



The Barossa Council

MINUTES OF THE MEETING OF THE BAROSSA COUNCIL DEVELOPMENT ASSESSMENT PANEL

Held on Tuesday, 4 June 2013 commencing at 5:01pm 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, Mr Richard Miller, and Mrs Susie Roehr – Panel Members.

Mr Ian Baldwin (Director – Development & Environmental Services), Mr Louis Monteduro (Senior Manager, Planning Services), Mr Paul Mickan (Principal Planner) Mr Brian Irvine (Senior Planner), Ms Maxine Lovett (Planner) and Mrs Christine Kruger (Minute Secretary) – Council Staff.

APOLOGIES

Mr Craig Grocke.

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, 7 May 2013 as circulated, be confirmed as a true and correct record of the proceedings of that meeting.

Seconded Mr Miller

CARRIED

BUSINESS ARISING FROM PREVIOUS MINUTES

Nil.

DECLARATION OF INTEREST BY MEMBERS OF PANEL

Nil.

APPLICATIONS FOR DECISION**DEBATE AGENDA****DA/DAP/R1****D932/08 (106584)****M BRITTON (IA GROUP) – REQUEST FOR EXTENSION OF CONSENT FOR DETACHED DWELLING AND ASSOCIATED EXCAVATION AND FILL (NON-COMPLYING)**

Mr Mickan distributed correspondence received from the applicant on 3 June 2013, to Panel Members for their information. The letter acknowledged delays due to personal circumstances of the proponent in the two years since the Panel supported the proposal. A revised date for extension of the planning approval (21 June 2013) was suggested by the applicant as a compromise.

Mr Richard Fewster (Representative of the Property Owner) answered questions from the Panel and provided a brief summary of the reasons for the delay in progression of the development.

MOVED Mr Miller that the Development Assessment Panel not grant an extension of time to the Development Plan Consent for Development No: 960/00932/08 on the grounds that legislation and development policies have changed to a significant degree such that a new detailed assessment of the proposal is necessary.

Seconded Mr Hughes

The Motion was put and

LOST

MOVED Mr Goldstone that the Development Assessment Panel grant an extension of time to 21 June 2013 for Development No: 960/00932/08 to enable the applicant to finalise documentation for a Building Rules Consent application.

Seconded Ms Roehr

CARRIED

| | |
|------------------------------------|---|
| DEVELOPMENT APPLICATION NO: | 960/932/2008 (Prop ID 106584) |
| APPLICANT: | Murray Britton (IA Group) |
| 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 (Non-Complying) |
| KEY ISSUES: | Extension of Consent for Non-Complying Development |
| RECOMMENDATION: | Refuse Request for Extension |
| OFFICER: | Paul Mickan |

BACKGROUND

At its meeting on 3 March 2009 the Development Assessment Panel considered a report on a non-complying dwelling in the former Rural (Hills Face) Zone. The officer recommended refusal of the application as the 2.12 ha allotment was below the 100 ha size requirement in the zone.

The Panel overturned the recommendation and resolved to seek concurrence from the Development Assessment Commission (DAC) to grant development plan consent, subject to various conditions including submission of a landscaping plan and landscaping schedule prior to concurrence being sought.

On 22 April 2010 a report was presented to the Development Assessment Commission with a recommendation that the Commission decline to grant concurrence as the proposal was seriously at variance with the Development Plan.

The Commission deferred consideration of the request but delegated to the Presiding Member of the Development Assessment Commission authority to grant concurrence subject to appropriate conditions. The Presiding Member subsequently granted concurrence on 6 May 2010.

Development plan consent was granted on 25 May 2010.

An appeal by four representors against the decision to grant development plan consent was lodged on 11 June 2010, but the appeal was subsequently withdrawn on 23 August 2010.

On 18 May 2011 a request to extend the development plan consent was received from a representative of the owner of the land. The request was granted on 23 May 2011 with the expiry date extended to 25 May 2013. The owner was advised at the time that it was unlikely a further extension would be granted.

When requesting the extension the owner advised that changed circumstances meant they would not be moving to the site and that the land was going to be placed on the market. The property is currently advertised for sale.

Building rules consent has not been obtained.

A further request for extension of the development plan consent has been received, providing an additional 8 weeks to obtain building rules consent and development approval.

The request is presented to the Panel for decision as it relates to a second extension of time relating to a previous decision by the Panel, a decision made over four years ago under a different policy and legislative regime.

ASSESSMENT OF REQUEST

The following factors/questions are considered relevant in deciding whether the consent should be extended:

Has there been a material change in the planning legislation relevant to the proposal?

Since the consent was granted the *Character Preservation (Barossa Valley) Act 2012* has been introduced and has taken effect. Although the legislation does not directly apply to the subject land or proposal but applies in a general sense, the following objects are considered particularly relevant to proposals in prominent areas such as the:

- “(b) *to ensure that activities that are unacceptable in view of their adverse effects on the special character of the district are prevented from proceeding; and*
- (c) *to ensure that future development does not detract from the special character of the district; and*
- (d) *otherwise to ensure the preservation of the special character of the district.”*

The Act also recognises various character values of the Barossa Valley district, of which the following are relevant to the subject land and proposal:

- “(a) *the rural and natural landscape and visual amenity of the district;*
-
- (e) *the scenic and tourism attributes of the district.”*

The Act requires a person or bodies involved in the administration of an Act to have regard to and seek to further the objects of the Act. Strictly speaking this includes the Panel when deciding whether to grant the extension of time. At this stage the planning strategy has not been altered nor has the Development Plan been reviewed to incorporate policies relating to the special character of the district. Despite this, scenic and tourist features such as the Barossa Range, the hills face, Mengler Hill and associated scenic vistas are likely to feature prominently in the future special character policy framework and subsequent policy review and refinement. It is likely that existing policies will be furthered strengthened to discourage developments on prominent hills face sites.

Has there been a material change in the Development Plan such that consent would now not be given?

The Development Plan, which applied when the development application was processed, was the old format Development Plan consolidated on 3 April 2008. In the four years since the decision was made the Development Plan has changed eight times with the Development Plan now in force being the Better Development Plan format document consolidated on 21 February 2013.

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 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.”*

A significant change also occurred through the *Barossa Valley and McLaren Vale – Revised – Protection Districts DPA* which introduced a new Character Preservation District Overlay with the following relevant objectives:

“1 *A district where:*

- (a) *scenic and rural landscapes are highly valued, retained and protected*
- ...
- (f) *buildings and structures complement the landscape.*

2 *Residential development is located inside townships, settlements and rural living areas.”*

Notwithstanding any design attributes which the proposal may offer, the objectives speak against the proposal in that it comprises residential development within a rural highly valued landscape protection area which should be retained and protected.

What are the reasons the development has not progressed?

The person making the request has not provided any specific reason why building rules consent has not been sought or obtained in the four years since the Panel supported the proposal.

Have there been other changes which affect the proposal?

Building Rules have changed since development plan consent was granted but not necessarily to the extent that the proposal could not comply with current requirements. The land remains in a High Bushfire Risk area and while bushfire construction requirements may have changed, they relate to building construction aspects rather than planning.

Has the proponent pursued the proposal with diligence?

When seeking the first extension the owner advised that significant preparatory work had been undertaken such as surveying, soil testing, design of solar power and waste control systems, landscape design and commissioning of draft engineering plans. Much of that work was undertaken as a necessary precursor to seeking building rules consent.

The proponent's architect made contact with Council in early March 2013 regarding potential minor changes, and again in late March foreshadowing a need to seek a further extension of time. Although detailed design work is apparently underway in preparation to obtain building rules consent, in the subsequent two months Council has not received an application for building rules consent, nor has it been advised that a private certifier has been appointed.

OTHER BUSINESS**COUNCIL'S DEVELOPMENT ASSESSMENT PANEL ANNUAL REPORT - 2012**

MOVED Mr Hughes that the Panel endorses the Development Assessment Panel Annual Report - 2012 for submission to Council for their information.

Seconded Mr Goldstone

CARRIED

THE BAROSSA COUNCIL DEVELOPMENT ASSESSMENT PANEL**2012 ANNUAL REPORT**

DRAFT 4

The Barossa Council has appointed a Development Assessment Panel in accordance with the provisions of Section 56A of the Development Act 1993. The Panel as required by the Act comprises four independent members one of which is the Presiding Member and three elected Council members.

As at January 2012 the Barossa Development Assessment Panel comprised:

- Mr Bruce Ballantyne as the Independent Presiding Member.
- Mr David Hughes, Mr Kelvin Goldstone and Mr Craig Grocke as the three Independent Members.
- Mr Scotty Milne, Mr Richard Miller and Ms Susie Reichstein as the three Elected Members.

On the 26 November 2012 Council re-appointed all previous incumbent Panel Members effective from that date.

Mr David Hughes is appointed by the Panel as the Deputy Presiding Member.

Mr Ian Baldwin, Council's Director - Development and Environmental Services, is Public Officer for the Panel.

The Panel operates in accordance with the relevant provisions of the Development Act 1993 and Regulations. In so far as the procedures and the Terms of Reference for the Panel are not prescribed in the Act and Regulations the Panel can determine its own procedures. To this effect the Panel at its meeting held on the 2 June 2009 adopted its Operating and Meeting Procedures.

Under Section 56A subsection (2)(b) of the Development Act 1993 the Panel may “as it thinks fit, provide advice and reports to the Council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under this Act”.

The following report provides information to the Council on:

- The activities of the Panel for the period January 2012 to December 2012 including information on the number of applications brought to the Panel for determination and other relevant statistical information and;
- Planning or development issues which the Panel wishes to bring to the attention of Council.

STATISTICAL DATA ON PANEL ACTIVITIES AND DEVELOPMENT APPLICATIONS

The statistical data collected is for 2012 and includes the meetings held 7 February 2012 to the 4 December 2012.

Number of Panel meetings held = 8

| PANEL MEMBERS NAME | ATTENDANCE RECORD |
|---------------------------|--------------------------|
| Bruce Ballantyne | 8 |
| Kelvin Goldstone | 6 |
| Craig Grocke | 8 |
| Scotty Milne | 8 |
| David Hughes | 8 |
| Richard Miller | 6 |
| Susie Reichstein | 7 |

Number of development application reports received = 22

| BREAK DOWN OF DECISIONS/RECOMMENDATIONS | NUMBER OF APPLICATIONS |
|--|-------------------------------|
| Approved | 14 |
| Refused | 3 |
| Deferred | 5 |
| Non-complying (Included in above) | 14 |
| Non Complying: To Proceed | 0 |
| Consent: To Proceed | 0 |

| TYPES OF DEVELOPMENT | NUMBER OF DEVELOPMENT APPLICATIONS | COMPRISE OF: |
|----------------------|------------------------------------|---|
| Commercial | 8 | <ul style="list-style-type: none"> • Extensions to existing Motel • 500 Tonne Winery including ancillary cellar door, sales offices, fruit reception area, gallery, wastewater treatment plant and car park • Shop (Cellar Door Sales), function room (including the provision of meals associated with a function or conference) and associated car parking and signage • Visitor Accommodation/ Demolish and replace dormitory accommodation and update existing dining hall • Shop (Cellar Door) and associated signage • Light Industrial Building for machinery storage • Artificial Hockey Pitch and associated lighting |
| Residential | 13 | <ul style="list-style-type: none"> • Detached Dwelling with Garage under main roof • Detached Dwelling (four separate applications) • Detached Dwelling with Garage under main roof and two verandas • Detached Dwelling with garage under main roof and three rainwater tanks • Detached Dwelling with garage under main roof and associated three rainwater tanks • Deck and Veranda • Two dwellings - Detached Dwelling including associated veranda, porches and garage, Detached Dwelling including associated portico, alfresco with garage • Deck and Veranda • Two Dwellings – detached dwelling included associated veranda, porches and Garage & Detached Dwelling including associated portico, alfresco and garage |
| Land Division | 1 | Land Division creating 4 additional allotments resulting in 5 allotments |
| Rural | 0 | |

1. **APPEALS TO THE ENVIRONMENT RESOURCES & DEVELOPMENT COURT AND SUPREME COURT**

There were two appeals against Council planning decisions made to the Environment Resources and Development Court both related to the refusal of two dwellings on Allendale Road (two separate applications). One appeal was subsequently withdrawn with the other being upheld by agreement to allow one of the dwellings.

2. **PLANNING AND DEVELOPMENT ISSUES AND RELEVANT MATTERS**

During the Panel's consideration of development applications there were a number of issues and matters which arose and in the opinion of the Panel should be brought to the attention of the Council. This information may assist Council in its strategic planning for The Barossa Council and in particular Council consideration of amendments to the Development Plan

2.1 Character Preservation Legislation

The advent of this legislation led to confusion about intended outcomes. A number of normally routine development applications were made non-complying by ministerial Development Plan amendments. This led to an increased number of non-complying applications wherein shops, industrial and farm buildings in appropriately zoned locations required additional assessment on the basis that they were now non-complying).

Despite the above stated unintended consequences of the State government's legislation there was acknowledgement that the intent of the Barossa Valley Character Preservation Act would be beneficial. In addition, all of the non-complying applications recommended for approval by the Council's Panel were also supported by the state's Development Assessment Commission and subsequently received consent. It is also interesting to note the nomenclature of the Act relating to the Barossa 'Valley'. This generic naming does not appear to be consistent with existing traditional approaches to planning nomenclature for the region where there is a differentiation between the valley floor, ranges, and other plains areas. Some review of this may need to be undertaken.

2.2. Strategic Directions

A review of Council's Development Plan, transport and infrastructure, and other matters pursuant to Section 30 of the Development Act is required this year and the Panel noted a number of trends and issues that could be considered as part of its Strategic Directions Report.

Over the past 12 months the Panel assessed a number of development applications within primary production and rural zonings. One matter suggested for further policy consideration is the use (and change of use) of land, dwellings, and associated outbuildings (including adaption of existing or proposing new buildings). This land use consideration should review the intensification and corporatisation of viticulture, agricultural, and other primary production land uses which is potentially creating more interface issues with adjoining land and impacting on infrastructure such as carrying capacity of minor rural roads. Up-scaling and value adding activities were evident in applications for wineries and a number of rural living/hobby farming proposals in sparsely populated rural areas in the Barossa ranges previously used for grazing and having limited infrastructure.

The review could focus on the definitions associated with rural activities and what is expected in the various rural zones in respect to emerging trends and potential changes in primary production. It is considered definitions used for rural policy would benefit from a review in response to identified trends and changes.

2.3 Changes in Agriculture

Council is likely to see an increase in family farms moving to corporate ownership and while farming activities will still take place it is in the form of consultancy services, contract services and farm dwelling being used as a business office that will change land use. Currently a farm dwelling being used as an Office requires a change of land use even though it can be argued that the primary "rural activity" remains the same. In the bigger picture is it this type of change in agriculture that requires some consideration of what 'rural activity' is desired or considered normal activity associated with agriculture.

Another trend now evident is the intensification and diversification of land use with the growth of hobby farms in what has traditionally been large rural holdings used for grazing purposes. In some cases the increase in rural activity places demand on natural resources and public infrastructure. In other cases it will introduce new agriculture activity and while low in scale, it may pose challenges between viticulture and broad-acre farming with the use of sprays and fertilizers. This includes issues of noise, views, odour and fire risk, which have been matters raised in recent representations on development applications.

A further associated matter is potential ongoing confusion of how the Barossa Valley Character Preservation legislation affects farms and businesses in the rural zones (especially on the Valley Floor). Interim advisory information may assist to manage perceptions that are preventing or deferring investment and improvement of land in relevant

zones while the community is consulted in respect any proposed associated Development Plan amendments.

2.4 Better Development Plan – sloping land policies

In previous reports the Development Assessment Panel raised the issue of residential development on sloping land that requires consideration to be given to such matters as finished floor level, land cut and fill, depth of excavation and retaining walls. The 'Better Development' version of Council's Development Plan has now been amended to address these issues including the inclusion of design technique statements. There was a delay in the implementation of the amendments due to ministerial control during the drafting of the Character Preservation Bill.

2.5 Open Space Contributions

The Panel has previously indicated that open space contributions should be subject to a more structured assessment in respect of whether a monetary amount and/or an open space area is provided in a particular location when new land divisions take place. It is understood Council is progressing this matter and it will be based on outcomes of a regional Recreation, Open Space & Public Realm strategy currently being undertaken which is likely to lead to classification and determination of a hierarchy for open space.

The Panel expresses its appreciation to Council Members, Council Management Team and Planning staff for their support and assistance.

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

This report is submitted to Council by the Presiding Member on behalf of the members of The Barossa Council Development Assessment Panel.

Bruce Ballantyne
PRESIDING MEMBER

NEXT MEETING

Tuesday, 2 July 2013 commencing at 5.00pm.

CLOSURE OF MEETING

Mr Ballantyne declared the meeting closed at 5.30pm.

Confirmed

Date: Chairman: