



The Barossa Council

**MINUTES OF THE MEETING OF THE BAROSSA COUNCIL
DEVELOPMENT ASSESSMENT PANEL**

Held on Tuesday, 1 October 2013 commencing at 5:02pm in
the Council Chambers, 43-51 Tanunda Road, Nuriootpa

WELCOME

Mr Bruce Ballantyne welcomed everyone and opened the meeting.

PRESENT

Mr Bruce Ballantyne (Presiding Member), Mr David Hughes, Mr Kelvin Goldstone, Mrs Susie Roehr, and Mr Craig Grocke – Panel Members.

Mr Ian Baldwin (Director – Development & Environmental Services) Mr Louis Monteduro (Senior Manager, Planning Services), Mr Brian Irvine (Senior Planner), Mr Bob Williams (Engineer) and Mrs Christine Kruger (Minute Secretary) – Council Staff.

APOLOGIES

Mr Richard Miller.

LEAVE OF ABSENCE

Mr Scotty Milne.

MINUTES OF PREVIOUS MEETING

MOVED Mr Hughes that the Minutes of the Development Assessment Panel meeting held on Tuesday, 3 September 2013 as circulated, be confirmed as a true and correct record of the proceedings of that meeting.

Seconded Mrs Roehr

CARRIED

BUSINESS ARISING FROM PREVIOUS MINUTES

Nil.

DECLARATION OF INTEREST BY MEMBERS OF PANEL

Nil.

APPLICATIONS FOR DECISION**DEBATE AGENDA****DA/DAP/R1****D50/08 (117365)****WHITE HOLDINGS GROUP – VARIATION TO LAND DIVISION (MERIT)**

MOVED Mr Hughes that the Development Assessment Panel accepts the variations to application 960/0050/08 (960/D050/07) without varying the conditions attached to the Development Approval, and the Development Assessment Commission be advised that the changes are minor and covered by the existing approval.

Seconded Mrs Roehr**CARRIED**

DEVELOPMENT APPLICATION NO:	960/D050/07 (960/0050/2008) (Prop ID 117365)
APPLICANT:	White Holdings Group
OWNER:	Gemtree Nuriootpa Pty Ltd
SUBJECT LAND:	Lot 742 Chardonnay Drive, Nuriootpa in DP 76327
PROPOSAL:	Variation to Land Division 960/D050/07 (58 Allotments, Roads and Reserves)
ZONE/POLICY AREA:	Residential Zone (Map Baro/3)
PROCEDURE:	Merit
REFERRALS:	Nil
PUBLIC NOTICE:	Category 1
KEY ISSUES:	Variation to Lot Sizes
DEVELOPMENT PLAN PROVISIONS:	Residential Zone Principle of Development Control 9
RECOMMENDATION:	Grant Variation Without Additional Conditions
OFFICER:	Brian Irvine

BACKGROUND

This application for land division was originally presented to the Panel on the 21 December 2009 and approved subject to conditions. Extensions of time to the approval have been previously granted. The applicant now wishes to make some variations to the proposal, and they are presented to the Panel for consideration.

Section 39(7)(b) of the Development Act limits consideration to the variations.

SUBJECT LAND AND LOCALITY

The subject land involves a single allotment of approximately 5.9 hectares on the southern side of the Sturt Highway, Nuriootpa. The site is bounded on the eastern and southern sides by land currently used or approved for residential use. The highway runs along the northern boundary.

The land is currently used as a vineyard and has a drainage channel running north-south through the middle of the allotment. There are no buildings on the site.

Chardonnay Drive runs into the eastern boundary midway along its length. Similarly, Centenary Avenue runs into the southern boundary.

The site is nearly flat, with a slight fall to the drainage channel in the middle of the development.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The original application proposed to divide the land into 60 residential allotments ranging from 413 m² to 1020 m² and 4 reserves totalling 12013 m². The original proposal incorporated a buffer strip, approximately 15m wide, along the edge of the highway, and the drainage channel into the reserves.

The original plan of division, the development approval, and the variations were included with the Agenda.

The differences between the 2 plans are:

- The number of allotments have been reduced from 60 to 58. (Note that there is no lot 15 in the amended plan).
- The road between Centenary Avenue and Chardonnay Drive has been widened from 14m to 15m.
- Lots 5, 6 and 7 have been reworked to improve access and produce regular shaped lots.
- The number of lots on the south eastern side of the road between Centenary Avenue and Chardonnay Drive has been increased by 1 with a corresponding variation in the size of allotments.
- The area of lots 16 to 21 on the new plan have been reworked by reorientating lot 16 and 17, reducing the number of lots by 1 and adjusting the size and frontage of the lots. (Lots 15, 16 and 17 on the old plan, which were less than 420 m², have been eliminated).
- Lots 35-37 and 42-44, in the old plan, have been enlarged by moving the western boundary of the lots towards the creek.
- Lot 45 on the old plan has been reshaped to enlarge the adjoining reserve, and the area of lots 45 to 52 have been reworked by reducing the number of lots by 1.
- The area of lots 53 to 60 on the old plan have been reworked to reduce the number of lots by 1 and to reshape the reserve between lots 56 and 57 on the old plan.
- Overall, the reserve area has been increased by 0.088 hectare.

PROVISIONS OF THE DEVELOPMENT PLAN

The original plan of division was assessed against the provisions of the authorised Development Plan, consolidated 25th March 2007.

The principal difference between the 2007 Development Plan and the current Development Plan is the increase in the minimum lot size for a detached dwelling from 300 m² to 420 m².

PUBLIC NOTIFICATION

The allotments are configured for residential development compatible with the purpose of the zone, and therefore, in the opinion of the assessing officer, is a Category 1 form of development for public notification purposes.

PLANNING ASSESSMENT

The basic layout of the land division has not changed although there has been considerable "fine tuning".

The number of lots less than 500 m² has been reduced from 16 to 9 and all are above the current minimum area of 420 m² by a comfortable margin. The widening of the road and the adjustments to the reserve are considered to be positive improvements.

The existing conditions for the original approval adequately address flooding and the provision of services, and do not require changing as a result of the changes to the layout.

The CWMS augmentation charge will be adjusted automatically for the reduced number of allotments.

CONCLUSION

The variations do not warrant amending the Development Approval or the conditions of consent attached to it and the new layout plan can be substituted for the original one.

DA/DAP/R2**D340/04 (104309)****HICKINBOTHAM GROUP – EXTENSION OF APPROVAL FOR LAND DIVISION (MERIT)**

MOVED Mr Goldstone that the Development Assessment Panel grant an extension of time to the Development Approval for Development No 960/D542/03 (Council Reference 960/340/2004) for a further period of 5 years.

Seconded Mr Grocke**CARRIED**

DEVELOPMENT APPLICATION NO:	960/D542/03 (960/0340/2004) (Prop ID 104309)
APPLICANT:	Hickinbotham Group
OWNER:	Hickinbotham Group
SUBJECT LAND:	Lot 2 in FP 931 and Lot 6 in DP 41947 Corner Kalimna Road and Research Road, Nuriootpa
PROPOSAL:	Extension of Approval for Land Division
ZONE/POLICY AREA:	Residential Zone (Map Baro/3)
PROCEDURE:	Merit
REFERRALS:	Nil
PUBLIC NOTICE:	Category 1
KEY ISSUES:	Extension of Time
DEVELOPMENT PLAN PROVISIONS:	Residential Zone
CONSOLIDATION DATE:	Consolidated 21 February 2013
RECOMMENDATION:	Approve Extension of Time
OFFICER:	Brian Irvine

BACKGROUND

An application to divide the land into 283 allotments was approved on the 2 March 2004. The eastern half of the land division has been completed with 128 allotments completed. Engineering approval has been given for another 22 lots in the north western corner of the allotment. A number of extensions to the approval have been granted in the past under delegated powers with the approval due to lapse on the 5 November 2013, if not extended further. Officer's delegations have been amended and now only the Panel have the delegated power to extend an approval where the Panel granted the original approval.

A request has been received for a 5 year extension.

A copy of the approved layout was included within the Agenda.

ASSESSMENT

The Development Act does not provide any guidance for the assessment of an application for the extension of the approval.

The original layout was designed to be coordinated with the neighbouring development to the west with the road and drainage systems linked.

More recently, the Hickinbotham Group have cooperated in a scheme to provide stormwater drainage to land on the northern side of Kalimna Road. A drain will be laid as part of their next stage to carry stormwater through to the North Para River.

An increase of the CWMS augmentation charge from the 2004 amount has been independently negotiated.

There have been no substantive changes to the Development Plan justifying refusal of the request and forcing the reassessment of a new application. Similarly there are no proposed changes in the foreseeable future.

CONCLUSION

Whilst the requested extension will result in an approved period almost 15 years, this should be weighed against:

- The large size of the original proposal and the relatively slow rate of sales in the area,
- The need to coordinate the development of this site with those nearby,
- There have been no significant changes to the Development Plan of a nature to warrant a different decision or conditions.

Therefore it is concluded that there is no benefit or valid reason to refuse the request.

DA/DAP/R3**D912/13 (107158)****ALI REZAIAN – VARIATION TO APPLICATION 960/546/12 – AMENDMENT TO BUILDING DESIGN (NON-COMPLYING)**

MOVED Mr Hughes that the Development Assessment Panel has considered all relevant matters and the officer's report in relation to Development Application 960/00546/2012 and resolves as follows:

(A) Approve the variation to Development Application No 960/00546/2012 and grant Development Plan Consent, subject to the following additional condition and note:

- 1 Any metal roof and wall cladding shall be of a factory applied colour finish in a muted medium or dark grey, green, brown, beige or other suitable colour to blend with the natural features of the landscape and nearby buildings.

NOTES ONLY

- (a) The conditions and notes attached to the Development Plan Consent for application 960/00546/2012 continue to apply.
- (b) Seek Concurrence of the Development Assessment Commission to approve the variation and grant Development Plan Consent.

Seconded Mr Goldstone**CARRIED**

DEVELOPMENT APPLICATION NO:	960/00912/2013 (Prop ID 107158)
APPLICANT:	Ali Rezaian
OWNER:	Ali Rezaian
SUBJECT LAND:	1246 Barossa Valley Way, Lyndoch
PROPOSAL:	Variation to Application 960/00546/12 – Amendment to the Building Design
ZONE/POLICY AREA:	Primary Production (Barossa Valley Region) Zone (Map Baro/35)
PROCEDURE:	Non-Complying
REFERRALS:	Nil
PUBLIC NOTICE:	Category 1
KEY ISSUES:	Variation to Building
DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE:	Council Wide Design and Appearance Objective 1. Principle of Development Control 7. Orderly and Sustainable Development Objective 9. Siting and Visibility Objective 2. Principle of Development Control 5. Tourism Development Objective 3. Principle of Development Control 3, 9 & 12. Primary Production (Barossa Valley Region) Zone Principle of Development Control 2. Consolidation Date: 21 February 2013
RECOMMENDATION:	Approval
OFFICER:	Brian Irvine

BACKGROUND

The original application, 960/546/13 was approved as an “Extensions to Existing Motel) by the Panel on the 4 December 2012 after going through the non-complying process. Development Plan Consent was issued on the 14 January 2013 following the receipt of concurrence from the Development Assessment Commission. The proposal involved renovating a derelict stone barn for bed and breakfast style accommodation. The applicant now wishes to amend the design prior to finalising the building documentation for Building Rules Consent.

Section 39(7)(b) of the Development Act limits consideration to the variations.

SUBJECT LAND AND LOCALITY

The subject land is an irregular shaped allotment with an area of 1.233 hectares located on the southern side of Barossa Valley Way, opposite the Lyndoch Hill motel/restaurant.

The owner has recently adjusted boundaries to separate the portion of the property used for the bed and breakfast business from the surrounding vineyard. Three accommodation units are provided in the original converted house and a newer building at the rear of the allotment comprising a total of 6 bedrooms. Other shedding exists on the site, including the old stone barn that was subject to the 2012 application (960/546/12) and this current application. The buildings are visible from the road but the overall appearance is similar to that of a typical farm house and farm buildings surrounded by vineyards.

To the south, east and west, the site is surrounded by vineyards owned by the owner of the units. The railway line and the township of Lyndoch are located further to the south. The land to the north, on the other side of Barossa Valley Way, is used for the Lyndoch Hill motel/restaurant.

The surrounding locality consists predominately of vineyards with a character typical of the Barossa Valley.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The original proposal involved restoring/renovating an old stone barn to be used as a small 2 bedroom tourist accommodation unit, with one of the bedrooms in the roof space.

The variation involves:

- removing portion of the roof and using part of the upper floor area as a balcony,
- extending the rear of the building by 605mm
- A pitched gabled dormer on the rear portion of the roof
- Using zincalume external wall cladding instead of timber stain shiplap boarding
- Changes to the internal layout.

Neither the use of the building or the overall number of guests are being changed.

The original approved plans, development Plan consent approval, and the variations were included with the Agenda.

PROVISIONS OF THE DEVELOPMENT PLAN

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

The proposal is deemed to be a non-complying form of development in the zone.

A decision has been made under delegation to proceed with the assessment of the application.

The following provisions of the Council Wide, and Zone parts of the Development Plan apply to the variations.

Design and Appearance

Objectives 1: Development of a high architectural standard that responds to and reinforces positive aspects of the local environment and built form.

Principles of Development Control

7. *The external walls and roofs of buildings should not incorporate highly reflective materials which will result in glare.*

Orderly and Sustainable Development

Objectives 9: Integrated re-development of poor quality buildings and under-utilised land.

Siting and Visibility

Objectives 2: The protection and enhancement of the area's visual amenity and landscape quality, including land visible from tourist routes.

Principles of Development Control

5. *The nature of external surface materials of buildings should not detract from the visual character and amenity of the landscape.*

Tourism Development

Objectives 3: Tourism development that sustains or enhances the local character, visual amenity and appeal of the area.

Principles of Development Control

3. *Tourism development should ensure that its scale, form and location will not overwhelm, over commercialise or detract from the intrinsic natural values of the land on which it is sited or the character of its locality.*

9. *Tourist developments should demonstrate excellence in design to minimise potential impacts or intrusion on primary production activities and on areas of high conservation, landscape and cultural value.*

12. *Where appropriate, tourism developments in areas outside townships should:*

- (a) *adapt and upgrade existing buildings of heritage value*
- (b) *seek to improve conditions in disturbed or degraded areas on the site.*

Primary Production(Barossa Valley Region) ZoneDesired Character

The zone is characterised by open undulating terrain combined with isolated stands of natural vegetation and scattered dwellings and farm buildings. The open nature of the land results in a landscape highly sensitive to development for non broad-acre farming or viticulture purposes. For this reason, it is expected that development will be carefully designed and located to blend located within the landscape and be inconspicuous in appearance from key tourist and scenic routes throughout the Barossa Valley Region.

Opportunities for non-agricultural development will be limited to preserve the natural appearance and scenic qualities of rural areas, as well as retain land for maximum horticultural and viticultural productivity. Similarly, large scale wineries and industrial development and dwellings will be limited in location and design to maximise productive land and prevent the incremental erosion of the existing landscape character. Forms of large scale winery and industrial development are more appropriate within regional industrial areas established specifically for such purposes.

Principles of Development Control

22 *Development listed as non-complying is generally inappropriate.*

Procedural Matters

All forms of development are non-complying except a short list of exemptions. The proposed development is not on the list of exemptions.

CONSULTATION

No consultation with government agencies is required pursuant to Schedule 8 of the Development Regulations.

PUBLIC NOTIFICATION

The original application received 1 representation in favour of the proposal. That representation does not relate to the variations and therefore, pursuant to Section 39(7)(c) of the Development Act, the variation does not require further public notification.

PLANNING ASSESSMENT

The use of the building has received Development Plan Consent and is not subject to reassessment.

The proposed variations to the structure will change the appearance of the building and therefore warrants reassessment.

The building is approximately 100 metres from Barossa Valley Way at its closest point, and is not visually prominent in its current form. The removal of part of the roof to create a balcony, building a dormer window in the roof, or extending the building in a minor manner, will not in themselves increase the building's visual dominance or detract from the amenity of the landscape or locality.

The proposed use of zincalume external cladding is of concern as it will attract attention to an otherwise inconspicuous building and is spoken against in a number of provisions of the Development Plan. However, this matter can be addressed with a standard condition of consent.

CONCLUSION

The variations are generally acceptable with the exception of the proposed use of Zincalume metal cladding.

DA/DAP/R4

D026/12 (102240)

KALIMNA ROAD UNIT TRUST – LAND DIVISION (57 ALLOTMENTS, ROADS AND RESERVE) - MERIT

Mr Irvine distributed an extract of the Development Plan – Interface between Land Uses, highlighting Land Division – Objective 3 *“Land Division that is integrated with site features, including landscape and environmental features, adjacent land uses, the existing transport network and the availability of infrastructure”*.

Copies of the Concept Plan Map Baro/2, the Detention Basin Landscape Concept Plan, and an overview aerial map, showing allotments in relation to the location of existing trees, were also provided to Panel members.

MOVED Mr Hughes that the Development Assessment Panel defer consideration of Development Application 960/0100/2013, to enable Council staff to negotiate with the Applicant to achieve the desired 12.5% of the site as an open space reserve.

Seconded Mr Grocke

CARRIED

DEVELOPMENT APPLICATION NO:	960/D026/12 (960/0100/2013) (Prop ID 102240)
APPLICANT:	Kalimna Road Unit Trust (Strategy Urban Projects & Roger Pitt)
OWNER:	GJ & JF Walker
SUBJECT LAND:	Lot 2, 41-47 Kalimna Road, Nuriootpa in FP 173385
PROPOSAL:	Land Division (57 Allotments, Roads and Reserve)
ZONE/POLICY AREA:	Residential Zone (Map Baro/3) Precinct 8 – Kalimna Road (Map Baro/3) Medium Bushfire Protection Area (BPA Map Baro/2) Concept Plan Map Baro/2
PROCEDURE:	Merit
REFERRALS:	Development Assessment Commission, SA Water, Environment Protection Authority, Department of Planning, Transport & Infrastructure - Transport Services, Urban Renewal Authority (Affordable Housing)
PUBLIC NOTICE:	Category 1

KEY ISSUES:	Stormwater disposal and stormwater detention, Impact on adjoining roads
DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE:	Numerous – Refer to <i>Attachment 3</i> Application Lodgement Date 8/8/2012 Development Plan Consolidation Date 11 November 2011, Modified by the Barossa Valley and McLaren Vale – revised – Protection Districts DPA (interim) 11 April 2012
RECOMMENDATION:	Grant Development Approval
OFFICER:	Brian Irvine

SUBJECT LAND AND LOCALITY

The subject land involves a single rectangular shaped allotment at 41-47 Kalimna Road Nuriootpa with an area of 8.192 hectares. The allotment is approximately 143 metres wide and 573 metres deep, extending from Kalimna Road to the northern boundary of the Residential Zone.

The land to the north is used for grazing purposes and is located in the Primary Production (Barossa Valley Region) Zone. The land on the eastern side is comprised of two relatively large lots with a rural or rural living appearance, and is located in the Residential Zone. The larger of the two eastern lots has had a land division application lodged over it, which is still awaiting further information before it is assessed further. (That application is expected to be completely rearranged and resubmitted.) Most of the land on the western side is also located in the Residential Zone and is comprised of medium sized lots with a rural living character, with the exception of one parcel that has recently been subdivided into residential lots. A small portion of land adjoining the western boundary and fronting Kalimna Road is located in the Home Industry Zone. The land on the southern side of Kalimna Road is in the Residential Zone.

The land is near flat with a very fine fall towards Kalimna Road. There is a single detached dwelling on the current allotment approximately 90 metres from the road. There are numerous isolated medium sized gum trees on the site (with no significant understory) and an established olive grove planted between the gum trees behind the house.

A new residential subdivision has been established between the Old Sturt Highway and the western boundary of the subject land. A new road in that subdivision terminates at the western boundary, with stormwater and CWMS draining through the subject land.

The existing character of the site is a mixture of residential and rural living , and can best be described as "township/rural fringe" in the process of being developed for residential purposes. The locality extends approximately 250m-300m north and south from the northern and southern edges of the proposed development, and to Research Road to the east and the Old Sturt Highway to the West.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The application proposes to divide the land into 57 residential allotments ranging from 1000 m² to 1521 m². The proposal also includes a reserve of 3000 m² adjacent to Kalimna Road that will serve as a landscaped stormwater detention basin.

It is proposed to extend roads into most of the adjoining allotments to enable the orderly division of those allotments in a coordinated manner.

Stormwater from the land division to the west will drain through the land division and discharge into a proposed detention basin in the proposed reserve. The basin will be sized to serve both land divisions. The outfall from the detention basin will be piped to the drainage pipe proposed to be installed in the "Hickinbotham Subdivision" to convey the water to the North Para River.

The plan of division and related correspondence was included with the Agenda.

PROVISIONS OF THE DEVELOPMENT PLAN

The subject land lies within the Residential Zone of the authorised Development Plan, consolidated 11 November 2011 and modified by the Barossa Valley and McLaren Vale – revised – Protection Districts DPA (Interim) dated 11 April 2012.

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 were provided with the Agenda.

CONSULTATION

Agency reports have been received from the Development Assessment Commission, SA Water, Department Planning, Transport & Infrastructure - Transport Services, Environment Protection Authority, and the Urban Renewal Authority.

The Environment Protection Authority have requested additional information which has not been provided. This is addressed in the assessment.

Copies of the reports were provided with the Agenda.

The 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 ranging from the minimum of 1000 m² to 1521m².

The width of the road reserves are adequate and tie in with the adjoining roads and adjoining land. There is some minor variation from the Concept Plan Map Baro/2 but the intentions of that plan are achieved.

The Transport Services Division of DPTI have expressed concern as to the impact the proposed development will have on the Kalimna Road/Murray Street intersection. They recommend that no further approval be granted until a Traffic Impact Study is undertaken and improvements to the intersection identified. Although it is not stated, it is implied that the study and any improvements should be undertaken by the applicant. The recommendation is not supported for the following reasons:

- Traffic management issues should have been raised and resolved during the government agency consultation process when the area was recently rezoned.
- It is unfair to require a single developer that will contribute only a small proportion of the traffic loading to undertake such a study and subsequent works for the benefit of other developers.
- There is no mechanism to fairly distribute the costs between different developers over time, and the State Government has declined to entertain developer augmentation charges for such off-site works and services.
- It is the Council's and the Department's role.
- There is insufficient information provided by DTEI to justify refusal.

In the absence of a study, the Council and the Department will negotiate improvements to the intersection at a later date, if and when deteriorating traffic conditions warrants such works.

The disposal of stormwater from the area north of Kalimna Road has proven to be an awkward issue to address because of the very shallow gradients involved, lack of infrastructure and final disposal difficulties. The solution involves, in addition to the internal drainage and detention basin works, the applicant constructing a discharge drain under Kalimna Road and through the land opposite to connect to a proposed drain in the Hickinbotham land division, which will convey the water to the North Para River. There are a number of factors that need to be taken into regard when considering conditions of consent.

- A preliminary design of a stormwater detention basin in the reserve and a discharge drain has been undertaken to ensure that stormwater can be disposed of. A refined design will be required but for legal reasons the approval of that design will need to be a reserved matter. (The internal design of the stormwater system can be addressed with a land division condition, but the design of the external system will need to be addressed as a planning condition. However, as the final design will need to be made after the development approval is granted and a planning condition that requires further approval is invalid, the approval of the design of the external system will need to be made a reserve matter.
- The detention basin will be sized to service the proposed land division and the Steinborner Road land division, but the discharge pipe will need to be sized to service other future land divisions on the north side of Kalimna Road in accordance with an overall stormwater master plan.
- The discharge pipe through the Hickinbotham land division will need to be completed by a third party (ie Hickinbotham) prior to the land division proceeding.
- The cost of the drain through the Hickinbotham land division will need to be recouped with an augmentation charge.

The land in the locality falls generally from the east to the west, with a number of subtle depressions and 'channels'. Surface water therefore flows into the subject land along the eastern boundary. There is a concern that when the allotments in the subject land are filled to ensure adequate drainage of the land division, it will block the natural drainage of the land to the east, and cause water to dam on the neighbouring land. Whilst this may be addressed at a later date when the neighbouring land is developed, provision should be made in this land division for water entering the site and to prevent flooding of neighbouring land. This can be achieved by either installing a drain of adequate size to accept surface drainage water (ie predevelopment flows) from the neighbouring land (which haven't been taken into consideration in discussions or design work to date) or providing for an overland flow path.

Other standard drainage matters can be addressed with standard conditions of consent.

The Environment Protection Authority is required to respond within 4 weeks of referral, ie 14 September 2012 unless an extension of time is sought. Although the Environment Protection Authority have requested additional information from the applicant, it hasn't sought an extension of time and the applicant has not provided the information. The Council is entitled to proceed with the assessment, but it must be assumed that in the absence of the additional information, the Environment Protection Authority is recommending refusal. There is a concern that the Environment Protection Authority is attempting to assess the application rather than providing advice to Council, and that their assessment is against the provisions of the Environmental Protection Act rather than the Development Plan. (Irrespective of the advice received, Council is obliged to assess an application against the provisions of the Development Plan.) The matters referred to in the request for information that relate to the Development Plan can be addressed with conditions of consent.

Effluent disposal will be achieved by connecting to the recently installed CWMS drain in Kalimna Road. That drain is being financed by charging an additional augmentation fee on new land divisions on the northern side of Kalimna Road. The internal design can be conditioned in the normal manner.

A significant but undetermined number of trees are expected to be removed, either as a result of the land division process or subsequent building of dwellings. However, the relatively large size of allotments will assist with the retention of a reasonable number of trees and represents a

reasonable compromise between the objective of developing the area for residential purposes and Natural Resources objectives and principles advocating the retention of native vegetation.

The design generally satisfies the bushfire protection principles and the Minister's Code. Hazards principle 16 specifically refers to olive orchards, but the olives on the site will be substantially removed as a natural consequence of developing the land.

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 10,240m². The proposed reserve is only 3000m². The Director-Works and Engineering has recommended that:

- The detention basin reserve be landscaped to enable it to be utilised as useable open space, and
- a monetary contribution be required in lieu of additional land in accordance with the formula set out in the Development Act. (This is expected to be approximately \$266,000)

If land is required for an overland flow path along the eastern boundary, it is suggested that it be large enough to be useful open space in the future, so that when it is no longer required for drainage purposes it can be used as a reserve. It is suggested that any such reserve be accepted as part of the open space instead of a drainage reserve.

Residential Objective 5 and Principle 4 refers to affordable housing. Renewal SA encourages affordable housing but the Council's policy planner has expressed an opinion that there is sufficient affordable housing opportunities in Nuriootpa without making a specific requirement.

CONCLUSION

The proposal coordinates well with, and links the adjoining developments and land. 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.

OTHER BUSINESS

DECLARATION OF CONFLICT OF INTEREST (B61)

MOVED Mr Goldstone that the Council Development Assessment Panel:

- (1) Agrees to require a Council Development Assessment Panel Member Declaring an Interest in a matter before the Panel to make a disclosure clearly stating the nature of that interest in writing to the Presiding Member, in accordance with Clause 2.4 of the Minister's Code of Conduct, and then in the meeting when the relevant agenda item is reached, makes a verbal disclosure to the panel and removes themselves from the meeting in accordance with Section 56A(7)(b) of the Development Act 1993.
- (2) Receives the advice provided in relation to the Independent Commissioner Against Corruption Act 2012, Minister's Code of Conduct and the Development Act 1993.

At the 3 September 2013 Council Development Assessment Panel (CDAP) meeting, discussion ensued regarding the legal requirements for members declaring interest in relation to a matter coming before the Panel as there appeared to be conflicting requirements under the Minister's Code of Conduct and the relevant provisions contained within the Development Act 1993.

Opinion was obtained from Victoria Shute, Kelledy Jones Lawyers and is provided as follows:

On the bare face of the Code, if an interest is declared to the presiding member in accordance with Clause 2.4, and the presiding member records the nature of the interest in the minutes as required by Clause 2.7, then the DAP member who made the declaration does not need to make another declaration at the meeting.

Unfortunately compliance with the Code does not necessarily result in compliance with Sections 56A(7). In order to comply with Section 56(A)7 of the Act, the disclosure needs to be made to the panel and not just to the presiding member.

This can however be easily achieved in a number of ways including:

- 1. The most common approach, which is that the relevant member makes the disclosure under Clause 2.4 of the Code, and then in the meeting when the relevant agenda item is reached, makes a verbal disclosure to the panel and remove themselves from the meeting in accordance with Section 56(A)7(b); or*
- 2. Where a member has made a Clause 2.4 disclosure, the presiding member can, when the relevant agenda item is reached, verbally confirm to the panel that the member has an interest and what the nature of that interest is (so that it can be minuted in accordance with Section 56A(14)) and the member leaves the meeting at that point in accordance with Section 56A(7)(b); or*
- 3. A novel approach which is that the disclosure is made in accordance with Clause 2.4 to the presiding member, and the disclosure is then also made to each and every other panel member before the meeting (eg by email) and when the agenda item is called, the presiding member notes that an interest has been disclosed, and that the nature of the interest will be minuted. The relevant member then leaves the meeting in accordance with Section 56A(7)(B).*

It will be important that the CDAP determine an agreed process for the Declaration of Interest under the Minister's Code of Conduct and the provisions of the Development Act as suggested above. The process outlined in Item 1 above would appear to be the most transparent for CDAP members and any applicants, representatives or members of the public who may be in the gallery.

Members also sought opinion in relation to any impact for CDAP members under the Independent Commissioner Against Corruption Act (ICAC) addressed within the following response from Victoria Shute:

Interestingly, the Independent Commissioner Against Corruption Act 2012 does not apply to independent CDAP members as they are not "public officers" as defined in Schedule 1 of the Act. This is because Schedule 1 only captures members of the Council or Council subsidiaries, employees of the Council, contractors (CDAP members are appointed, not contracted) and persons to whom functions or powers are delegated to (it is the CDAP as a whole which is the delegate of the Council, not individual members).

This means that if any complaints of corruption are made to the Office for Public Integrity, these complaints will be referred to the SAPOL as the ICAC will not have jurisdiction to investigate them himself. If any complaints of misconduct or maladministration are made against independent CDAP members, they cannot be made to the OPI, but can be made to the Council under the Minister's Code of Conduct. Further, whilst independent CDAP members are entitled to make a complaint about corruption, misconduct or maladministration to the OPI, they are not subject to the mandatory reporting requirements under Section 20 of the ICAC Act.

*Having said this, **all** CDAP members need to be aware that if they breach the Minister's Code that this may result in a complaint being made against them – it is just the forum for the complaint which*

will be different depending on whether the member is an independent member or a Council member.

*Likewise, if **any** CDAP member breaches Section 56A(7) of the Act, they are **each** liable for a criminal offence under the Act, and if they engage in corruption or other behaviour, criminal consequences may arise. Again, it is just the forum for a complaint to be made in this regard, and the body who may investigate that complaint which will be different.*

Ian Baldwin
Public Officer

PROPOSED APPOINTMENT OF REGIONAL DEVELOPMENT ASSESSMENT PANEL

Mr Baldwin advised that discussions are currently being held with Light Regional Council, regarding a proposed formation of a Regional Development Assessment Panel. A report will be presented to Light Regional Council at its meeting to be held on 22 October 2013 for decision to proceed or otherwise.

Subject to this outcome, arrangements can be made for implementation of a Regional Development Assessment Panel or alternatively, the re-appointment of Council’s Development Assessment Panel.

Discussion ensued regarding the process to be undertaken and legislative provision for rollover of current appointments in both instances.

Mr Grocke has advised that he will not be seeking re-appointment.

NEXT MEETING

Tuesday, 12 November 2013 commencing at 5.00pm.

CLOSURE OF MEETING

Mr Ballantyne declared the meeting closed at 6.01pm.

Confirmed

Date: Chairman: