



The Barossa Council

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

Held on Tuesday, 3 June 2014 commencing at 5.01pm in
the Council Chambers, 43-51 Tanunda Road, Nuriootpa

WELCOME

Bruce Ballantyne welcomed everyone and opened the meeting.

PRESENT

Bruce Ballantyne (Presiding Member), David Hughes, Kelvin Goldstone, Susan Shannon, Richard Miller, Susie Roehr and Scotty Milne – Panel Members.

Ian Baldwin (Director – Development & Environmental Services) Louis Monteduro (Senior Manager – Planning Services), Brian Irvine (Senior Planner), Maxine Lovett (Planner), and Marie Thom (Minute Secretary) – Council Staff.

APOLOGIES

Nil.

LEAVE OF ABSENCE

Nil.

MINUTES OF PREVIOUS MEETING

MOVED K Goldstone that the Minutes of the Development Assessment Panel meeting held on Tuesday, 13 May 2014 as circulated, be confirmed as a true and correct record of the proceedings of that meeting.

Seconded D Hughes

CARRIED

BUSINESS ARISING FROM PREVIOUS MINUTES

Nil.

DECLARATION OF INTEREST BY MEMBERS OF PANEL

D Hughes declared a conflict of interest in relation to DA/DAP/R2 (Tundarri Sales and Services Pty Ltd), due to being an employee of the Department of Environment, Water and Natural Resources, Natural Resources Adelaide and Mount Lofty Ranges Natural Resources Management Board working from the Gawler office.

APPLICATIONS FOR DECISION**DEBATE AGENDA****DA/DAP/R1****D119/2014 (103153)****M STEINERT – DETACHED DWELLING (NON-COMPLYING)**

Ms Ann Atkinson (on behalf of the Applicant M Steinert) addressed the Panel at 5.04pm, relative to DA/DAP/R1.

MOVED R Miller that the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application 960/119/2014 and resolves as follows:

- (A) Pursuant to Section 6(2) of the Character Preservation (Barossa Valley) Act 2012, the Development Assessment Panel has had regard to the objects of the Act and this decision is made in furtherance of those objects.
- (B) That the proposal is seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (C) That Development Plan Consent be refused for the development comprised in Development Application 960/119/2014 for the following reasons:
 - (1) The proposal is a non-complying form of development.
 - (2) The proposal does not contribute to the desired character of the zone.
 - (3) The proposal does not promote or contribute to economically productive, efficient and environmentally sustainable primary production.
 - (4) The proposal is contrary to Character Preservation District Overlay Objective 2.

Seconded S Milne**CARRIED**

DEVELOPMENT APPLICATION NO:	960/119/2014 (Prop ID 103153)
APPLICANT:	M Steinert
OWNER:	M Steinert
SUBJECT LAND:	Section 526 Flaxman Valley Road, Flaxman Valley
PROPOSAL:	Detached Dwelling
ZONE/POLICY AREA:	Primary Production Zone, Map Baro/24, Precinct 4 – Barossa Range, Character Preservation District, High Bushfire Risk Area, BPA Map Baro/9
PROCEDURE:	Non-Complying
REFERRALS:	Not Applicable
PUBLIC NOTICE:	Not Applicable
KEY ISSUES:	Non-Complying Nature of Development
DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE: 21 February 2013	<ul style="list-style-type: none"> • Design and Appearance • Hazards • Interface between Land Uses • Natural Resources • Orderly and sustainable Development • Siting and Visibility • Transportation and Access • Character Preservation District Overlay • Primary Production Zone
RECOMMENDATION:	Refusal
OFFICER:	Brian Irvine

SUBJECT LAND AND LOCALITY

The subject land comprises a rural allotment of approximately 32 hectares in size surrounded by roads on all sides (ie Flaxman Valley Road, Pohlner Road, and Tanunda Creek Road).

The land falls generally towards Tanunda Creek Road with moderate slopes. The land is used for grazing purposes with rocky outcrops, remnant trees and patches of native understorey plants scattered over the land. Power lines cross the land.

The land has no dwelling. The Statement in Support refers to a previously demolished dwelling but a site inspection and aerial photos dating back to 2005 show no evidence of a ruin. A small shed and cattle yard are located near the Flaxman Valley Road boundary.

The land to the north and south are used for vineyard. The land to the east is used for grazing in large holdings and the Kaiser Stuhl Conservation Park is located on the other side of Tanunda Creek Road to the west.

Both Flaxman Valley Road and Tanunda Creek Road are rural bitumen roads but Pohlner Road is unsealed.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposal involves the construction of a single storey detached dwelling with verandahs all around. It will be positioned 385 metres west of Flaxman Valley Road and 152 metres south of Pohlner Road, near the power line.

If a decision is made to proceed with assessment, further information will be required to clarify the nature of external building materials, the location of the driveway and associated garage, and water storage and bushfire protection measures. This information has not been requested at this point in time because it is not critical to determining whether to proceed with the assessment of a non-complying form of development.

PROVISIONS OF THE DEVELOPMENT PLAN

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

CONSULTATION

No statutory consultation with government agencies has been undertaken. Consultation with the CFS will be required if a decision is made to proceed with assessment.

PUBLIC NOTIFICATION

The application will require Category 3 public notification if it is decided to proceed with the assessment of the application.

PLANNING ASSESSMENT

Dwellings are listed as non-complying in Precinct 4 Barossa Range, except where they meet the exception criteria. The proposal does not meet the criteria and therefore it is a non-complying form of development.

The first step in the process is to determine whether to proceed with the assessment of the application. If not, the application is refused with no further processing. If a decision is made to process the application, a statement of effect will be requested together with other additional information, followed by public notification and agency referrals. The application will then be referred back to the Panel for a decision. If the Panel wishes to approve the proposal, the concurrence of the Development Assessment Commission will be sought; otherwise the application will be refused.

The application has been referred to the Panel to decide whether to proceed with the assessment.

A full assessment of the design and appearance of the building, siting, access, bushfire assessment and similar matters has not been undertaken. They are not critical to the initial question of whether to proceed and can be addressed in a detailed assessment if it is decided to proceed. The house site is not prominent and it is reasonable to assume, from the information available, that any issues of design detail can be addressed with additional information or reasonable amendments. Access from Pohlner Road may be an issue if the CFS requires road widening. The roadside vegetation is significant and road widening may not be possible, but the applicant has many access options available.

A dwelling is non-complying unless it meets the exception criteria. The site is not an infill site and no amalgamation of lots is proposed. The remaining exception is where a dwelling is proposed on an allotment of at least 100 hectares. The site is approximately one third of the minimum lot size required for a dwelling. Zone principle 2 states that development listed as non-complying is generally inappropriate. This is reinforced by Precinct principle 23 that states that a dwelling should only occur in certain circumstances, which are the same as the non-complying exception criteria.

The Zone objectives are orientated towards promoting the primary production of land and do not provide any support for dwellings. The Desired Character statement for the Zone states that "additional dwellings within Precinct 4 Barossa Range and Precinct 6 Mocolta will be limited, so as to maximise farm productivity and prevent incremental erosion of the existing landscape character." The land is currently being used as part of a larger farming enterprise with land in Mader Road and elsewhere, and although it has been stated in the Statement in Support that the existing grazing use will continue, no case has been put forward to explain why an additional dwelling is required to ensure that the rural use of the land will continue.

Zone principle 5 reinforces the Desired Character statement by stating that a detached dwelling should be associated with primary production. Zone principle 7 expands that principle further by stating that a dwelling should only be developed if there is a demonstrated connection with farming or other primary production. The land is already being used for farming purposes without a dwelling on the site and it has not been demonstrated that a dwelling is essential to continue the primary production use of the land.

Zone Principle 18 states that "Development should not occur within 500 metres of a National Park, Conservation Park, Wilderness Protection Area or significant stands of native vegetation if it will increase the potential for, or result in, the spread of pest plants." The house site is approximately 250 metres from the boundary of the Kaiser Stuhl Conservation Park.

Objective 2 for the Character Preservation District Overlay states:

"Residential development is located inside townships, settlements and rural living areas."

A statement of this nature is usually included as a principle to provide guidance to assist in achieving an objective. In this instance the objective is to ensure that residential development is not located in rural areas, such as this site.

The Statement in Support refers to other dwellings on smaller allotments further to the north. They are not regarded as being within the locality and with one exception were constructed prior to the non-complying status of dwellings being put in place. It is not sufficient to argue that the allotment is not a viable agricultural unit by itself, and therefore a dwelling should be approved as the only suitable alternative. Few, if any single allotments in the precinct would constitute a viable agricultural unit. Viable farms are made up of a number of (large) allotments and the restriction on dwellings ensures that the existing vacant allotments remain available to be used with other allotments for farming purposes. The restrictions also prevent incremental erosion of the existing landscape character caused by further dwellings in the rural areas.

A non-complying dwelling was approved in the same zone and precinct, approximately 2.5 kilometres to the north-east. Approval of a non-complying form of development does not constitute a precedent for later applications. To do so, would constitute a change of policy direction better addressed with the Development Plan Amendment process.

The Zone provisions do contain some principles for design and siting of dwellings. By themselves, they do not promote dwellings, but rather provide guidance in those parts of the Zone, or in circumstances where dwellings are not non-complying.

On balance, the intent of Precinct 4 within the Primary Production Zone, is to limit dwellings to very specific circumstances to protect both the farming use of land and the character that is derived from that land use.

Section 6(2) of the Character Preservation (Barossa Valley) Act states:

"a person or body involved in the administration of an Act must, in exercising powers and functions in relation to the district, have regard to and seek to further the objects of this Act."

The objects of the Act are generally to recognise, enhance and otherwise ensure the preservation of the special character of the district. The recommendation attached to this report does not offend the objects of the Act.

CONCLUSION

The proposal involves the building of a single storey detached dwelling on an allotment of 32 hectares currently used for grazing purposes. The Development Plan speaks against such development and has listed it as non-complying. The applicant has not demonstrated sufficient merit in the proposal to justify further processing of the application.

The reasons given in support of the proposal are 'repeatable' over most other similar vacant allotments in the zone and precinct. If it is intended to allow dwellings in such circumstances, it would be more appropriate to consider amending the Development Plan rather than consider approval of multiple non-complying applications.

It is concluded that the proposal is seriously at variance with the provisions of the Development Plan and should be refused pursuant to Section 35(2) of the Development Act.

DA/DAP/R2

D1153/2013 (113154)

TUNDARRI SALES AND SERVICES PTY LTD – ALTERATIONS & ADDITIONS TO EXISTING SERVICE TRADE PREMISES, (TRACTORS AND FARM MACHINERY AND WORKSHO (NON-COMPLYING)

D Hughes left the meeting at 5.08pm due to a stated conflict of interest.

MOVED S Milne that the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application 960/1153/2013 and resolves as follows:

- (A) Pursuant to Section 6(2) of the Character Preservation (Barossa Valley) Act 2012, the Development Assessment Panel has had regard to the objects of the Act and this decision is made in furtherance of those objects.
- (B) The proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (C) Grant Development Plan Consent to Development Application 960/1153/2013 subject to the following conditions:
 - (1) The development shall be in accordance with the plans and details submitted to and approved by Council as part of the application, except as varied by any subsequent conditions imposed herein.
 - (2) A landscaping plan for the subject land to be submitted and approved by Council.
 - (3) The landscaping shall be established prior to occupation of the development and shall be maintained in good health and condition at all times. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased with others of the same, or similar, respective varieties.
 - (4) A stormwater management plan shall be submitted to Council for approval and shall include the restoration of the minor watercourse located along the eastern boundary of the subject land.
 - (5) The building shall be connected to a wastewater system approved under the South Australian Public Health Act 2011.

- (6) No oil, grease or contaminants shall be discharged to the stormwater system, but shall be directed to an approved waste water management system.
- (7) Hours of operation shall be between Monday to Friday 8.00am to 5.00pm and Saturday 8.00am to 11.30am.
- (8) There shall be no encroachment from display equipment or other means near the watercourse located along the front boundary of the subject land.
- (9) The riparian zone of the water course shall be re-vegetated with local native species (i.e. bottlebrush, tea -trees, sedges and reeds) to stabilise the banks and prevent erosion.
- (10) Display equipment shall be restricted to the undercover display area only and shall not be located on other parts of the site.
- (11) Signage shall display only the name of the business conducted on the subject land and shall not include third party advertising.

NOTE

- (a) Prior to building work commencing the applicant shall lodge and have approved by Council an application to install a wastewater system pursuant to the provisions of the South Australian Public Health Act 2011 and South Australian Public Health (Wastewater) Regulations 2013.

(D) Seeks the concurrence of the Development Assessment Commission.

Seconded K Goldstone

CARRIED

DEVELOPMENT APPLICATION NO:	960/01153/2013 (Prop ID 113154)
APPLICANT:	Tundarri Sales and Services Pty Ltd
OWNER:	Super Graetz Custodian Pty Ltd
SUBJECT LAND:	338 Barossa Valley Way, Kalbeeba Volume 591 Folio 828
PROPOSAL:	Alterations & Additions to Existing Service Trade Premises (Tractors and Farm Machinery) and Workshop
ZONE/POLICY AREA:	Primary Production Zone, Precinct 5 Concordia
PROCEDURE:	Non-Complying
REFERRALS:	Not Applicable
PUBLIC NOTICE:	Category 3 – No Representations
KEY ISSUES:	Scale of Expansion, Non-Complying Development in the Primary Production Zone
DEVELOPMENT PLAN PROVISIONS:	General Section:

CONSOLIDATION DATE: 21 February 2013	<ul style="list-style-type: none"> • Advertisements • Design and Appearance Objectives • Hazards Objectives • Siting and Visibility • Interface between Land Uses • Natural Resources Objectives • Orderly and Sustainable Development • Siting and Visibility Objectives • Waste Objectives <p>Primary Production Zone Objectives 1, 3 & 5, Desired Character Statement Principles of Development Control 1, 2, 10, & 11. Character Preservation Overlay Objectives 1. Principle of Development Control 1.</p>
RECOMMENDATION:	Grant Development Plan Consent
OFFICER:	Maxine Lovett

SUBJECT LAND AND LOCALITY

The subject land is known as Tundarri Sales and Services Pty Ltd and is located at 338 Barossa Valley Way, Kalbeeba. The site is located in the Primary Production Zone, Precinct 5 Concordia and has a frontage of 105.72 metres to Barossa Valley Way and an average depth of 96.5 metres with an area totaling 1.013 hectare. The site access is located on a road with a speed limit of 80 km/hour.

A prescribed watercourse traverses the allotment, running parallel to the front boundary. A culvert is in place to allow vehicle access to the site. A minor watercourse is located along the eastern boundary and has been filled in some places.

The site currently has existing use rights as a service trade premise and has been trading since 1974. The business provides parts and servicing to farm equipment and also sells new farm machinery. The tractors are currently displayed on the site at the front of the existing buildings.

Development approval for the existing workshop at the rear of the site was issued in December 1994. An existing building and lean-to, at the front of the workshop, accommodates the office, parts and service area and was constructed prior to 1989. Two existing freestanding signs displaying the name of the business are located at the entrance of the site.

The current hours of operation are Monday to Friday, 8.00am to 5.00pm and Saturday 8.00am to 11.30am. There are occasional times when machinery is serviced outside of these hours.

The locality consists of allotments in the range of 1 ha, with some larger allotments up to 20 hectares in area. The allotments immediately adjoining the subject land each contain a detached dwelling and associated outbuildings. The majority of the allotments do not have a farming use, despite the primary production zoning of the locality.

A railway line abuts the rear boundary of the subject land.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development involves a significant expansion to the existing service trade premises. An additional workshop (313.82 m²) with a wall height of 4 metres is proposed alongside the existing workshop, located parallel to the rear boundary. A show room with porch (164.20m²), with a maximum overall height of 5 metres, consisting of an enclosed building with glass door access and windows, is to be constructed forward of the existing parts and service area. An undercover display area (212.35m²) is proposed and will appear as an open verandah, located each side of the showroom. The existing building, currently used for the parts and service area will remain and internal alterations are proposed to accommodate a spare parts area, meeting room, offices, toilets and storage.

Signage is proposed on the façade above the proposed showroom.

The showroom facade will be clad in a coloured rendered finish to the walls with custom orb Colorbond roof sheeting. The proposed workshop will be clad in Trimclad and finished in Colorbond.

The proposed built area of the site totals 793.87m² with the buildings located a minimum of 28 metres from the batter of the watercourse.

Car parking is to be located in front of the proposed showroom and display area, and consists of nine spaces including one for disabled persons.

A freestanding pylon sign is proposed at the western end of the front entrance and is 4m² in area. This sign will advertise the subject business and will replace the two existing freestanding signs.

The hours of operation will remain unchanged from the existing.

A waste application for the alteration/upgrade to the wastewater management system will be required to be submitted if planning consent is granted for the development.

REFERRALS

Pursuant to Schedule 8 of the Development Regulations, referrals to external agencies are not required. The proposal does not include a change to the existing access or propose an additional access. The proposed signage is not illuminated.

PROCEDURAL

The proposal is a non-complying form of development in the Primary Production Zone. A service trade premises is listed as a non-complying land use.

The application has proceeded to assessment under delegation. The site has been operating as a service trade premises for forty years in quite a prominent capacity. It is an existing use that provides current economic benefit and has an existing customer base. The proposal was considered as not being a reasonable expansion of an existing use but has proceeded to assessment as a non-complying development. Therefore it has not been determined as a minor development.

It is considered, however, that the proposed development may be appropriate within the locality given its history, and that the application warranted a more detailed assessment.

PUBLIC NOTIFICATION

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

PLANNING ASSESSMENT

Nature of Development

The proposal is not considered to be a reasonable expansion of an existing use due to its extensive scale, however, the commercial use of the site has been prominent within the surrounding locality for many years.

Tundarri Sales and Service Pty Ltd is defined as a service trade premises. The business provides onsite and remote servicing of farm machinery in addition to selling new machinery that is displayed on site. There is also an area that stores parts for purchasing on site. The hours of operation are currently in keeping with normal business hours with no proposed changes, and staff numbers will remain much the same. Although the footprint of the expansion is considered large, the operational nature of the development and commercial scale will not be markedly noticeable in comparison to the current activity occurring on the site, with the exception of the appearance of the site.

Siting and Visibility

The main visual impact of the development would be the proposed buildings (showroom and display area) forward of the existing building. These proposed buildings are set back 52 metres from the front boundary of the property.

Farm machinery is currently displayed near the entrance of the site, however the proposal intends to consolidate all buildings together to form the enclosed showroom and display areas, therefore removing the visual encroachment toward the front of the site. The proposed buildings are

consistent with the height of the existing building and have been designed to incorporate articulation and treatments to the façade including rendering and timber fascias. These buildings are to be grouped together and will be significantly enhanced in contrast to the existing buildings.

Siting and Visibility

Principle of Development Control

2 *Buildings should be sited in unobtrusive locations and, in particular, should:*

- (a) *be grouped together*

Design and Appearance

Principle of Development Control

3 *Buildings should be designed to reduce their visual bulk and provide visual interest through design elements such as:*

- (a) *articulation*
- (b) *colour and detailing*

Commercial Activity In The Primary Production Zone

The trade service premise has existed on the site for many years. The site is in the Primary Production Zone and the locality primarily consists of dwellings on large allotments and some nearby farming land beyond the locality.

The facade of the existing main building contains signage, with the commercial activity and informal car parking scattered around the site.

The nature of the development is non-complying in the Primary Production Zone. However, given the current scale of the business, the proposal is considered to be appropriate as it intends to contain the activity of the business within the proposed buildings with no proposed changes to the access and activities on the site. The main consideration of the subject proposal is to ensure that the character of the area is not detracted from or impacted by the built form and signage. The expansion is large in floor area, however this will consolidate the existing layout of the site. The proposed showroom will be the most significant change, but this building will present with a similar form in terms of height and signage as the existing building. The proposed workshop is located at the rear of the site and has form, similar to a farm building.

Primary Production Zone – Form and Character

Principle of Development Control

12 *Buildings should be unobtrusive in appearance, not detract from the open natural character of the zone and, in particular should:*

- (a) *be single storey*
- (b) *be of a low profile with roof lines that complement the natural form of the land*
- (c) *comprise variations in wall and roof lines and floor plans which complement the contours of the land so as to minimise the mass of the building*
- (d) *be sited on an excavated rather than a filled site in order to reduce the vertical profile of the building*
- (e) *incorporate large eaves, verandas and pergolas into designs to create shadowed areas which reduce the bulky appearance of buildings*
- (f) *utilise non-reflective materials and be finished in colours that blend with the natural environment*

Watercourse

The Natural Resource Management Board has had recent concerns with the management of the watercourse. The area near the water course appears to have been levelled to provide a suitable display area for machinery. As this display area has encroached onto the area near the watercourse, there is potential for the bank to become unstable resulting in erosion and siltation,

gradually degrading the watercourse. The area near the watercourse is grassed with a couch variety that will eventually invade the watercourse. The grassed ground cover does provide some stability to the banks of the watercourse, however, the site would benefit from landscaping including particular attention to the riparian zone (banks) of the watercourse. This would contribute to the health of the watercourse and also soften the appearance of the site. The site would benefit from the subject proposal, as the machinery will be confined within a covered display area, set back 28 metres from the watercourse. A minor watercourse runs along the eastern boundary of the land and the proposed work shop will be located 5 metres from the minor watercourse.

The application was referred internally to Council's Engineering staff whom concluded that there were no watercourse flood safety issues for the proposal.

However, it was noted that some of the minor watercourse has been filled and that this watercourse should be restored to its original levels and state.

Signage

Originally, the proposal included two large Pylon signs at the entrance of the property (each sign is 7.79m² on each fact = 15.5m² per sign). This signage was considered too large and out of character for the locality. The proposal has been amended to include one pylon sign of 2m² in area on each fact = 4m².

The proposed signage consists of one freestanding pylon sign of an acceptable size, given the nature of the locality. It will replace the two existing freestanding signs. Fixed signage is proposed on the façade of the showroom and will be elevated at the same height as the existing signage. The proposed signage is orderly and integrated and will replace the cluttered signage that is currently located randomly on the existing building.

Advertisements

Principle of Development Control

- 2 *The number of advertisements and/or advertising hoardings associated with a development should be minimised to avoid:*
- (a) *clutter*
 - (b) *disorder*
 - (c) *untidiness of buildings and their surrounds.*

Non-complying Development-

Advertisement and/or advertising hoarding except where:

Advertisement and/or advertising hoarding where the development achieves at least one of (a) or (b):

- (a) *is adjacent to a road with a speed limit of less than 80 km/h*
- (b) *has an advertisement area of 2 square metres or less and achieves all of the following:*
 - (i) *the message contained thereon relates entirely to a lawful use of land*
 - (ii) *the advertisement is erected on the same allotment as use it seek to advertise*
 - (iii) *the advertisement will not result in more than two advertisements on the allotment.*

Car Parking

There are nine car parking spaces, including one disabled park proposed as indicated on the plan. The car parking area is located on compacted rubble and the spaces will not be line marked. The Development Plan requires 4 parks per 100m² of floor area for a service trade premise. The floor area of the showroom and display area would be calculated for the purposes of the car parking requirement. The two workshop areas are ancillary to the showroom and display area and are not considered to form part of the car parking ratio. The floor area calculated includes the showroom – 144m², the display areas – 212m², and office and storage area – 103m², total floor area being 459m². Therefore it would be required that the site allocate a minimum of 18 car parks.

A maximum of 10 staff members are proposed and two will not be operating on site. These numbers are much the same as the current situation. Given the nature of the business, it would be acceptable to maintain the number of parks proposed. The calculated floor area is relatively large to accommodate the display machinery, but this does not reflect the requirement for parking for the use of the site. The customer vehicles entering the site would be largely the farm machinery requiring servicing, these vehicles would therefore be occupying the workshop area or rear of the site. The site is large enough to accommodate any spillover of parking requirements for the number of vehicles that will be using the site.

CONCLUSION

A service trade premises of this nature is required to service the primary industries in the region and this is evident through it being significantly entrenched for many years. It is a preferred scenario to enhance an existing activity in a region that is accessible to its customer base. The site is located in an area of limited scenic value in comparison to other localities within the Barossa region. The proposal is a significant expansion, however given the location and the existing use of the land, it is not considered to have a detrimental effect on the visual amenity within the area. The proposed development will not result in any change in activity, access or nature of the existing use. The activities and display equipment will be contained within the proposed buildings, resulting in an orderly outcome for the site with the inclusion of landscaping and the restoration of the watercourses.

D Hughes returned to the meeting at 5.11pm.

OTHER BUSINESS**DEVELOPMENT ASSESSMENT COMMISSION CONCURRENCE APPLICATIONS**

MOVED R Miller that the Report be received.

Seconded S Roehr

CARRIED

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
960/864/2013	Charles Melton Wines Pty Ltd	194 Krondorf Road, Krondorf	Extension to Winery (Winery Maker's Office) and Extension to Cellar Door Sales	Concurrence Granted 07/05/2014 (01/04/2014 panel meeting)

960/530/2013	Barossa Valley Brewing	2A Murray Street, Tanunda	Change of Use of Existing Industry (Micro Brewery) and Tasting Room Restaurant to Include Entertainment in the form of Light Amplified Acoustic Music	Concurrence Granted 19/05/2014 (04/02/2014 panel meeting)
960/1068/2013	Allan Chapman	181 Angaston Road, Nuriootpa	Community Land Division (1 Lot into 2)	Concurrence Granted 22/05/2014 (01/04/2014 panel meeting)

CONFLICT OF INTEREST MATTER – SECTION 56A(7) OF THE DEVELOPMENT ACT 1993

MOVED S Milne that the report be received.

Seconded D Hughes

CARRIED

In response to a recent out of session enquiry from a Council Development Assessment Panel (CDAP) member, legal advice has been sought in relation to the declaration of an “actual” or “perceived” conflict of interest under section 56A(7) and the relevant provisions of clause 2.4 of the Minister’s Code of Conduct (the Code) under Section 21A.

(Note: CDAP members have been issued with copies of the Development Act 1993 and Minister’s Code of Conduct)

The following advice is provided for information and general application by CDAP members:-

1. The Code is a policy document instituted pursuant to the Act, it does not have the same legal status as section 56A(7) and cannot therefore override or amend the conflict of interest provisions in that section.
2. Under section 56A, it is only where a CDAP member has an interest in a matter before the CDAP in accordance with the definition of interest in section 56A(7) that they are legally obliged to disclose that interest and remove themselves from the meeting. A breach of section 56A(7) is a criminal offence. For the reason given above, a breach of the Code does not amount to a breach of section 56A(7).
3. Accordingly, the Code must be read in the context of section 56A(7). On the basis, the function of the Code is to compel CDAP members to actively identify situations where they not only have an actual interest (in which case they must comply with section 56A(7)), but also to identify situations where they may be reasonably perceived to have an interest by a member of the public. In both situations, the Code obliges CDAP members to disclose the actual or perceived interest in writing to the Presiding Member before the meeting. However, because the Code does not and legally cannot elevate the status of a perceived interest to an actual interest which triggers the operation of section 56A(7), a CDAP member who makes their written disclosure of an perceived interest is not obliged to declare that interest at the relevant meeting and to remove themselves from it in accordance with section 56A(7).

The advice obtained also further addressed the provisions of sections 4(8) and 56A(8) as they relate to a CDAP member’s interest where an “association” with another person having an interest in relation to an matter being assessed by the CDAP is determined. Clarity is provided in the following:-

4. Having regard to the above, the nature of the CDAP member's "interest" needs to be identified. If the "interest" is only a perceived interest and is not an interest under section 56A(7) for the following reasons:

- an actual interest is defined to be "a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons";
- where a CDAP member does not have a direct or indirect personal or pecuniary interest in the relevant development application, they will only need to comply with section 56A(7)(a) and (b) if they have an interest in the matter or if an associate of the member has an interest in the matter (section 56A(8));
- the question as to whether a person is an "associate" as defined in section 4(8) such that a CDAP members' interest triggers the operation of section 56(8). Section 4(8) states:

- "(8) For the purposes of this Act, a person is an associate of another person if –
- (a) the other person is a relative of the person or of the person's spouse or domestic partner; or
 - (b) the other person –
 - (i) is a body corporate; and
 - (ii) the person or a relative of the person or of the person's spouse or domestic partner has, or two or more such persons together have, a relevant interest or relevant interests in shares of the body corporate
The nominal value of which is not less than 10 per cent of the nominal value of the issue share capital of the body corporate; or
 - (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or
 - (d) the person is an associate of the other person within the meaning of the regulations."

Ultimately, where the CDAP member has identified a perceived interest which must be disclosed in writing to the CDAP Presiding Member prior to the meeting pursuant to clause 2.4 of the Code, once this disclosure has been made, the CDAP member has complied with their obligations under the Act and can, if they choose to, lawfully remain in the relevant meeting.

The above advice will not necessitate any change to the CDAP Establishment and Terms of Reference.

OTHER BUSINESS

NOVEMBER DEVELOPMENT ASSESSMENT PANEL MEETING

S Shannon queried if the November Panel meeting, currently scheduled for the second Tuesday of the month, could be rescheduled to the normal scheduled first Tuesday of the month but possibly at a different time.

Discussion ensued with Panel members deciding to leave the scheduled November meeting as the second Tuesday of the month at this stage, allowing further review if necessary.

NEXT MEETING

Tuesday, 1 July 2014 commencing at 5.00pm.

S Milne advised that he will be an apology for the July meeting.

CLOSURE OF MEETING

Mr Ballantyne declared the meeting closed at 5.24pm

Confirmed

Date: Chairman: