate the dwelling, garage, outdoor patio and required private open space area. The retaining walls would consist of sandstone concrete sleepers separated by galvanized 'I Beam' columns.

Sloping Land Principle of Development Control 2 states development, including associated earthworks should be sited and designed to minimise their visual impact, minimise the extent of cut and/or fill, minimise the need for, and the height of, retaining walls and not cause instability of any embankment or cutting.

Sloping Land Principle of Development Control 7(a) states that the cutting and/or filling of land outside townships and urban areas should be kept to a minimum and be limited to a maximum depth or height no greater than 1.5 metres so as to preserve the natural form of the land. It is acknowledged that this principle relates to 'land outside townships and urban areas'.

The earthworks and retaining walls would largely be screened by the proposed dwelling and garage when viewed from Penrice Road and would not have an unreasonable visual impact upon the streetscape or adjacent properties.

The dwelling would have a split floor level and the proposal has been amended to reduce the front setback and increase the northern side setback away from the boundary shared with 52 Penrice Road, to reduce the required height of retaining walls.

Representations

The representation received from Mr Rosenzweig refers to excavations adjacent the rear boundary fence. This excavation does not relate to the proposed development and is a matter to be resolved between property owners.

The representation received from Mr R A Meissner raises concerns about structural damage to adjacent buildings at 52 Penrice Road as a result of excavation. The house and outbuilding at 52 Penrice Road are located approximately 5.2 and 1.8 metres away from the boundary shared with the subject land and the highest proposed retaining wall. The applicant has encountered rock in this area however, is confident that the site work can be completed without damage to neighboring structures. The structural components of the retaining walls will be assessed against the Building Code of Australia as per the Building Consent Assessment. Should the proposal receive planning consent a note advising the applicant to take all practical measures to prevent damage to adjacent structures or property, and to prevent the risk of landslip is appropriate.

CONCLUSION

The detached dwelling, garage and outdoor patio are envisaged within the zone and reasonably comply with the provisions of the Development Plan.

Given the sloping nature of the site an element of excavation would be required despite the size and design of the home. The proposed retaining walls would not have an unreasonable visual impact when viewed from Penrice Road or neighboring properties and the dwelling has been moved within the allotment to reduce their required height.

On balance and having regard to the relevant provisions of the Development Plan it is considered that the proposal is not seriously at variance with the provisions of the Development Plan and has sufficient merit to warrant approval subject to conditions.

RECOMMENDATION:

That the Development Assessment Panel has considered all relevant assessment matters and the officer's report prepared in relation to Development Application Number 960/639/2014 and resolves:

- (A) That pursuant to Section 35(2) of the Development Act, the proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.
- (B) That pursuant to Section 33(1)(a) of the Development Act, development application number 960/639/2014 be granted Development Plan Consent subject to the following conditions:
 - (1) The development shall be undertaken in accordance with the plans and documentation accompanying the application (as amended).

NOTES

- (a) Note: During site works and construction, all practical measures shall be taken to prevent damage to adjacent structures or property, and to prevent the risk of landslip.
- (b) Note: In accordance with Section 60 of the Development Act, where the building owner proposes to carry out work that affects the stability of adjoining land, the owner must advise the adjoining owner of that work at least 28 days before the work is intended to be started.
- (c) Note: The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act, to take all reasonable and practicable measures to ensure that the activities on the whole site do not pollute the environment in a way which causes or may cause environmental harm.

DEVELOPMENT ASSESSMENT PANEL**3 MARCH 2015****DEBATE AGENDA****DA/DAP/R2**

DEVELOPMENT APPLICATION NO:	960/583/2014 (Prop ID 111576)
APPLICANT:	Australian Transit Enterprises
OWNER:	AD & ME Chapman
SUBJECT LAND:	Lot 11 in CP28433, Sale Yards Road, Nuriootpa
PROPOSAL:	Bus Depot
ZONE/POLICY AREA:	Primary Production (Barossa Valley Region) Zone, and Character Preservation District (Map Baro/06). Medium Bushfire Risk (BPA Map Baro/3)
PROCEDURE:	Non-Complying
KEY ISSUES:	Seeking Concurrence – Validity of Proposed Conditions 7 and 8
RECOMMENDATION:	Grant Development Plan Consent – Removal of Proposed Conditions 7 and 8
OFFICER:	Brian Irvine

BACKGROUND

The Panel considered the above application for a bus depot at Sales Yards Road Nuriootpa at its meeting on the 2 December 2014 and resolved to seek the Development Assessment Commission's concurrence to approve the proposal subject to 8 conditions.

The application was for a non-complying form of development and was subject to public notification.

The Commission has indicated that it is prepared to concur with the Panel's decision to approve the proposal if conditions 7 and 8 are removed.

ASSESSMENT OF REQUEST

The Development Assessment Commission has questioned both the validity and enforceability of conditions 7 and 8. A copy of the Commission's letter is contained in Attachment 1.

These conditions were related to expected bus movements at the intersection of Light Pass Road with Angaston Road, and at the intersection of Sale Yards Road with Angaston Road. These conditions state:

- “(7) Road intersections be improved to the satisfaction of Council so that busses can safely negotiate the Light Pass Road/Angaston Road and Sale Yards Road/Angaston Road intersections, as per Swept Path Diagrams dated 2 December 2014 submitted in relation to DA 960/583/2014. All works shall be completed prior to the occupation of the site.*
- (8) Busses shall not make a right hand turn from Angaston Road into Sale Yards Road or make a left hand turn from Sale Yards Road onto Angaston Road.”*

Condition number 7 was included because the Swept Path Diagram raised concerns that busses turning left out of Light Pass Road into Angaston Road would result in the rear wheels having to travel over the verge, leading to a need to improve the geometry of the intersection. It was expected that in the first instance the applicant would review the Swept Path Diagrams after receiving consent, and then if it could not be demonstrated that buses could safely negotiate the intersection, improvements to the intersection would be undertaken.

As a result of the Commission’s response, the applicant has been asked to review the Swept Path Diagram for this intersection. A new diagram has been produced to demonstrate that the geometry of the intersection is satisfactory for the movement of buses. The Council’s engineer has checked the diagram and is satisfied. A copy of the revised diagram is contained in *Attachment 2*.

It is concluded that condition 7 is no longer necessary and can be safely removed.

Condition number 8 was imposed to prevent unsafe traffic manoeuvres at the Sale Yards Road/Angaston Road intersection. No analysis has been undertaken because it is generally accepted that the traffic manoeuvres, referred to in the condition, are unsafe and could only be undertaken by breaking the traffic rules by driving on the wrong side of the road.

The Development Assessment Commission has suggested that the condition is both invalid and unenforceable. Legal advice has not been obtained but it is relevant to consider that:

- There is no greater responsibility for Council to consider this intersection than all the other intersections throughout the whole network serviced by the applicant.
- The bus driver and the company are ultimately responsible for obeying the road traffic rules.

The applicant has previously advised that there is no need for busses to use that intersection when going to or coming from Angaston, and therefore this manoeuvre would not occur. The Light Pass Road/Angaston Road intersection is a more convenient intersection to use. In the event of a driver making a mistake, it is only a short distance to travel to the Tanunda Road roundabout to change the direction of travel safely.

It is similarly concluded that condition number 8 is unnecessary and its deletion will not place Council at risk.

The alternative to accepting the Commission's request is to either refuse the application. If the Commission's request is not agreed to (and conditions 7 and 8 are retained) the Commission will not give its concurrence, which will have the same effect as refusing the application.

RECOMMENDATION:

That the Development Assessment Panel has considered all relevant assessment matters and the officer's report prepared in relation to Development Application 960/583/2014 and resolves as follows:

- (A) That pursuant to Section 35(2) of the Development Act, the proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.
- (B) Pursuant to Section 6(2) of the Character Preservation (Barossa Valley) Act 2012, the Development Assessment Panel has had regard to the objects of that Act and, in determining this application, seeks to further the objects of that Act.
- (C) That pursuant to Section 33(1)(a) of the Development Act, development application number 960/583/2014 be granted Development Plan Consent subject to the following conditions:
 - (1) The development shall be undertaken in accordance with the plans and documentation accompanying the application (as amended), unless varied by the following conditions.
 - (2) The bus and motor car parking bays shall be sealed with compacted rubble/gravel, while the driveways and manoeuvring areas shall be sealed with reconstituted bitumen, prior to occupation of the site as a bus depot so as to minimise the creation of dust.
 - (3) The concrete block walls near the southern, eastern and western boundaries shall be completed prior to using the site as a bus depot.
 - (4) The landscaping along the side and rear boundaries of the site shall comprise primarily of quick growing bushy plants with a mature height higher than the adjacent wall or fence. Planting shall be completed in the next growing season following the granting of Development Approval, and any plants that die or are removed shall be replaced.
 - (5) Used wash bay water shall be treated to remove oil and grease and be disposed of by irrigation in the landscaped areas. Treated water shall not be permitted to discharge into neighbouring land.
 - (6) External yard lights shall be positioned to avoid light spill into neighbouring residences.

NOTES ONLY

- (a) Please note that the proposed concrete block walls require Building Rules Consent.
 - (b) Please be advised that where a Private Certifier is appointed to undertake the building assessment, Council does not provide a service of advising the Private Certifier of site conditions or any matters relevant to the building assessment. It is recommended that a Private Certifier undertakes his or her own investigations and inspection of the site to become acquainted with site conditions and any other relevant matter.
 - (c) The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act, to take all reasonable and practicable 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.
- (D) Seek the concurrence of the Development Assessment Commission.

DEVELOPMENT ASSESSMENT PANEL**3 MARCH 2015****DEBATE AGENDA****DA/DAP/R3**

DEVELOPMENT APPLICATION NO:	960/679/2014 (Prop ID 102825)
APPLICANT:	BGI Building Group
OWNER:	Yu-Chiu Liu
SUBJECT LAND:	165 Kalimna Road, Light Pass
PROPOSAL:	Winery Building, Cellar Door Sales, Outlet, Administration, Associated Driveways, Car Parking, Rain Water Tanks and Signage
ZONE/POLICY AREA:	Primary Production (Barossa Valley Region) Zone, and Character Preservation District (Map Baro/4)
PROCEDURE:	Merit
REFERRALS:	Not Applicable
PUBLIC NOTICE:	Category 2 – 1 Representation
KEY ISSUES:	Residential Amenity and Waste Disposal
DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE: 21 February 2013	Primary Production (Barossa Valley Region) Zone Objectives 1, 3, 4, 5 & 6. Primary Production (Barossa Valley Region) Zone Principles of Development Control 1, 3, 4, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18 & 24. General Advertisement Objectives 1, 2 & 3. General Advertisement Principles 1, 2, 4, 5, 6, 9, 10, 12, 14 & 15. General Design & Appearance Objectives 1. General Design and Appearance Principles of Development Control 1, 2, 3, 5, 7, 9, 11, 12, 13, 14, 15 & 17. General Industrial Development Objectives 1, 2, 4 & 8. General Industrial Development Principles 1, 2, 4, 6, 7, 8, 10, 11 & 12. General Interface between Land Uses Objectives 1 & 2. General Interface between Land Uses Principles of Development Control 1, 2, 3, 4, 5, 6, 7, 8, 9 & 11. General Natural Resources Objectives 1, 6, 7, 8, 10 & 13. General Natural Resources Principles of Development Control 1, 2, 5, 6, 7, 8, 9, 10, 11, 14, 26, 27, 28, 29, 30, 31, 32, 33 & 34. General Transportation & Access Objectives 1, 2 & 5. General Transportation & Access Principles 1, 5, 6, 8, 11, 12, 13, 22, 23, 29, 30, 31, 32, 33, 37 & 39. General Waste Objectives 1 & 2. General Waste Principles 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15 & 17.
RECOMMENDATION:	Grant Development Plan Consent
OFFICER:	Philip Harnett

SUBJECT LAND AND LOCALITY

The subject land fronts Research Road and contains approximately 12 hectares of vineyard and 2 dams. The subject land is predominantly flat. Vacant portions of the allotment comprise dispersed native vegetation.

The wider locality is characterised by primary production activities including vineyards as well as dispersed dwellings. The Residential Zone to the west, on the opposite side of Research Road could be divided for denser residential purposes.

A map showing the location of the subject land and Planning Zones are included in Attachment 1.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The applicant seeks Development Plan Consent for a new winery, cellar door sales outlet, administration, associated driveways, car parking, rain water tanks and signage. The winery would have a processing capacity of 50 tonnes per annum.

Details of the application form Attachment 2.

PUBLIC NOTIFICATION

The application has been publicly notified as a Category 2 development, pursuant to Section 38 of the Development Act 1993.

One representation was received. A copy of the representation and response from the applicant forms Attachment 3.

PROVISIONS OF THE DEVELOPMENT PLAN

The subject land lies within the Primary Production (Barossa Valley Region) Zone of the authorised Development Plan, consolidated 21 February 2013.

PLANNING ASSESSMENT

Use

In accordance with Zone Principle of Development Control 4, the winery would be situated on an allotment which comprises at least 4 hectares of vineyard and the proposal would involve grape crushing, fermenting of grape product, wine maturation and subordinate activities, including administration, labelling, packaging, warehousing, waste treatment and disposal.

The proposed indoor component of the cellar door sales outlet would be approximately 108 square metres. Weather permitting, the patio may be used in lieu of the outlet and would have an area of 68 square metres. The cellar door sales outlet would sell products of the proposed winery, would have a maximum capacity of 75 persons and would not include the provision of sit down meals or musical entertainment.

Winery and small-scale tourist facilities are appropriate within the zone only where the character and function of viticulture activities are not adversely affected.

Design and Siting

The proposal would be located on a vacant portion of the allotment and would not require the removal of an existing vineyard. The cellar door sales and office building would comprise a skillion roof and an articulated façade. The proposed winery building, when viewed from Research Road, would sit behind the tasting room and would appear as a typical colorbond farm building. Despite the large scale and unbroken expanse of the winery building, all aspects of the proposal would be suitably setback from Research Road and other property boundaries. The proposal would not dominate or detract from the landscape given the use of non-reflective external finishes, the presence of established vegetation and the siting of the winery building behind the cellar door sales building when viewed from Research Road.

The proposed sign fronting Research Road would comprise suitable proportions, have a black post and a white message board. The sign would not be illuminated.

Considering design and siting, the proposal is not considered to adversely affect the character and function of viticulture activities.

Car Parking and Traffic

A single access point from the sealed portion of Research Road would enable safe access and egress to the site. Internal driveways have been widened to enable two way vehicle movements and would consist of grey compacted rubble. It is anticipated that flatbed trucks or the occasional semi-trailer would service the proposal 7-10 times per week. The applicant has specifically stated that no B Doubles are expected to make deliveries.

A total of 15 car parking spaces, 4 staff and 11 visitor, including 1 parking space for disabled persons, is proposed. The applicant anticipates 3-4 staff members on site during normal operations with a maximum of 6 during vintage times. Approximately 16 car parking spaces are required in accordance with Table/Baro1 – Off Street Vehicle Parking Requirements. It has been noted by the applicant that additional areas can be utilised for on-site car parking if the demand exceeds the number of spaces provided. Despite a marginal shortfall the number of car parking spaces provided is considered acceptable.

Amenity

The Residential Zone is situated to the west of the subject land, on the opposite side of Research Road. The proposed tasting room building would be located approximately 130 metres from the Residential Zone and approximately 190 metres from the nearest existing dwelling.

The winery would process the equivalent of 50 tonnes of grape product per annum and all activities would be housed within enclosed buildings. Zone Principle of Development Control 19 states that residential and tourist accommodation development should not be located within 300 metres of existing wineries unless the development is sited and designed to mitigate the likely noise, dust, odour and traffic impacts arising from the winery. Being an envisaged use, the zone generally aims to accommodate wineries and preserve rural productivity whilst putting the onus on dwellings to mitigate potential rural impacts. Alternately the Residential Zone attempts to accommodate Residential Development.

The winery would operate from 7:00am to 7:00pm possibly with some extended hours during vintage. The cellar door would not be open to the general public with wine tasting being available by invitation only. A noise assessment has not been submitted to support the proposal and thus a condition requiring compliance with the Environment Protection (Noise) Policy 2007 is appropriate, if the application were approved.

All driveways, car parking areas and vehicle maneuvering areas would be covered with grey compacted rubble. If approved a condition requiring these areas to be suitably maintained to prevent dust travelling onto adjoining properties is appropriate.

Some external lighting may be attached to the proposed buildings. If approved a condition requiring all lighting to be directed and shaded so as to cause no light spill or nuisance is appropriate.

An aerobic effluent waste system would be installed and operate separately to the winery waste system. This would be the subject of a subsequent application to be assessed against the Public Health Act. If approved, this requirement should be conditioned.

An aerobic treatment tank system is proposed for winery waste. The treatment tank will have an enclosed top to inhibit the release of odour. The irrigation area has been relocated to a clearing on the site away from native vegetation. Council's Environmental Health Officer has reviewed the Environmental Impact Statement prepared by Archer Environmental. Given the relocation of the irrigation area no concerns are raised.

A representation has been submitted raising concern about storm water management and containment, particularly with regard to the land north of the development site. All storm water from proposed roof areas would be collected in two 50,000 litre rain water tanks located on the eastern side of the development. This water would be used within the winery. A condition ensuring any overflow from the proposed rainwater tanks and any storm water runoff from other impervious areas, is dispersed throughout the subject land so not to be directed onto a neighboring property is appropriate.

Despite being located within 300 metres of a Residential Zone it is considered that the proposal has reasonably been designed to mitigate noise, dust, odour and traffic impacts arising from the winery.

Character Preservation District

Objective one of the Character Preservation District Overlay states a district where scenic and rural landscapes are highly valued, retained and protected, the long term use of land for primary production and associated value adding enterprises is assured and promoted, activities positively contribute to tourism, building and structures complement the landscape.

The proposal reasonably complies with Objective 1 of the Character Preservation District Overlay.

CONCLUSION

Wineries are envisaged within the zone and cellar door sales outlets are appropriate under certain circumstances. The design and appearance of proposed buildings and structures, the proposed sign, driveways and car parking area are considered to be acceptable. A reasonable element of disturbance is expected for sensitive land uses adjacent rural zones, however appropriate measures must also be considered to preserve existing and future residential amenity where appropriate. Subject to conditions, noise, dust, odour and traffic impacts arising from the winery can be reasonably managed.

On balance and having regard to all of the relevant provisions of the Development Plan, it is considered that the proposal is not seriously at variance with the provisions of the Development Plan and has sufficient merit to warrant approval subject to conditions.

RECOMMENDATION:

That the Development Assessment Panel has considered all relevant assessment matters and the officer's report prepared in relation to Development Application 960/679/2014 and resolves as follows:

- (A) That pursuant to Section 35(2) of the Development Act, the proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.
- (B) Pursuant to Section 6(2) of the Character Preservation (Barossa Valley) Act 2012, the Development Assessment Panel has had regard to the objects of that Act and, in determining this application, seeks to further the objects of that Act.
- (C) That pursuant to Section 33(1)(a) of the Development Act, development application number 960/679/2014 be granted Development Plan Consent subject to the following conditions:
 - (1) The development shall be undertaken in accordance with the plans and documentation accompanying the application (as amended), unless varied by the following conditions.
 - (2) The total quantity of grapes processed must not exceed 50 tonnes per year.
 - (3) Prior to operation, bunding in all processing and storage areas must be designed and built to contain at least 120% of the net capacity of the largest container.
 - (4) The cellar door sales outlet shall not be used outside the hours of 9.00am till 10.00pm.
 - (5) The total capacity of the cellar door sales outlet, including any associated outdoor areas, shall not exceed 75 patrons at any one time.

- (6) All of the car parking, driveway, and vehicle maneuvering area shall be covered with sufficient compacted rubble and aggregate to provide a smooth and durable surface free from mud and dust, and shall be maintained in a good condition to the reasonable satisfaction of Council.
- (7) Each car parking space or area abutting a walkway, footpath, landscaped area, fence or shop frontage shall be provided with a vehicle wheel stop or 900mm high bollard prior to the occupation or use of the development herein approved.
- (8) All existing trees, other than those indicated for removal, shall be retained wherever practicable, and maintained in good condition to the reasonable satisfaction of Council.
- (9) The approved development shall be connected to a waste system that complies with the relevant public and environmental health legislation applying to that type of system.
- (10) Waste irrigation areas shall be located away from native vegetation to prevent its loss or disturbance.
- (11) Any lights used for the illumination of the subject land shall be sited and designed so as not to cause unreasonable nuisance to any person living in the vicinity of the subject land or to nearby vehicular traffic.
- (12) Storm water from the roofs of all buildings shall be directed to the approved rain water tanks. Any overflow from a water tank shall be disbursed within the subject land in a safe and efficient manner to prevent direct discharge or flow into a neighboring property.
- (13) At all times the resultant noise levels at any residential premises in the area not associated with the development shall comply with the relevant provisions of the Environment Protection (Noise) Policy 2007.

NOTE ONLY

- (1) Note: The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act, to take all reasonable and practicable measures to ensure that the activities on the whole site do not pollute the environment in a way which causes or may cause environmental harm.

DEVELOPMENT ASSESSMENT PANEL**3 MARCH 2015****DEBATE AGENDA****DA/DAP/R4**

DEVELOPMENT APPLICATION NO:	960/596/2014 (Prop ID 105702)
APPLICANT:	Craig Lloyd-Jones
OWNER:	UCAL Pty Ltd
SUBJECT LAND:	178 Murray Street, Tanunda
PROPOSAL:	Change of Use – Shop (Fruit and Vegetable Stall)
ZONE/POLICY AREA:	Residential Zone
PROCEDURE:	Non-Complying
REFERRALS:	Nil
PUBLIC NOTICE:	Category 3 – No Representations
KEY ISSUES:	Location
DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE: 21 February 2013	<u>Council Wide</u> <ul style="list-style-type: none"> • Advertisements • Centres and Retail Development • Hazards • Infrastructure • Interface between Land Uses • Orderly and Sustainable Development • Transportation and Access • Waste <u>Zoning</u> <ul style="list-style-type: none"> • Residential Zone • Desire Character
RECOMMENDATION:	Grant Development Plan Consent
OFFICER:	Maxine Lovett

SUBJECT LAND AND LOCALITY

The subject land has a generous frontage of 85 metres onto Murray Street with a total area of 1550m². The site is irregular in shape with a maximum depth of 39 metres at the northern end, tapering down to less than 1 metre at the southern end. The site has a wide access as there is a spoon drain along the majority of the length of the frontage.

The existing buildings on the site include a workshop of approximately 340m² with a 70m² freestanding carport to the southern side and a verandah fronting onto Murray Street. Another building abuts the workshop that totals 126m², and a garage (54m²) is located at the rear of the workshop. The site has a vehicle display area in front of the workshop, this area is partially covered by the verandah.

The site is located in the Residential Zone and is currently used as a car dealership known as 'John Kastle Cars', with a portion of the site used as a tyre fitting service known as Tanunda Tyre Service. These uses are contained within the large existing workshop, with cars displayed under the verandah of the building fronting Murray Street. The site has a historic development approval for a tyre shop, with existing use rights as a car dealership. The existing building located at the northern end of the site, (nominated to accommodate the subject proposal) has previously been used as an additional tyre fitting shop known as Advanced Tyre and Auto. The business no longer trades from the site. The applicant has temporarily set up a fruit and vegetable stall in front of the building and trades every Thursday and Friday.

The site is located in the Residential Zone and the locality contains detached dwellings on varying sized allotments. The Light Industry Zone is located 35 metres from the subject land but does not abut. The land is not located in an area affected by the Character Preservation District Overlay in the Development Plan.

The site fronts onto Murray Street which has a 50km p/h speed limit and a pedestrian crossing is located adjacent the southern end of the subject land.

A locality Plan forms Attachment 1.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The applicant seeks consent to operate a fruit and vegetable retail shop from the display/shop (126m²) area on the site. The allocated area of the site proposed for the shop will be used for the preparation and storage of fresh produce and will include a display and serving area. A cold room measuring 8.6m² will be located within the building. A compressor will be located in the building within a small enclosure. The produce will be brought to the site by the applicant and the applicant will be the only person trading in the shop and will not employ staff. The applicant intends to trade between 8.00am and 6.00pm Monday to Saturday.

The existing tyre fitting and car sales business will not be displaced by the proposal as they both currently occupy the large workshop. The building proposed to be occupied by the applicant is currently vacant and was previously occupied by a separate tyre fitting proprietor.

The applicant has shown 10 on site car parking spaces allocated to the proposed shop. The remainder of the car parking area south of the existing building will continue to be used for off-street car parking associated with the other uses on the site.

The proposal includes a non-illuminated sign measuring 1800mm x 1800mm that will replace the existing sign of a similar size, located on the building where the fruit and vegetable shop is proposed.

Details of the application form Attachment 2.

PROCEDURE

The proposal is a non-complying form of development in the Residential Zone. A shop is listed as non-complying if greater than 50 square metres in floor area and/or the site fronts onto an arterial road. The existing approved use is for a shop. The proposed use is also for a shop but of a different nature.

The application has proceeded to assessment under delegation. The site has been operating as a tyre shop and it is considered that the proposed use replaces the existing use with a softer and more appropriate use within the Residential Zone. It is considered that the proposed development would be appropriate within the locality and that the application warrants an assessment.

The Statement of Effect forms Attachment 3.

REFERRALS

The site has access to Murray Street (a DPTI – Department of Planning, Transport and Infrastructure Road). The subject proposal does not require a referral to DPTI under Schedule 8 of the Development Regulations as the proposal does not:

- Alter an existing access
- Change the nature of movement through an existing access
- Create a new access

PUBLIC NOTIFICATION

The application was subjected to Category 3 public notification. No representations were received.

PROVISIONS OF THE DEVELOPMENT PLAN

The land is located in the Residential Zone and is not within a Policy Area.

The relevant zoning Objectives and Principles of Development Control are listed below.

RESIDENTIAL ZONE

Objective 4. Development that contributes to the desired character of the Zone.

Principles of Development Control

4. *Non-residential development such as shops, schools and consulting rooms should be of a nature and scale that:*
 - (a) *Serves the local community*
 - (b) *Is consistent with the character of the locality*
 - (c) *Does not detrimentally impact on the amenity of nearby residents*
 - (d) *Does not result in an extension of a centre zone or result in ribbon or retail or commercial development.*

COUNCIL WIDE

Interface between land uses

Objective 1: Development located and designed to prevent adverse impact and conflict between land uses.

Principles of Development Control

1. *Development should not detrimentally affect the amenity of the locality or cause unreasonable interference though any of the following:*
 - (a) *The emission of effluent, odour, smoke, fumes, dust or other airborne pollutants*
 - (b) *Noise*
 - (c) *Vibration*
 - (d) *Electrical interference*
 - (e) *Light spill*
 - (f) *Glare*
 - (g) *Hours of operation*
 - (h) *Traffic impacts*

Centres and Retail Development

Principles of Development Control

11. *A shop or group of shops located outside of zones that allow for retail development should:*
 - (a) *Be of a size and type that will not hinder the development, function or viability of any centre zone*
 - (b) *Be developed taking into consideration its effect on adjacent development.*

PLANNING ASSESSMENT

The site has an approved use for a tyre fitting service and car dealership. The site has been occupied by two separate tyre fitting proprietors (Tanunda Tyre Service and Advanced Tyre and Auto) in addition to a car sales business. Advance Tyre and Auto vacated the premises approximately 4 months ago, leaving the northern building unoccupied. The applicant intends to occupy this building. The applicant has been trading on the site two days a week for approximately 3 months and now seeks development approval. The applicant has not occupied the building but has set up a temporary stall in front of the building, under the verandah.

The proposed signage measuring 1800mmx 1800mm and is of a similar dimension of the existing sign, is considered acceptable as it is replacing the existing signage. The sign will be located on the subject building and will be obscured slightly by the verandah.

The current trading hours of the existing uses on the site are 8.30am to 5.30pm Monday to Friday and 9.00am to 1.00pm on Saturday. The proposed hours for the Fruit and Vegetable shop are 8.00am to 6.00 Monday to Saturday and are slightly greater than the existing use but it is unlikely to create any nuisance within the locality given the nature of the proposed use.

Car Parking and Access

The proposal has 10 allocated car parks with the remainder of the car parks on the site to be used by the existing use. The minimum requirement for the proposed shop is 7. The previous use, also a shop, would have the same car parking requirements, therefore there is no change in parking requirements. It is likely that some customers of the fruit and vegetable shop would park on the street and those parking on site would only occupy the park for a brief time while purchasing produce. Traffic movements onto the site may increase slightly from the previous use, but car parking demand will decrease since long term parking will not be required.

Vehicles for the existing uses can access the site via the southern end of the allotment where car parks are located. Access can be gained for the proposed shop at the northern end of the allotment. These access points are existing due to the spoon drain located along the frontage. To further clarify the car parking areas on the site, line marking would be required to delineate the areas reserved for customers of the fruit and vegetable shop. This would help segregate the proposed shop from the remainder of the site.

The location of the proposed shop, being within a residential area, would allow the convenience for some customers to walk to the shop as opposed to the previous use, where customers are required to bring their car to the site and have it parked there for a number of hours.

Non-Residential Development in the Residential Zone

The proposed fruit and vegetable shop will replace a tyre fitting shop that was located in the existing building at the northern end of the site. As a result there will be no further intensification of the uses on the site, simply just a change in nature of the use within the existing shop. The fruit and vegetable shop will be a minor use in comparison to the previous use and will serve the community better as opposed to having two tyre/auto businesses trading from the same site. The existing Tanunda Tyre Service and car dealership will continue on the site and will be dominant in appearance and scale.

The proposal does not result in the extension of commercial development in the zone as it is replacing an existing non-residential use. The proposal will not alter the appearance of the site as it will occupy an existing building and will include signage of a similar scale to the existing.

Noise emissions from the proposed shop will be significantly less in comparison to the previous tyre fitting service. A compressor, required for refrigeration, will be used but this will result in no change to the noise emissions as a compressor was also used for the previous tyre fitting shop and was located as in the same position as the proposed.

CONCLUSION

The proposed use will replace an existing non-residential use and will perform a similar function with regard to a 'Shop'. It is considered, however, that the proposed use will have a lesser impact on the amenity of the Zone due to the nature of the business being a retail fresh produce shop as opposed to a tyre/auto repair shop. In contrast to the existing uses on the site, the proposed development will be generally inert. There will be no change in access with similar traffic movements onto the site and car parking requirements will remain the same. The proposed development is considered acceptable within the zone having regard to the current activity on the site.

RECOMMENDATION:

That the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application 960/596/2014 and resolves as follows:

- (A) The proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (B) Grant Development Plan Consent to Development Application 960/596/2014 subject to the following conditions:
 - (1) The development shall be undertaken in accordance with the plans and documentation (as amended) accompanying the application, unless varied by the following conditions.
 - (2) The subject land shall be lined marked showing the delineated car parks reserved for the Fruit and Vegetable retail shop to the reasonable satisfaction of Council.
 - (3) Each car parking space shall conform to the applicable Australian Standard. Such car parking spaces shall be line marked with continuous white lines along the whole of each side of each car parking space, prior to the use of the development herein approved and such line marking shall be maintained in good and substantial condition at all times to the reasonable satisfaction of Council.
 - (4) The use and any associated processes or activities carried out shall not detrimentally affect the amenity of the locality by reason of smell or noise.
 - (5) The premises shall be kept tidy, free of graffiti and in good repair and condition to the reasonable satisfaction of Council at all times.
 - (6) The hours of operation shall be between 8.00am to 6.00pm Monday to Saturday.
 - (7) Waste generated from the fruit and vegetable shop shall not be stored onsite and shall be removed from the site weekly.
- (C) Seeks the concurrence of the Development Assessment Commission.

DEVELOPMENT ASSESSMENT PANEL**3 MARCH 2015****DEBATE AGENDA****DA/DAP/R5**

DEVELOPMENT APPLICATION NO:	960/932/2008 (Prop ID 106584)
APPLICANT:	Rian Nominees Pty Ltd
OWNER:	Rian Nominees Pty Ltd
SUBJECT LAND:	Lot 892 Mengler Hill Road, Bethany
PROPOSAL:	Request for Extension of Consent for Detached Dwelling and Associated Excavation and Fill
ZONE/POLICY AREA:	Rural Landscape Protection
PROCEDURE:	Non-Complying
KEY ISSUES:	Extension of Consent for Non-Complying Development
RECOMMENDATION:	Refuse Request for Extension
OFFICER:	Brian Irvine

INTRODUCTION

The Development Assessment Panel has previously granted an extension to the Development Plan Consent for a non-complying dwelling at lot 892 Mengler Hill Road.

A Development Approval was subsequently issued, and following the expiry of that approval, Botten Levinson Lawyers lodged a request for an extension on behalf of the applicant.

The request for the extension to the Development Approval is contained in Attachment 1.

A request for further information is contained in Attachment 2.

The Panel is now required to consider and decide upon the request.

BACKGROUND

The Development Assessment Panel considered a proposal for a non-complying dwelling in the former Rural (Hills Face) Zone at its meeting on 3 March 2009. The site comprised an area of 2.12 hectares near the lookout reserve on Mengler Hill Road. Although a dwelling on an allotment less than 100 hectares in size was non-complying and the report to the Panel recommended refusal, the Panel supported the proposal because it was believed that the unique design of the building that recessed the building back into the hill, adequately reduced the visual prominence of the structure.

The concurrence of the Development Assessment Commission was subsequently sought and granted, and the Development Plan Consent was subsequently granted on 25 May 2010.

A subsequent third party appeal was withdrawn on 23 August 2010.

A development authorisation lapses if work has not substantially commenced within 12 months of granting consent or approval. Where development plan consent and building rules consent are applied for and granted in sequence, the subsequent granting of building rules consent and issue of the development approval 'resets the clock'.

Building rules consent was not applied for within 12 months and the owner consequently applied for a 2 year extension of the Development Plan Consent. This was granted by staff and the owner was advised that the consent would lapse on the 25 May 2013 if the work has not substantially commenced. It is arguable that the extended consent was due to expire on the 23 August 2013 because a consent does not become operative until any appeal has been determined. The appeal was determined (by its withdrawal) on the 23 August 2010 and therefore the initial 12 month period and the subsequent 2 year extension would expire on 23 August 2013. However, subsequent events proceeded on the assumption that the 'anniversary' was the 25 May.

The property was subsequently placed on the market and several enquiries were received by staff who emphasised that the consent was specific to the design presented to the Panel and any other house design would require a fresh application, and that construction would need to commence prior to the expiry date.

In early 2013 it became apparent that the architectural firm, IA Group, had been engaged to prepare the building rules consent documentation. In March a minor variation was agreed to and discussion occurred about the possibility of a further minor extension. The architect indicated that they expected to be able to complete the documentation within the timeframe but wanted a minor extension to the Development Plan Consent just in case there were unforeseen difficulties. He was advised verbally that if it was demonstrated that the documentation was substantially completed and a minor extension was required to put the finishing touches to it, a minor extension could be supported. It was also emphasised that a substantial extension could not be expected, given that nearly 3 years had elapsed since the consent had been granted. It was also indicated that an extension of several months probably would not be supported, as that would indicate that the preparation of the building documentation was not proceeding with due diligence and that further requests for extensions were a possibility.

An application for a further extension of 8 weeks was subsequently received on the 21 May 2013. It was referred to the Panel meeting of 4 June 2013 with a recommendation of refusal because legislation and development policies had changed to a significant degree since the original consent was issued and that a new assessment was warranted. There was considerable debate at the meeting and the applicant addressed the meeting where he stated that the project had been delayed because of a number of personal difficulties, but that the property had been taken off the market and he was now committed to the project, and that he was now in a position to ensure that it would now proceed without undue delay. He reassured the Panel that no further extensions were contemplated.

A compromise was submitted to the Panel, which was accepted, of extending the Development Plan consent to the 21 June 2013 to enable the applicant to finalise documentation for a Building Rules Consent application.

The Building Rules Consent documentation was subsequently completed and assessed and consented to by a private certifier, with the Development Approval being granted on the 21 June 2013. This effectively 'reset the clock' with the expiry date now becoming the 21 June 2014, if work had not substantially commenced.

An application for an on-site wastewater system (septic application) was received on the 21 January 2014 and approved on the 1 April 2014. The site was inspected on the 23 June 2014 by a Council building officer and a conclusion made that work had not substantially commenced. A letter was sent to the applicant on the same day advising that the development approval had lapsed.

An application for an extension to the development approval for a period of 8 months to the 21 February 2015 was received from Botten Levinson Lawyers on behalf of the applicant on the 27 July 2014.

A letter requesting further information and explanation was sent on the 8 September 2014.

A reminder email was sent on the 5 January 2015, to which the lawyer responded with a statement that he would need to get instructions from his client. He was requested to respond by the 10 February, and he advised that they should be able to meet that timeline. As at the 16 February 2015 no response had been received. It is considered that the applicant has been given a reasonable opportunity to 'put his best case forward', and consequently, the matter is put to the Panel for consideration with the information available.

ASSESSMENT OF REQUEST

Although Regulation 48 does set out time limits within which development should commence and be completed (otherwise the development authorization lapses), a relevant authority does have the discretionary power to extend the period of the consent or approval.

Legal Principles

The legislation does not provide any guidance for the exercise of the power to extend a consent or approval, but a number of principles have been set by the Courts as a result of appeals. These principles, and matters to consider include:

- The notion of requesting an extension for ‘as long as possible’ or an indefinite extension is unacceptable in view of risks it poses to good planning for the future.
- In considering a request for an extension, a relevant authority should not review its original decision. (The consideration of an extension is not an opportunity to correct perceived mistakes in an earlier assessment.)
- A request to extend should be made within a reasonable time after the date of expiry.
- Has the planning legislation changed?
- Has the Development Plan or Building Rules changed to a material extent? (If so, it is appropriate to consider refusal of an extension to enable assessment against the current provisions before proceeding with the development.)
- Reasons why the request for extension has been made?
- Are others unfairly prejudiced if the extension is granted?
- Is the applicant unfairly prejudiced if the extension is not granted?
- Have there been material changes in the circumstances of the locality?
- Has the applicant pursued the development with diligence?
- All factors need to be weighed and a fair and balanced decision made.

Indefinite Extension

This request represents the third request since the Development Plan Consent was originally granted, and although it is only just over 12 months since the Development Approval was issued, it was made just short of 4 years after the operative date of that Consent, and seems to be prompted by Council giving notice of the expiry. It is arguable that the repeated requests for extension is evolving into an indefinite extension.

Changes to Development Plan and Legislation

It is argued in the submission that there have been no material changes to the Development Plan to warrant reassessment of the proposal. It is true that the non-complying status has not changed, but there have been a number of changes to legislation and the Development Plan, that could reasonably change the balance of assessment.

The introduction of the Character Preservation (Barossa Valley) Act requires Council to have regard to and seek to further the objects of the Act. The objects of that Act are character related in a very generalised manner, but the requirement of that Act has the effect of placing greater emphasis on the consideration of character and amenity issues in the planning assessment.

Approval of the Better Development Plan and General DPA on 18 August 2011 replaced and reformatted the Development Plan and at the same time changed the zoning of the land from Rural (Hills Face) Zone to Rural Landscape Protection Zone. The new Development Plan also introduced a range of new and reformatted policies in the General Section relating to Design and Appearance, Siting and Visibility and Sloping Land. In a broad sense the old zone, new zone and new general policies all seek similar desired character and outcomes, that is the preservation of scenic natural landscape character and unobtrusive buildings, but the assessment of a new proposal would arguably be more rigorous under the current policy regime than the previous.

An example is the policy relating to earthworks. Whereas the previous policy stated:

- “9 *Development should minimise the impact of earthworks in relation to:*
- (a) *visual impact from those roads shown on Map Baro/1(Overlay 1) PART A and B;*
 - (b) *erosion; and*
 - (c) *impact on the water quality of watercourses in the locality.”*

the new policy is more specific, stating:

- “6 *The excavation and/or filling of land should:*
- (a) *be no greater than 1.5 metres from natural ground level*
 - (b) *only be undertaken in order to reduce the visual impact of buildings or structures or to construct water storage facilities for use on the allotment*
 - (c) *result in stable scree slopes that are covered with topsoil and landscaped so as to preserve and enhance or assist in the re-establishment of, the natural character of the locality.”*

It is not appropriate to assess the development against the current Development Plan without a new application being lodged, but it cannot be reasonably argued that a new assessment would result in the same decision and therefore would be unnecessary. There is a reasonable probability that a new assessment against the provisions of the Development Plan may result in either a modified proposal, additional or different conditions of consent, or refusal. It is therefore justified to consider refusal of the request for extension to enable a new application to be lodged and considered.

Reasons for Extension

The reasons for seeking an extension, which are contained in a paragraph midway down on page 3 of the submission, refer to the difficulties in finalising design matters because of the unusual design of the building. It is true that the design is not ‘standard’ for a dwelling, but the design issues are not unfamiliar to the commercial building sector and do not present difficult circumstances for appropriate builders or contractors. No reasons have been provided as to why these issues were unable to be addressed during the 6 month period in which the building documentation was being prepared for Building Rules Consent, or during the 12 months since the Building Rules Consent was granted. In any event, it is reasonable to assume that the Building Rules Consent documentation should have contained all of the necessary information to commence construction. (A claim that there is insufficient building design documentation to enable the construction to commence does cast doubt over the integrity of the Building Rules assessment.)

Substantial Commencement

Near the top of page 2 of the submission it is claimed that “my client does not concede that there has not been substantial commencement of the development”. The 11 points that follow appear to have been provided to substantiate that development has substantially commenced and/or the applicant has pursued the development with diligence.

If it is decided that the development has substantially commenced, the development approval remains valid and no extension is required. However, the only physical work undertaken on the site since the Development Approval was issued, was some scraping of the soil referred to in point 8 of the submission ie top soil removal to enable a contractor to quote on the excavation work. This is not regarded as substantial commencement of the development, and similarly the other points do not involve works that constitute commencement of the development. It is therefore concluded that the development has not substantially commenced.

Diligence

The 11 points provided in the submission were intended to demonstrate that the applicant has pursued the development with diligence, but they also demonstrate the opposite. At the Panel meeting of the 4 June 2013 the applicant claimed that if the extension was granted to enable the Building Rules Consent to be finalised, he intended to proceed with the construction of the building without delay. However:

- There was a delay of over 5 months before he commenced discussions with a contractor about the septic application, which wasn't lodged until 7 months after development approval. (There was a planning condition stating that construction could not commence until the septic system had been approved.) This issue could have been addressed any time after the Development Plan Consent was issued in 2010 and did not have to wait until after Development Approval was issued. There was a further 3 month delay until the documentation was in an acceptable state to approve. The preparation and assessment of a septic application can usually be undertaken within a 2 to 3 month time frame.
- There was a delay of 8 months after development approval before an earthmover inspected the site to give advice and quote. There was a further 3 month delay until top soil was scraped to enable the earthmover to provide a more detailed report and costing. It is unknown whether a quote has been received or accepted.
- Design issues regarding stormwater and tilt wall systems remain unresolved 12 months after development approval was issued, with no indication of when they will be resolved or explanation of what action has occurred in the intervening 12 months.
- In a submission made when the previous extension was requested, it was stated that a number of builders had been consulted and 90% of the construction and associated works had been sourced. If that had been achieved during the 6 month design process before Building Rules Consent was granted, it is difficult to accept that the remaining work and the appointment of a builder or contractors could not be achieved in the subsequent 12 months if the project was being pursued with diligence.

Although the applicant indicated that the property had been withdrawn from the market when he addressed the Panel meeting in June 2013, Council staff have continued to receive enquiries from potential purchasers, and noted that it remains on sale. It is legitimate to sell land with an approval in place but in this instance, together with the delays and repeated requests for extensions, it suggests a lack of commitment to the development and a distinct possibility of the development not proceeding in a timely manner.

Prejudice

The applicant could argue that he would be unfairly prejudiced if the latest extension is not granted. The approval has obviously increased the value of the land and he has expended money on the application process that could be lost if the approval lapses. However, if the extension is not granted and the approval lapses a substantial proportion of the documentation can be reused for a new application. Similarly, the loss of value in the land is unknown until a new application is determined. If a new application is refused (worst case scenario), it is reasonable to assume that the value of the land would revert to its pre-approval value, and therefore there would have been no overall loss incurred by the applicant other than the expenses associated with the application process.

CONCLUSION

The request of an extension was made within a reasonable time frame and a refusal of the request has the potential for the applicant to lose the 'investment' he has made in the application process.

This needs to be weighed against the changes made to the Development Plan and lack of diligence in pursuing the development evidenced by:

- Delays in utilising the consent and approval
- An apparent behavioural characteristic of 'last minute' activity near an expiry date to demonstrate that the project is being progressed,
- Undertaking minimal work and expense to obtain the next extension or consent,
- Repeated requests to extend consents and approvals,
- Absence of any work program or appointment of builder or contractor or other demonstrated commitment to the project.

On balance, the extension of the Development Approval is not warranted. We should not encourage this action.

RECOMMENDATION:

That the Development Assessment Panel not grant an extension of time to the Development Approval for Development Number 960/932/2008 on the grounds that legislation and development policies have changed to a significant degree such that a new assessment of the proposal is necessary, and because the applicant has a demonstrated history of not pursuing the development with diligence.

DEVELOPMENT ASSESSMENT PANEL**3 MARCH 2015****DEBATE AGENDA****DA/DAP/R6**

DEVELOPMENT APPLICATION NO:	960/510/2014 (960/D024/14) (Prop ID 113547)
APPLICANT:	Actium Developments
OWNER:	CR Lindner Nominees Pty Ltd & Vintage Real Estate Pty Ltd
SUBJECT LAND:	Lot 700 in DP 18250 (Lot 50 in 960/D044/04), 80 Basedow Road, Tanunda
PROPOSAL:	Land Division (23 Allotments and Roads)
ZONE/POLICY AREA:	Residential Zone (Map Baro/17 and 18), Policy Area 11 – Menge Road (Map Baro/17 and 18), Concept Plan Map Baro/16
PROCEDURE:	Merit
REFERRALS:	Development Assessment Commission, SA Water, Department Planning, Transport & Infrastructure, Urban Renewal Authority (Affordable Housing)
PUBLIC NOTICE:	Category 1
KEY ISSUES:	Undersize Allotment, Stormwater Disposal, CWMS, Reserve Contribution, Affordable Housing
DEVELOPMENT PLAN PROVISIONS:	Refer <u>Attachment 3</u> for extracts from:
CONSOLIDATION DATE: 21 February 2013	<ul style="list-style-type: none"> • Hazards • Infrastructure • Interface between Land Uses • Land Division • Natural Resources • Open Space and Recreation • Residential Development • Transportation and Access • Residential Zone • Menge Road Policy Area
RECOMMENDATION:	Grant Development Plan Consent, Land Division Consent and Development Approval
OFFICER:	Brian Irvine

SUBJECT LAND AND LOCALITY

The subject land involves a single, near rectangular shaped allotment at 80 Basedow Road, Tanunda with an area of 10.53 hectares. The existing allotment is approximately 500 metres long and 200 metres wide, extending from the end of Grocke Way (a constructed road off Basedow Road not yet declared public) to the Illaparra Winery site adjacent to the northern boundary.

The land to the north is used as part of the Illaparra Winery but is located in the Residential Zone, Policy Area 11 and Precinct 40. The land on the eastern side is comprised of 2 relatively large lots used for vineyards and is also in the Residential Zone and Policy Area 11. The land on the western boundary is also predominantly for a vineyard but a portion at the southern end is used as a depot yard. This land is also in the Residential Zone and Policy Area 11. The land to the south is made up of a number of residential properties fronting Basedow Road. Those properties are in the Residential Zone but are not in Policy Area 11.

The subject land is vacant, has no vines, trees or other improvements. The land falls gently to the north.

A small residential subdivision, comprising 8 allotments is being established between the subject land and Basedow Road. The road in that land division will lead into subject land to provide access.

The existing character of the site is that of a typical rural land holding on the "township/rural fringe". It is distinctly rural but with the expectation of being developed for residential purposes. The locality extends approximately 50m-70m in all direction from the boundary of the site.

A map showing the location of the subject land is included in *Attachment 1*.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The application proposes to divide the land into 23 residential allotments ranging from 429m² to 873m² and a residual allotment of 8.701 hectares which is the subject of a separate land division proposal. The proposal also includes roads with a proposed round-about at a cross roads. It is proposed to extend roads to the adjoining allotments to enable the orderly division of those allotments in a coordinated manner.

Stormwater and effluent will drain to the north (away from Basedow Road) and arrangements for easements and facilities in lot 1000 have been discussed with the applicant.

A separate application has been lodged to further divide lot 1000 in this proposal together with the adjoining land. That application will be presented to the Panel at a later meeting following some refinements.

The plan of division and related correspondence is included in *Attachment 2*. (A copy of the future land division is also included for background information purposes only.)

PROVISIONS OF THE DEVELOPMENT PLAN

The subject land lies within the Residential Zone and Policy Area 11 of the authorised Development Plan, consolidated 21 February 2013.

The nature of development has been determined to be “Land Division” and the application has been determined to be a merit form of development.

The provisions of the Development Plan relevant to the consideration of the proposal are contained in Attachment 3.

CONSULTATION

Agency reports have been received from the Development Assessment Commission, SA Water, Department Planning, Transport & Infrastructure - Transport Services, and Renewal SA (Affordable Housing).

Copies of the reports are included in Attachment 2.

Council's Manager of Engineering Services was also consulted.

PUBLIC NOTIFICATION

The allotments are configured for residential development compatible with the purpose of the zone, and therefore, in accordance with the Development Regulations, Schedule 9, Clause 5, the proposal is a category 1 form of development for public notification purposes.

PLANNING ASSESSMENT

The land is zoned for residential purposes and the allotment arrangement is typical of a residential subdivision. The layout is compatible with a grid layout referred to the Residential Zone Desired Character statement. There is a reasonable range of allotment sizes for detached dwellings although lot 19 is less than the required minimum of 500m² and lot 23 is less than the required minimum area and less than the minimum road frontage of 15 metres. These deficiencies cannot be rectified with some minor adjustments and therefore it is suggested that a condition be attached to any approval requiring lots 19 to 23 inclusive to be re-worked into 4 allotments that meet minimum requirements.

All of the residential allotments are greater than 300 metres from the neighbouring winery wastewater facility and greater than 100 metres from the winery referred to in Menge Road Policy Area Principles 3 and 4. No interface issues between land uses are expected to flow from this development.

The width of the road reserves are adequate. Road 'A' is 20 metres wide and will serve as a collector road. Rather than providing a usual wider pavement, the applicant is considering a divided carriageway. The width of the road reserve is adequate for either option. A separate application has been lodged to further divide lot 1000 in this proposal and the adjoining land. That proposal has been sufficiently progressed to be confident in concluding that the roads in this land division tie in with the proposed adjoining roads and adjoining land.

There is a possibility that the corner cut-offs, on the 4 corner allotments around the roundabout, may need to be enlarged when the detailed engineering design is completed, but those allotments are sufficiently large to enable further land to be used for road purposes without adverse consequences.

The Transport Services Division of DPTI have not objected to the land division but have recommended the removal of several parking spaces near the Murray Street/Basedow Road intersection to improve driver sightlines. It is assumed that they are concerned that the traffic generated by the land division will require improvements to that intersection. This land division is well removed from the Murray Street/Basedow Road intersection and will contribute only a minor proportion of the traffic that passes through it. If there is a sightline issue at that intersection it can and should be addressed by Council independently from this application.

The proposed roads fall away from Basedow Road and drain into the proposed lot 1000. There is no drainage infrastructure to accept this water. Currently, water drains from the land as a natural dispersed flow over neighbouring land and eventually finds its way to the railway line culvert to the north, where it enters a watercourse and related drainage infrastructure. In discussions with the applicant it has been proposed to construct a temporary retention stormwater basin in lot 1000 near the end of road 'A', in the area of a future reserve, with any overflow being dispersed over the remainder of lot 1000 so that any discharge from lot 1000 will mimic natural run-off. Council's engineering staff have recommended that the retention basin be sized to retain stormwater from a 1 in 100 year storm event, thereby restricting overflows occurrences to larger storm events. (When lot 1000 and the adjoining land are further divided, it will be necessary to construct a permanent stormwater collection and retention/detention system in the northwestern corner of the adjoining land (adjacent to the Illaparra Winery site) and pipe it to the watercourse.)

The concept is acceptable to the Council's engineering staff and can be addressed with conditions of consent. The applicant will then be required to design the system in detail and have it accepted by the Council's engineering staff before construction commences.

The fall of the land creates a similar challenge for effluent disposal. Gravity drainage to CWMS drains in Basedow Road cannot be achieved. Two options are available. The first involves the construction of a small temporary pump station near the end of Road 'A' in the future reserve, with a rising main and easements to pump the effluent to the drain in nearby Wilberth Street. The second option is to construct a larger permanent pump station adjacent to the Ilaparra Winery site capable of servicing both this and the future land division, and pumping the effluent through to a drain at the northern end of Walden Street. Both options are feasible and can be addressed with a condition of consent. The standard augmentation charge will also apply.

A Preliminary Environmental Site Assessment of the site was prepared for an earlier land division application over the land (960/D010/13). That study examined the possibility of soil contamination and cleared the site of any need for remedial action. Nothing has changed on the site since that study and it is considered that a new study is not warranted.

The design generally satisfies the bushfire protection principles and the Minister's Code.

SA Water has advised of their standard requirement for water supply.

Electricity supply should be underground, and can be addressed with a condition of approval.

Council can require 12.5% of the site as an open space reserve, which equates to 2286m² (calculated on the residential component of the land division), or a monetary contribution (\$149,224 for 23 lots or \$142,736 for 22 lots). If a land contribution is required it should be cut out of lot 1000 in the area of the future reserve (with a right of way). The area shown as reserves in the future land division application also includes a component of land contribution for this application. If a monetary contribution is required for this application, the overall land contribution can be expected to be reduced in the future proposal. It is therefore recommended that a proportional land contribution be sought as part of this application and it be located so that it can be added to in the future application.

Objective 3 for the Menge Road Policy Area states that a minimum of 15% of dwellings should be affordable housing. This equates to 3 dwellings. The administrative system to achieve affordable housing requires a land management agreement to be entered into between the relevant Minister and the applicant, and then offering the designated allotments at below a calculated price point to eligible purchasers. If the allotments are not 'taken up' within a designated time frame they can be offered on the open market. The system is cumbersome, does not guarantee affordable housing, and is of limited benefit in relatively small land divisions. The applicant has indicated in initial discussions for the future application that because of the relatively higher land values in Tanunda, the required price point cannot be achieved in Tanunda for detached dwellings unless lot sizes can be reduced to below the minimum. As an alternative the applicant has commenced discussions with the Department to provide affordable housing in a Nuriootpa land division as well as providing a site in this land division for 2 semi-detached dwellings.

CONCLUSION

The allotments are suitable for their intended use subject to the 2 undersized allotments being bought up to minimum requirements. Overall the proposal coordinates well with the adjoining area and proposed future developments. It is considered that the proposal is not seriously at variance with the provisions of the Development Plan and that it warrants approval subject to conditions to address the matters referred to in the report.

RECOMMENDATION:

That the Development Assessment Panel grants Development Plan Consent, Land Division Consent and Development Approval to application 960/D024/12 (Council Reference 960/510/2014) subject to the following conditions:

Conditions of Development Plan Consent

- (1) The land division shall be undertaken in accordance with the plans accompanying the application, unless varied by the following conditions.
- (2) The applicant shall construct all necessary services and infrastructure to service each allotment, including:

- roads,
- water supply,
- storm water drainage,
- waste disposal (CWMS),
- electricity, public lighting and communications

to the reasonable satisfaction of Council. (Note Only: This may include constructing drains outside of the site, where existing drains are inadequate to accept additional water or sewerage.)

- (3) Each allotment shall have a minimum area of 500m² and a minimum road frontage of 15 metres.
- (4) Allotments 19 to 23 inclusive depicted on the proposal plan shall be reconfigured into 4 allotments that each have a minimum area of 500m² and a minimum road frontage of 15 metres.
- (5) The pavement of the proposed roads shall be extended to and join the existing pavements of adjoining streets and roads.
- (6) The payment of the CWMS augmentation charge required pursuant to Section 188 of the Local Government Act be made to Council prior to the issuing of the Certificate of Approval. The charge payable is the charge current at the time of payment. (see note below)

Reason - To ensure that effluent can be satisfactorily disposed of from the proposed allotments and that the allotments are suitable for their intended use.

NOTE ONLY

Pursuant to Section 188 of the Local Government Act, the Council requires an augmentation charge to be paid for each additional allotment connected to the CWMS system. At the time of approval the current charge is \$4500 per allotment. Based upon the current charge a payment of \$99,000 is required for 22 allotments (22 additional allotments requiring new connections @ \$4500/allotment). This charge is reviewed periodically, and the augmentation charge to be paid is the charge applicable at the time the payment is made. Please enquire with the Council office prior to making payment for the current charge.

- (7) Easements shall be acquired and transferred to Council for any stormwater or CWMS infrastructure that is required to service this land division, but which passes through private property external to this land division, prior to the issue of the Certificate of Approval.
- (8) A right of way shall be provided thorough lot 1000 between the end of road 'A' and any isolated easement provided for stormwater or CWMS infrastructure.
- (9) A site to be provided, suitable for 2 semi-detached dwellings and arrangements be entered into to register the site for affordable housing prior to the issue of the Certificate of Approval.

- (10) During construction of infrastructure temporary debris and sediment control measures shall be installed to prevent debris and sediment from leaving the site during all construction stages. Control measures shall be in accordance with a soil erosion and drainage management plan, which shall provide such pollution prevention measures as required to comply with the "Environmental Protection Authority's Stormwater Pollution Prevention Codes of Practice":

- For the Community
- For Local, State, and Federal Government
- For the Building and Construction Industry

Temporary debris and sediment control measures shall be in place prior to construction commencing and shall be maintained at all times during construction. Prior to construction, a copy of the soil erosion and drainage management plan shall be provided to Council for approval.

Conditions of Land Division Consent

- (1) Drainage easements be provided wherever necessary to provide for drainage of the allotments and roads, and for any CWMS infrastructure. Drainage easements shall have a minimum width of 3 metres for a single service and 4 metres where 2 services are provided.

Easements be provided wherever necessary for electrical purposes.

Any stormwater retention/detention basin or CWMS pumping station located within lot 1000 shall be provided with an easement vested to Council. The boundaries of the easement shall be a minimum of 4 metres from the edge of the basin or pump station.

- (2) Road 'A' shall have a minimum width of 20 metres. Other roads shall have a minimum width of 14 metres.
- (3) Corner cut-offs measuring a minimum of 4.5 metres in each direction be provided at the intersection of all roads.

NOTE: Corner cut-offs may be increased in size to accommodate the roundabout.

- (4) All roads and civil works shall be constructed in accordance with drawings and specifications designed by a professional engineer, submitted to and approved by Council before construction commences. The design shall generally be in accordance with the appropriate Australian Standards, technical codes of practice and Council's standard land division requirements. In particular:
- (a) All site construction work shall be carried out under the supervision of a Professional Engineer in accordance with plans and specifications approved by Council. Council shall be notified prior to each stage inspection (24 hours or one full working day in advance) for attendance.

- (b) All earthworks associated with the development shall be stabilised in accordance with certified engineering design and practices against erosion and failure. Earthworks must not encroach across neighbouring property boundaries. When fill or cut at the property boundary exceeds 200mm, a retaining wall with existing ground and proposed wall levels shall be specified.
- (c) Defects Liability Period for the development shall will be 12 months from the Council's written acceptance of Practical Completion.
- (d) Minimum road grades shall be 0.5% and maximum road grades shall be 15% unless otherwise approved.
- (e) The road verge on both sides of the carriageway in road 'A' shall be shaped to provide a minimum width of 3.5 metres adjacent the kerb where a single carriageways constructed, or a minimum width of 2.3 metres where a divided carriageway is constructed. All other roads shall be provided with a verge with a minimum width of 3.5 metres. All verges shall have a maximum cross fall grade of 2.5%. grade towards the road top of kerb (ie the finished surface level at the allotment boundary shall be a minimum of 225mm above the adjacent watertable level) and be graded uniformly to be suitable for pedestrian traffic. Batters into allotments are to be no steeper than 1 in 6.
- (f) The surface of each residential allotment shall be graded towards the road.
- (g) The road pavement of Road 'A' shall have a minimum width of 8 metres where a single carriageway is constructed. Where a divided carriageway is proposed, the road pavement of each carriageway shall have a minimum width of 6.2 metres.

The road pavements of other roads shall have a minimum width of 7 metres.
- (h) All roads shall be sealed with an AC10, 30mm thick Bituminous Hotmix wearing course. Pavements are to be designed based on "ARPG21 A Guide for the Design of New Pavements for Light Traffic" using 95 percentile confidence limits for the ultimate traffic loading and a 20 year design life.
- (i) The pavement of the proposed roads shall be extended to and join the existing pavements of adjoining streets and roads.
- (j) All necessary signs (including street signs), traffic control devices and pavement markings shall be provided in accordance with AS1742.
- (k) Adequate measures shall be implemented to suppress dust generated during site works to ensure that dust generation does not become a nuisance off-site. Site development machinery should not generally be operated outside the hours of 7.00am to 7.00pm daily.

- (l) All roads shall be provided with kerb and gutter to the reasonable satisfaction of the Council.
 - (m) Kerb openings for the disposal of stormwater shall be provided for each allotment that drains to the road.
 - (n) "As Constructed" drawings shall be provided to Council in hardcopy and electronically in "dwg" or "dxf" format.
- (5) Concrete block paved footpaths of 1.5m wide shall be provided on both sides of road 'A' and on one side of other roads, adjacent to the roadway in accordance with plans and specifications approved by Council. The footpath cross fall shall not exceed 2.0%. Pedestrian pram ramp accesses, including tactile ground surface indicators, are to be provided in accordance with Australian Standards AS1428.
- (6) A stormwater drainage system shall be constructed and installed in accordance with a Stormwater Management Plan supplied to and approved by Council prior to the commencement of work to ensure that all allotments and roads are adequately drained. The Stormwater Management Plan shall be prepared in accordance with the 1987 edition of "Australian Rainfall and Runoff", Australian Standard 3500, and to the satisfaction of the Council as follows:
- (a) Detailed stormwater design calculations justifying the Stormwater Management Plan shall be provided.
 - (b) The Stormwater Management Plan shall consider ultimate development of all catchment areas contributing to runoff over or through the land division, and ensure that natural run-off from neighbouring land and/or roads is not interrupted.
 - (c) Stormwater retention systems shall be incorporated into the stormwater drainage system to ensure that all stormwater from a 100 year ARI storm event is retained on site.

Any stormwater discharged from the basin into lot 1000 shall not be concentrated but will be dispersed uniformly over lot 1000. Details of the discharge arrangements shall be provided.

The maximum gradient of any embankment associated with a stormwater retention basin shall be 1 in 6.

Any basin shall be located in lot 1000, within the area depicted as "Stage 2 reserve" in the proposed plan of division contained in 960/D044/14, but not with the open space reserve contribution made for this application.

- (d) Stormwater runoff from the site shall not be discharged into any adjacent property other than via a pipe placed in an easement or land under the care and control of Council and in accordance with a design approved by Council.

- (e) All allotments shall grade towards a roadway.
 - (f) Pollution control devices shall be incorporated within the development to provide for the removal of stormwater borne pollutants, consistent with current best practice and EPA requirements.
 - (g) The Stormwater Management Plan shall include existing contours, features, existing stormwater infrastructure, proposed site works details, levels and grading, proposed stormwater system details, retention/detention system volumes and discharge controls, proposed building floor levels, proposed paving and connection details to and any upgrading if required of the existing external drainage systems.
 - (h) The drainage system shall be designed making provision for future development (buildings and paved areas) covering up to 75% of allotment areas.
 - (i) The pipe system shall provide for runoff generated by a minimum 10 year Average Recurrence Interval (ARI) storm event with overflow paths provided for a 100 year ARI storm event that will prevent stormwater runoff inundating properties.
 - (j) Minor drainage systems shall be provided to limit gutter flow widths to a maximum of 1.5m for a 10 year ARI storm. Where overflow path discontinuity occurs and property flooding may occur a minimum of 100 year standard is required.
 - (k) Minimum pipe size for road drainage shall be 375mm and pipes shall be rubber ring jointed.
 - (l) "As Constructed" drawings shall be provided to Council in hardcopy and electronically in "dwg" or "dxf" format.
- (7) Underground electrical power be provided to each allotment in accordance with a design approved by SA Power Networks and Council. Where appropriate, services should be provided in a common service trench located in accordance with the publication titled "Services in Streets – A Code for the Placement of Infrastructure Services in New and Existing Streets".
- (8) Street Lighting be provided in accordance with a design and specifications conforming to Australian Standard 1158.1 and approved by SA Power Networks and Council. Lighting columns shall be standard SA Power Networks design approved by Council.
- (9) Each allotment be provided with a connection point to the Community Wastewater Management Scheme at the boundary of the allotment, in accordance with a technical design and specifications approved by Council, prior to the commencement of work.

The design shall be prepared by a professional engineer and show the new drains and connection points locations, flushing points, inspection points, depths, gradients etc.

The specifications should provide for:

- Council inspections prior to backfilling of trenches,
 - The provision of test results to Council.
 - Provision of "As constructed" drawings to Council in hardcopy and electronically in "dwg" or "dxf" format.
- (10) An area equivalent to 12.5% of the combined area of the residential allotments and roads shall be vested in the Council as a reserve to be held as open space. The reserve shall be located in lot 1000, within the area depicted as "Stage 2 reserve" in the proposed plan of division contained in 960/D044/14.

NOTE ONLY. The area of reserve is estimated to be 2286m². The area will be calculated correctly when the final plan is provided.

- (11) The financial, and easement requirements of the SA Water Corporation shall be met for the provision of water supply. (SA Water 90114/14).
- (12) A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the Development Assessment Commission for Land Division Certificate purposes.

NOTES

- (a) Land Division Conditions 1 to 10 inclusive are the requirements of Council and Conditions 11 and 12 are the requirements of the Development Assessment Commission.
- (b) The applicant is reminded of its general environmental duty, as per Section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure that its activities on the whole site, including construction, do not pollute the environment in any way which causes or has the potential to cause environmental harm.
- (c) Suggested street names should be submitted to Council for consideration prior to submitting the final plan. Street names are considered at a Council meeting and names suggested by the applicant may not always be adopted. It is recommended that any suggested names be submitted at least 8 weeks prior to lodging the final plan to avoid delays.
- (d) The applicant is advised to contact the Council when all Council conditions have been complied with and request Council's release for the issue of the Certificate of Approval. Any bonding arrangements should be in place prior to seeking the issue of the Certificate of Approval.
- (e) For further information regarding this approval and the conditions of approval please contact the relevant officer:

Brian Irvine	Planning Officer	Ph 8563 8486
Bob Williams	Civil Engineer	Ph 8563 8496
Michael Clark	CWMS Co-ordinator	Ph 8563 8479

DEVELOPMENT ASSESSMENT PANEL

3 MARCH 2015

9. OTHER BUSINESS

9.1 DEVELOPMENT ASSESSMENT COMMISSION CONCURRENCE APPLICATIONS (B61)

The Development Assessment Panel requested details of responses received from the Development Assessment Commission, relating to applications referred for concurrence.

To date the following applications (non-complying or requiring concurrence under the Character Preservation Legislation), in which the Panel were the decision authority, have been received from the Commission as follows:

DA NUMBER	APPLICANT	ADDRESS	NATURE OF DEVELOPMENT	DAC DECISION
960/1142/2013	Cameron Sims & Anthea Egyud	Lot 714 Allendale Road, Kalbeeba	Detached Dwelling, Outbuilding and Deck	Concurrence Granted 30/1/2015 (02/09/2014 panel meeting)

RECOMMENDATION:

That the report be received.

DEVELOPMENT ASSESSMENT PANEL

3 MARCH 2015

9. OTHER BUSINESS – LATE ITEM

9.2 8 FERGUSSON COURT, LYNDOKH – APPEAL – OFFER OF SETTLEMENT THROUGH AMENDED PROPOSAL (960/401/2014)

BACKGROUND

At its meeting held on the 3 December 2014, the Development Assessment Panel refused Development Plan and Land Division Consent to Development Application 960/401/2014.

A copy of the minutes and the refused plan form Attachment 1.

An appeal to the Environment, Resources and Development Court against the decision has been lodged. The appeal has been set down for conference on 12 of March 2015.

The notice of appeal forms Attachment 2.

In an attempt to settle, the appellants have now submitted an amended plan which forms Attachment 3.

As the application was determined by the Development Assessment Panel, it is necessary for the Panel to consider the revised proposal. If the Panel supports the revised proposal, the Court will be advised accordingly, in which case the Court would typically uphold the appeal and overturn the Panel's original decision to refuse the application. If the Panel does not support the revised proposal the matter would proceed to a hearing.

PLANNING ASSESSMENT

With regard to the amended plan, each resulting allotment would exceed 500 square metres in area (excluding the handle of allotment 201) and would have a minimum 12 metre frontage to a public road in accordance with Residential Policy Area 7 Principle of Development Control 7. Each proposed allotment is capable of facilitating Residential Development and would reasonably maintain the low scale, low density character and prevailing generous front, side and rear boundary setbacks found within Fergusson Court. The proposal is therefore considered to reasonably achieve the Desired Character of the Township Zone and Residential Policy Area 7 and is not considered to have an undue impact upon the streetscape.

RECOMMENDATION:

That the Development Assessment Panel has considered all relevant assessment matters and the officer's report prepared in relation to Development Application 960/401/2014 and resolves:

- (A) To acknowledge that, pursuant to Section 35(2) of Development Act, the revised proposal presented by the applicant in respect to Development Application 960/401/2014 is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.

- (B) To advise the Environment, Resources and Development Court that it supports the revised proposal and recommends that, in the event the appeal is upheld, any Development Plan Consent and Land Division Consent be subject to the following conditions:

Development Plan Consent Conditions

- (1) The land division shall be undertaken in accordance with the plan and documentation prepared by Mattsson and Martyn Surveying and Planning Consultants (Reference P11889/02/14, Date Drawn 18/12/14) unless varied by the following conditions.
- (2) The applicant shall provide for the construction of all necessary services and infrastructure including but not necessarily limited to roads, storm water drainage, waste disposal and electricity to the reasonable satisfaction of Council and all relevant authorities. All associated costs shall be borne by the developer.
- (3) On approval of the application, all internal water piping that crosses the allotment boundaries must be severed or redirected at the developers/owners cost to ensure that the pipework relating to each allotment is contained within its boundaries.
- (4) No storm water shall be discharged onto any adjoining property.
- (5) A payment of \$4500.00 (GST exempt) per additional allotment/unit (1 allotment/units x \$4500.00), towards the infrastructure maintenance costs of the township Community Wastewater Management Scheme (CWMS) be paid to Council.

Land Division Consent Requirements

- (1) Any portion of Council's infrastructure damaged as a result of work undertaken, on or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
- (2) Kerb inverts and crossing places shall be provided in upright kerb for safe and convenient access to allotments where necessary to the satisfaction of Council.
- (3) All weather compacted rubble crossovers are to be constructed for safe and convenient access from the kerb to the boundary to service each allotment.
- (4) The controlled storm water discharge shall be connected safely to the street gutter using a kerb invert sleeve.
- (5) The location of the septic tank and associated plumbing servicing the existing dwelling shall be confirmed as being on the same allotment as the dwelling, or a new septic tank shall be installed on the same allotment as the dwelling, and be connected to the dwelling and

Community Wastewater Management Scheme prior to the issue of the Certificate of Approval.

- (6) Underground electrical power shall be provided to each allotment in accordance with a design approved by ETSA Utilities and Council.
- (7) Where appropriate, services should be provided in a common service trench located in accordance with the publication titled 'Services in Street – A Code for the placement of Infrastructure Services in New and Existing Streets'.
- (8) Each allotment shall be provided with a connection point to the Community Wastewater Management Scheme at the boundary of the allotment, in accordance with a technical design and specification approved by Council, prior to the commencement of work.

The design shall be prepared by a professional engineer and show the new drains and connection point locations, flushing points, inspection points, depths, gradients etc.

The specification should provide for

- i. Council inspections prior to backfilling of trenches.
- ii. The provision of test results to Council.
- iii. Provision of 'As Constructed' drawings to Council in hard copy and electronically in 'dwg' or 'dxf' format.

Note: Non-compliance with this requirement will delay the Council's clearance for the issuing of the Certificate of Approval.

Requirements of SA Water and the Development Assessment Commission

- (1) The financial requirements of SA Water shall be met for the provision of water supply.
- (2) Payment of \$6488 into the Planning and Development Fund (1 allotment(s) @ \$6488/allotment). Payment may be made by credit card via the internet at www.edala.sa.gov.au or by phone (8303 0724), by cheque payable to the Development Assessment Commission marked "Not Negotiable" and sent to GPO Box 1815, Adelaide 5001 or in person, at Level 5, 136 North Terrace, Adelaide.
- (3) A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the Development Assessment Commission for Land Division Certificate purposes.