



*The Barossa Council*

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

Held on Tuesday, 4 February 2014 commencing at 5:01pm in  
the Council Chambers, 43-51 Tanunda Road, Nuriootpa

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### **WELCOME**

Bruce Ballantyne welcomed everyone and opened the meeting.

### **PRESENT**

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

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

### **APOLOGIES**

Richard Miller,

### **LEAVE OF ABSENCE**

Nil.

### **MINUTES OF PREVIOUS MEETING**

**MOVED** D Hughes that the Minutes (as amended, refer DA/DAP/R2 – Moved S Milne, not R Milne as stated) of the Development Assessment Panel meeting held on Tuesday, 21 January 2014 as circulated, be confirmed as a true and correct record of the proceedings of that meeting.

**Seconded** K Goldstone

**CARRIED**

### **BUSINESS ARISING FROM PREVIOUS MINUTES**

Nil.

### **DECLARATION OF INTEREST BY MEMBERS OF PANEL**

K Goldstone declared a conflict of interest in relation to DA/DAP/R5 (G Frater), due to a professional and social relationship with the applicant's representative and Planning Consultant, Mr James Miller.

**APPLICATIONS FOR DECISION****DEBATE AGENDA**

DA/DAP/R1

D866/2013 (118072)

**ASPIRE HOMES (SA) PTY LTD – CONSTRUCTION OF AN OUTBUILDING (SHED) EXTENSION AND TENNIS COURT FENCING AND LIGHTING (MERIT)**

**MOVED** D Hughes that the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application 960/866/2013 and resolves as follows:

- (A) The proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (B) Grant Development Plan Consent to Development Application 960/866/2013 subject to the following conditions:
  - (1) The development shall be undertaken in accordance with the plans and documentation (as amended) accompanying the application, unless varied by the following conditions.
  - (2) The outbuilding herein approved shall not be used for human habitation or occupation.
  - (3) The colour of the external roof and/or wall materials shall match or blend with those of the existing building. Where metal cladding is used, it shall have a colorbond type of finish.
  - (4) The tennis court lighting herein approved shall not be used between 10.30 pm and 7.30am.
  - (5) The tennis court lighting herein approved shall be directed in such a manner so as to cause no light spill nuisance to any person living in the vicinity of the subject land or to nearby vehicular traffic

**Seconded S Milne****CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/866/2013 (Prop ID 118072)
<b>APPLICANT:</b>	Aspire Homes (SA) Pty Ltd
<b>OWNER:</b>	Mark Horsburgh
<b>SUBJECT LAND:</b>	Lot 44 Docking Road, Sandy Creek
<b>PROPOSAL:</b>	Construction of an Outbuilding (Shed) Extension and Tennis Court Fencing and Lighting
<b>ZONE/POLICY AREA:</b>	Rural Living, Precinct 21 – Cockatoo Valley

<b>PROCEDURE:</b>	Merit
<b>REFERRALS:</b>	Nil
<b>PUBLIC NOTICE:</b>	Category 3 – 1 Representation
<b>KEY ISSUES:</b>	Representation received during public notification
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Rural Living Objectives 1 and 2. Principles of Development Controls 1 and 9
<b>CONSOLIDATION DATE:</b> 21 February 2013	<u>Council Wide:</u> Design and Appearance Principle of Development Control 15 Residential Development Objective 1. Principle of Development Control 12.
<b>RECOMMENDATION:</b>	Grant Development Plan Consent
<b>OFFICER:</b>	Karen Mitrovic

### **SUBJECT LAND AND LOCALITY**

The subject land is located within the Rural Living Zone, Precinct 21 – Cockatoo Valley, of The Barossa Council Development Plan consolidated 21 February 2013.

The subject land has a size of approximately 1 hectare, with a frontage to Docking Road of 78.55 metres and a depth of 123.62 metres. The Rural Living Zone stretches to the north, south, east and west of the subject land with a Council owned reserve located to the rear of the property. The allotment currently contains a detached dwelling, alfresco, swimming pool, and associated outbuildings.

The locality contains allotments varying in size from 1 to 1.5 hectares with most allotments in the area containing a detached dwelling and associated outbuildings.

### **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

The proposed development for the construction of a 12m x 16m extension to an existing garage, a gazebo measuring 3m x 5m, tennis court fencing to a maximum height of 3m and four 10m high flood lights, has been brought before the Development Assessment Panel for decision as a representation was received during the public notification period, which cannot be overcome.

### **REFERRALS**

No referrals are required under Schedule 8 of the Development Regulations, 2008.

### **PUBLIC NOTIFICATION**

The construction of tennis court fencing and lighting are not listed within Council's Development Plan or the Development Regulations as either a Category 1 or 2 form of development. As such, the proposal becomes a form of development which requires Category 3 public notification. Adjacent land owners and directly affected persons were notified in writing, and an advertisement was also placed in the local newspaper. One representation was received and their concerns are summarised below:

- Concern regarding lighting impacting upon their living area
- Noise from late night use of the tennis court

A copy of the representation was provided with the Agenda.

The representor does not wish to be heard by the Panel.

The applicant's response to the representations is summarised below:

- The tennis court will be approximately 100 metres from the representor's dwelling
- The light beam will be directed downwards at the court

- The light beams travel approximately 15 metres only and a protective cone will be located around the globe to reduce spill.
- The tennis court will not be used late at night.

The applicant's response was included within the Agenda.

### **PROVISIONS OF THE DEVELOPMENT PLAN**

The proposed development is located within the Rural Living Zone.

The relevant Zone and Council Wide Objectives and Principles of Development Control are listed below.

### **RURAL LIVING ZONE**

#### **Objectives**

*Objective 1: A zone consisting of large allotments, detached dwellings and rural activities that do not adversely impact the amenity of the locality.*

*Objective 2: Development that contributes to the desired character of the zone.*

#### **Principles of Development Control**

1. *The following forms of development are envisaged in the zone:*

- *detached dwelling*
- *domestic outbuilding in association with a detached dwelling*
- *domestic structure*
- *dwelling addition*
- *farming*
- *farm building*
- *stable*

9. *Outbuildings should:*

- (a) *have a maximum height of 3.6 metres*
- (b) *have a maximum area of 200 square metres for any allotments greater than 1 hectare in area, or 135 for those allotment below 1 hectare in area*
- (c) *not overshadow or block light from the windows of a dwelling*
- (d) *be finished in unobtrusive materials or natural colours*
- (e) *be limited to one outbuilding per site and clustered with the existing dwelling to retain as much of the land in open or productive use*
- (f) *be located in an unobtrusive locations, such as within valleys and below ridgelines, and screened by buildings and vegetation.*

### **COUNCIL WIDE – DESIGN AND APPEARANCE**

#### **Principle of Development Control**

15. *Outdoor lighting should not result in light spillage on adjacent land.*

### **COUNCIL WIDE – RESIDENTIAL DEVELOPMENT**

#### **Objectives**

*Objective 1: Safe, convenient, pleasant and healthy-living environments that meet the full range of needs and preferences of the community.*

#### **Principle of Development Control**

12. *Garages, carports and outbuildings should have a roof form and pitch, building materials and detailing that complement the associated dwelling.*

### PLANNING ASSESSMENT

The representor expressed concerns that the proposed lighting will have a negative impact upon the use of their internal living area and a concern that the tennis court will be used late at night.

Council Wide - Design and Appearance Principle of Development Control 15 states that "outdoor lighting should not result in light spillage on adjacent land." The proposed tennis court lighting is located 3 metres from the nearest property boundary at the rear. A Council owned reserve is located at the rear of the property, which will reduce the likelihood of any possible light spill impacting upon a neighbour.

The proposed lighting is to be located approximately 28 metres from each side boundary which will likely ensure that no light spill enters either of the neighbouring properties to the side of the site.

The representor resides at the property located to the rear of the subject land with their dwelling being located approximately 100 metres from the proposed lighting. The 30 metre wide Council reserve located between the subject land and the representor's property will effectively ensure that light spill from the lighting will not enter the representor's property.

The desired character for the Rural Living Zone states the following:

*"It is envisaged that development in the zone will accommodate rural living activities on a range of allotment sizes, based on characteristics of the land, landscape appearance, siting and vegetation."*

The use of a portion of the subject land as a tennis court is considered to be an appropriate rural activity for the site which will not adversely impact upon the amenity of the locality. The location of the development towards the rear of the allotment has meant that the structures associated with the tennis court will be approximately the same distance away from all adjoining neighbours. Given the distance between the proposed land use and neighbouring dwellings, it is considered that the impact of noise will be negligible.

Whilst the Development Plan as a whole and, more specifically, the Rural Living Zone do not make reference to the construction of fencing and lighting for tennis courts, it is considered that these forms of development are appropriate within a rural living area, as allotment sizes are sufficient to ensure that neighbouring properties are not greatly impacted upon by the effects of light spill.

Principle of Development Control 9 of the Rural Living Zone provides recommended design criteria for outbuildings within the zone. The proposed outbuilding extension will result in the overall size of the building being greater than 200 square metres, the maximum recommended size for outbuildings within the Rural Living on allotments greater than 1 hectare in size. Although the proposed outbuilding extension will increase the overall size of the building to greater than 200 square metres, it is considered that the allotment is large enough to accommodate a structure of this size without any negative impacts upon neighbouring property owners/occupiers. The extension to the existing outbuilding will ensure that the structure remains clustered with the existing structure on site, thereby maintaining a better amenity as multiple structures will not be spread throughout the site.

The proposed development is also located within the Character Preservation District. Objective 1 of the Character Preservation Overlay indicates that this is a district where:

- (a) scenic and rural landscapes are highly valued, retained and protected
- (b) development near entrances to towns and settlements does not diminish the rural setting, character and heritage values associated with those towns and settlements
- (c) the long term use of land for primary production and associated value adding enterprises is assured and promoted
- (d) activities positively contribute to tourism
- (e) the heritage attributes of the district are preserved
- (f) buildings and structures complement the landscape.

The proposed development is located within a Rural Living Zone and will not detract from the amenity of the area nor will it result in the requirements of Objective 1 not being met.

Objective 2 of the Character Preservation Overlay notes that residential development should be located inside townships, settlements and rural living areas. The proposed development is considered to be an appropriate expansion of the existing residential use of the land within a Rural Living Zone.

**CONCLUSION**

The proposed development is a merit form of development within the zone and is considered to be a reasonable addition to the existing residential use of the land.

As stated earlier, although the proposed outbuilding extension will result in an outbuilding of greater than 200 square metres, it is considered that the allotment is large enough to accommodate a structure of this size without any negative impacts upon neighbouring property owners/occupiers.

The lighting and fencing associated with the proposed tennis court on the property are appropriately located on the site to have minimal impact upon neighbouring allotments.

It is considered that the proposed development will not have an unreasonable impact on the adjoining property and warrants planning consent being granted.

**DA/DAP/R2****D889/2013 (1166527)****TREASURY WINE ESTATES VINTNERS LIMITED – VINEYARD (MERIT)**

Mr Murray Klemm addressed the Panel in relation to DA/DAP/R2 at 5.05pm.

Mr Roger Schmidt, on behalf of Treasury Wine Estate (Applicant), addressed the Panel at 5.13pm, and answered questions from the Panel in relation to access points, dust reduction, vegetation buffer and chemical usage.

**MOVED** K Goldstone that the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application 960/889/2013 and resolves as follows:

- (A) The proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (B) Grant Development Plan Consent to Development Application 960/889/2013 subject to the following conditions:
  - (1) The development shall be undertaken in accordance with the plans and documentation (as amended) accompanying the application, unless varied by the following conditions.
  - (2) The spraying of agricultural chemicals shall only occur during daylight hours, and only on days when weather conditions are such as to prevent spray drift onto adjoining properties.
  - (3) The vegetation buffer(s) shall be planted and maintained with a mixture of trees, shrubs and ground cover species with predominantly long, thin and rough leaves, capable of forming a dense vegetation buffer, to the reasonable satisfaction of Council.
  - (4) The vineyard shall be designed with sufficient maneuvering area for vehicles and machinery at the end of each row so as not to encroach onto any public road verge by vehicles and machinery engaged in vineyard maintenance or harvesting.

**NOTE ONLY**

- The Applicant is reminded of the general duty of care under Section 25 of the Environment Protection Act to ensure activities on the site do not pollute the environment or cause environmental harm.

**Seconded S Roehr**

As the vote was tied, the casting vote of the Presiding Member was used, and the recommendation was upheld and **CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/889/2013 (Prop ID 1166527)
<b>APPLICANT:</b>	Roger Schmidt
<b>OWNER:</b>	Treasury Wine Estates Vintners Limited
<b>SUBJECT LAND:</b>	Lot 683 Moculta Road, Penrice
<b>PROPOSAL:</b>	Vineyard
<b>ZONE/POLICY AREA:</b>	Primary Production, Precinct 6 – Moculta
<b>PROCEDURE:</b>	Merit
<b>REFERRALS:</b>	Nil
<b>PUBLIC NOTICE:</b>	Category 3 – 2 Representations
<b>KEY ISSUES:</b>	Representations received during public notification period
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Primary Production Zone Objectives 1, 3 and 5. Principle of Development Controls 1, 10, 16 and 17.
<b>CONSOLIDATION DATE:</b> 21 February 2013	<u>Council Wide:</u> Interface between Land Uses Objective: 1. Principle of Development Control 1 and 9. Orderly and Sustainable Development Objectives 3 and 7. Principle of Development Controls 1, 2, and 3. Transportation and Access Objectives 2 and 5. Principle of Development Controls 22 and 23. Character Preservation District Overlay Objective 1. Principle of Development Control 1.
<b>RECOMMENDATION:</b>	Grant Development Plan Consent
<b>OFFICER:</b>	Karen Mitrovic

**SUBJECT LAND AND LOCALITY**

The subject land is located within the Primary Production Zone, Precinct 6 – Moculta, of The Barossa Council Development Plan consolidated 21 February 2013.

The subject land has a size of approximately 121.2 hectares, and is surrounded by Gruenberg Road, Lindsay Park Road and Moculta Road. An existing vineyard is established on the allotment in addition to two associated farm buildings and a dam.

The township of Moculta is located approximately one kilometre to the east of the subject land. The locality consists of broad acre farming and horticultural allotments ranging from 33 hectares to 150 hectares in size with some allotments also containing dwellings and associated farm buildings.

**DESCRIPTION OF THE PROPOSED DEVELOPMENT**

The applicant seeks Development Plan Consent for the change in land use of 34 hectares of land from grazing to vineyard.

**REFERRALS**

No referrals are required under Schedule 8 of the Development Regulations, 2008.

**PUBLIC NOTIFICATION**

The change of use from broad acre farming to horticulture (vineyard) is not listed within Council's Development Plan or the Development Regulations as either a Category 1 or 2 form of development. As such, the proposal becomes a form of development which requires Category 3 public notification. Adjacent land owners and directly affected persons were notified in writing, and an advertisement was also placed in the local newspaper. Two representations were received and their concerns are summarised below:

- Increase in traffic causing nuisance in the form of dust
- Potential issues with spray drift from subject land onto representor's property and vice versa

A copy of the representation was provided with the Agenda.

One of the representors wishes to be heard by the Panel, their details are as follows:

MJ & MR Klemm who will be represented by Murray Klemm, Ben Klemm and Peter Wendt

The applicant's response to the representations is summarised below:

- No increase in traffic is proposed, machinery travelling to and from the subject land will be asked to enter the property via a new access point located on Gruenberg Road to avoid traffic travelling past the representor's property.
- The existing vineyard and proposed vineyard are to be operated by trained staff who are aware of their responsibilities in regards to the controlling of spray drift.
- The Applicant will establish a 10m wide vegetated buffer along Gruenberg Road to reduce the chance of potential spray drift.

The applicant's response was included within the Agenda.

**PLANNING ASSESSMENT**

The proposed development is located within the Primary Production Zone, Precinct 6 – Moculta.

The relevant Zone and Council Wide Objectives and Principles of Development Control are discussed below.

**Interface Between Land Uses**

Objective 1 states that development should be located and designed to prevent adverse impact and conflict between land uses. The proposed vineyard is an extension to an existing vineyard and is located in an area which has vineyards scattered throughout. The subject land is located within an established primary production area and will continue to be used for this purpose. The main issue of concern in relation to interface issues would be the possible impact of spray drift. The Applicant has advised that the use of sprayed pesticides/fungicides etc will be conducted in accordance with the requirements of the Environmental Protection Act and by appropriately trained personnel.

Principle of Development Control 9 requires that:

*'traffic movement, spray drift, dust, noise, odour, and the use of frost fans and gas guns associated with primary production activities should not lead to unreasonable impact on adjacent land users.'*

The Applicant has advised that drivers of all machinery will be advised to enter and exit the site via a new access point located along Gruenberg Road. The use of this access point will negate the need for machinery to be driven past the dwelling of M & D Koch (representors). It is considered that the use of existing access points from sealed roadways and locations away from neighbouring dwellings, in addition to the proposed new access point on Gruenberg Road, will mean that the impact of dust generated by traffic entering/existing the subject land will be negligible.



The use of sprayed pesticides/fungicides etc is a common occurrence in relation to vineyard activities. One representation from MJ & MR Klemm received in relation to the proposal indicated a concern with possible spray drift from the site impacting upon their existing dairy farm. The representor's land is located to the south of the subject land and is currently cropped for the purpose of providing feed for their dairy cow herd. The representors concern relates to the need for them to utilise certain herbicides in their day to day activities and the impact upon the proposed vineyard, in addition to the impact of the vineyard creating issues of spray drift through their practices.

The Applicant has advised that they operate within the requirements of the Environmental Protection Act and all relevant staff are aware of their responsibilities under this act. The Applicant's staff follow a strict spraying regime and will only spray when all criterion are met in order to minimise any adverse impacts on the environment and themselves. The criterion for spraying are reviewed yearly and are set in place in consultation with an agronomist from Elders. The Applicant further advises that the use of correctly calibrated application units, correct nozzles, adherence to label instructions, use of appropriate spray units (multi head sprayer with axial fan) and applying in appropriate weather conditions should result in minimal to no risk of spray drift impacting upon neighbouring properties.

In order to further reduce the impact of spray drift, the Applicant has indicated that they will introduce a 10m wide vegetated buffer of native trees and shrubs along the southern boundary of the subject land. In addition to the 10m buffer, a 10m wide headland will be provided between the southern boundary and the first row of vines. The 20m road reserve also between the subject land and the representor's property will result in a 40m buffer between the proposed vineyard and the northern boundary of the representor's land.

It is considered that the measures taken by the Applicant to reduce the impact of dust and spray drift on neighbouring property owners are sufficient to meet the requirements of Principle of Development Control 9.

#### Orderly and Sustainable Development

Objective 3 states that:

*"developments which do not jeopardise the continuance of adjoining authorised land uses should be established."*

The proposed development is for the expansion of an existing vineyard in an area which is used for both broadacre farming and horticultural purposes. It is not considered that the change of use of 34 hectares from broadacre farming to vineyard will impact negatively upon the existing use of land in the area.

One of the representors, MJ & MR Klemm, indicated that they had concerns regarding the impact which their existing spraying operations may have upon the proposed vineyard. The Applicant has advised that their research into the use of the herbicides listed as being in use by the representor, has resulted in the belief that the use of these chemicals should have little to no impact upon the proposed vineyard. The 40m buffer between the two land uses is considered to be sufficient to ensure that spray drift from the representor's property over the subject land is minimised and that the continued use of the land for broadacre dairy farming is not jeopardised.

#### Character Preservation Overlay

The proposed development is also located within the Character Preservation District. Objective 1 of the Character Preservation Overlay indicates that this is a district where:

- (a) *scenic and rural landscapes are highly valued, retained and protected*
- (b) *development near entrances to towns and settlements does not diminish the rural setting, character and heritage values associated with those towns and settlements*
- (c) *the long term use of land for primary production and associated value adding enterprises is assured and promoted*
- (d) *activities positively contribute to tourism*
- (e) *the heritage attributes of the district are preserved*
- (f) *buildings and structures complement the landscape.*

It is considered that the proposed development is consistent with the character preservation district overlay. The proposal will not adversely impact upon the scenic or rural landscape character of the land or the locality, nor will it reduce the ability of the land to be used for primary production purposes.

#### Primary Production Zone

Objective 1 of the zone seeks to encourage economically productive, efficient and environmentally sustainable primary production. The Applicant has provided a detailed description of their proposal including information relating to soil management on site, chemical usage and water sourcing.

The Applicant has undertaken a soil survey to ensure that the subject land is acceptable for the planting and growing of vines. The results of the survey indicate that the site is adequate for the establishment of an economically productive and environmentally sustainable vineyard. In addition, the Applicant has provided evidence that they have an established agreement with SA Water to provide water in the event that they need additional water from off-site.

Objective 5 encourages development to contribute to the desired character of the zone which states that:

*'Development of grazing and broadacre farming land uses is the most appropriate form of agricultural use located within the zone, with limited opportunities for more intensive uses such as horticulture and viticulture located within the uplands areas of the zone such as the Barossa Range.'*

Principle of Development Control 16 of the zone requires that:

*Development for commercial orchards or vineyards should provide a headland/access area (excluding any area required for a landscaped spray shield/buffer) for agricultural vehicles and equipment to manoeuvre on the site of at least:*

- (a) 5 metres in width where the planting rows are parallel to the property boundary
- (b) 10 metres in width in other cases.

Principle of Development Control 17 specifies that:

*"Spray shields and biological buffer zones should be of a size and location that minimises runoff onto arterial roads, established along property boundaries with sensitive adjoining land uses, and appropriately landscaped."*

The Applicant has provided an amended plan which indicates that a 10m vegetated buffer will be planted along the southern and eastern property boundaries in addition to a 10m wide headland. The application is therefore consistent with Principle of Development Controls 16 & 17 of the Primary Production Zone.

#### **CONCLUSION**

The proposed development is a merit form of development within the zone and is considered to be a reasonable addition to the existing horticultural use of the land.

The proposed vineyard will not detract from or inhibit existing land uses considered appropriate to the Primary Production Zone nor will it detrimentally affect potential for future primary production uses.

Having regard to the provisions of the Primary Production Zone and the Council Wide Section in the relevant Development Plan, the proposal is not seriously at variance with the provisions of the Development Plan and displays sufficient merit to warrant Development Plan Consent.

**DA/DAP/R3** **D717/2013 (117708)**  
**TARAC PROPERTIES PTY LTD – WINE SALES AND STORAGE, OFFICE  
 ACCOMMODATION, FOOD AND TOURISM BASED RETAIL AND  
 CAFÉ/RESTAURANT (INCLUDING CULINARY EDUCATION CENTRE) – (NON-  
 COMPLYING)**

Ben Scott answered questions from the Panel in relation to existing and proposed signage, on behalf of the Applicant (Tarac Properties Pty Ltd).

The Panel noted that it would be desirable to retain existing signage on the building as it relates to its heritage.

**MOVED** S Roehr that the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application 960/717/2013 and resolves as follows:

- (A) The proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (B) Grant Development Plan Consent to Development Application 960/717/2013 subject to the following conditions:
  - (1) The development shall be undertaken in accordance with the plans and documentation (as amended) accompanying the application.
  - (2) The use of the proposed retail component of this development shall be restricted to food and tourism based retail.
- (C) Seeks the concurrence of the Development Assessment Commission.

**Seconded** D Hughes

**CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/717/2013 (Prop ID 117708)
<b>APPLICANT:</b>	Tarac Properties Pty Ltd
<b>OWNER:</b>	Tarac Properties Pty Ltd
<b>SUBJECT LAND:</b>	Lot 100 Barossa Valley Way, Nuriootpa
<b>PROPOSAL:</b>	Wine Sales and Storage, Office Accommodation, Food and Tourism Based Retail and Café/Restaurant (Including Culinary Education Centre)
<b>ZONE/POLICY AREA:</b>	Industry (Barossa Valley Region), Policy Area 1 – Beckwith Park, Precinct 3 – Beckwith Park Mixed Use/Industry
<b>PROCEDURE:</b>	Non-Complying
<b>REFERRALS:</b>	Nil
<b>PUBLIC NOTICE:</b>	Category 3 – 2 Representations
<b>KEY ISSUES:</b>	Non-Complying form of development in Industry (Barossa Valley Region) Zone
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Industry (Barossa Valley Region) Zone Objectives 1 and 2. Principle of Development Controls 1, 2, 7, 9, 10, 12,13, 14 and 15. Beckwith Park Policy Area 1 Objectives 1 and 2. Principle of Development Controls 1, 2, 3, 4, 5, 6 and 7. Beckwith Park Mixed Use/Industry Precinct 3. Principle of Development Controls: 8, 9 and 10. Council Wide:
<b>CONSOLIDATION DATE:</b> 21 February 2013	

	Centres and Retail Development Objectives 1, 5 and 7. Principle of Development Controls 9, 10 and 11. Heritage Places Objectives 1, 2, 3 and 4. Principle of Development Controls 2, 3 and 7. Orderly and Sustainable Development Principle of Development Controls 1 and 3. Tourism Development Objectives 1, 2, 3 and 6. Principle of Development Controls 1, 2, 3, 4, 6 and 12. Transportation and Access Objective 2. Principle of Development Controls 1, 2, and 31.
<b>RECOMMENDATION:</b>	Grant Development Plan Consent and Seek Concurrence of the Development Assessment Commission
<b>OFFICER:</b>	Karen Mitrovic

### **SUBJECT LAND AND LOCALITY**

The subject land is located within the Industry (Barossa Valley Region) Zone, Policy Area 1 – Beckwith Park and Precinct 2 - Beckwith Park General Industry.

The subject land fronts Tanunda Road and is part of the Beckwith Park Industry and Business Centre. The entire Beckwith Park centre comprises a site of approximately 16 hectares whilst the subject site of the proposed development is located on approximately 1 hectare.

The site is currently used for a mixture of land uses including cellar door sales, wine storage, office and administration, staff amenities and storage. The proposed land use includes a redeveloped cellar door sales area (subject to a future separate application), food and tourism based retail and offices. No additional floor area is proposed as part of the application and the only introduced use will be the introduction of food and tourism based retail.

### **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

The Applicant intends to refurbish the existing Penfolds Cellar Door building to create a food, wine and tourism precinct. The proposal is to retain and adapt the existing building from its current use as a mix of cellar door sales, office/administration and storage to a food, wine and tourism facility.

At this stage, the applicant has not secured tenants for the proposed retail space however, it is to be marketed to appropriate food, wine and tourism based retailers. The anticipated uses of the site will include a redeveloped cellar door sales area, restaurant/café, culinary education centre and food production operations in addition to small scale retail activities which may include such uses as an artisan baker, small goods maker, cheese wright, chocatier, coffee roaster and providore. The subject land may also offer an opportunity for the display of local artwork and the potential for 'pop-up' or seasonal tenancies.

The proposed retail spaces will have a floor area of approximately 450m<sup>2</sup> and will have a food wine and tourism focus. The upper level of the building is intended to incorporate a commercial kitchen associated with the education facility, meeting space, and general commercial tenancies which may include offices or food industry related business activities and processes.

The proposed hours of operation are between 6.00am and midnight, 7 days per week. These hours accommodate the broad range of land uses on the subject land.

### **REFERRALS**

No referrals are required under Schedule 8 of the Development Regulations, 2008.

### **PROCEDURAL MATTERS**

All forms of development are non-complying within the Industry (Barossa Valley Region) Zone with only certain forms of development listed as exemptions to the non-complying process. The proposed development does not meet the criteria for any of the listed exemptions and is therefore non-complying.

### **PUBLIC NOTIFICATION**

The application is a Category 3, non-complying form of development and it therefore required public notification. Adjacent land owners and directly affected persons were notified in writing, and an

advertisement was also placed in the local newspaper. Two representations, both of which had no objection to the proposal, were received and their comments are summarised below:

- The proposed development is appropriately located to be an extension to the existing town centre.
- DPTI has no objection to the proposal but advise that a condition relating to stormwater disposal should be included on any decision.

A copy of the representations were provided within the Agenda.

A copy of the applicants response was included with the Agenda.

### **PLANNING ASSESSMENT**

The proposed development is located within the Industry (Barossa Valley Region) Zone, Policy Area 1 – Beckwith Park, Precinct 2 - Beckwith Park General Industry, of the authorised Development Plan, consolidated 21 February 2013.

The relevant Zone and Council Wide Objectives and Principles of Development Control are discussed below.

#### Centres and Retail Development

Whilst the proposed development does not meet the requirements of all objectives and principles within the Council Wide Centres and Retail Development section of the Development Plan, it is considered that it is generally consistent with the objectives and principles and will not result in a development which will hinder the desired outcome for the region's centres and retail development being achieved.

Objective 1 specifies that shopping, administrative, cultural, community, entertainment, educational, religious and recreational facilities located in integrated centres. In addition Principle of Development Control 11 states that:

*A shop or group of shops located outside of zones that allow for retail development should:*

- be of a size and type that will not hinder the development, function or viability of any centre zone*
- not demonstrably lead to the physical deterioration of any designated centre*
- be developed taking into consideration its effect on adjacent development.*

The proposed development is not a typical retail development as the tenancy range and available products will be linked to local and regional food, wine and tourism pursuits. The total potential floor area for retail purposes is 450m<sup>2</sup> at full capacity. The nature of the proposed retailers will be dedicated to a specific market, likely tourists to the area, and will not negatively impact upon the Nuriootpa town centre.

Principle of Development Control 9 suggests that a shop or group of shops with a gross leasable area of greater than 250 square metres should be located within a centre zone. As discussed a development of this nature would not necessarily be appropriate within the established centre zone given the niche market style of proposed occupants. In addition, the existing town centre does not contain an appropriately sized site to provide an integrated land use and required car parking facilities.

#### Heritage Places

The proposed development is consistent with the objectives and principles of the heritage section in general but more specifically with objectives 1 and 2 which encourage the conservation of State and local heritage places and the continued use, or adaptive re-use of State and local heritage places, that supports the conservation of their cultural significance. The proposal seeks to retain and renovate the building to maintain and enhance its local heritage status. The local heritage listing of the building includes the front section which retains detailing and materials from 1911 including rendered walls and circular columns. The best way to encourage the continued retention of a heritage place is to use the building for an economically viable purpose. In order to retain the character of the existing building the Applicant is proposing minimal external modifications to the building. The application has been considered by Council's Heritage Advisor who is content with the proposal.

Principle of Development Control 3 indicates that development of a State or local heritage place should be compatible with the heritage value of the place. The proposed development is consistent with this principle as it will make use of the existing local heritage place with as few alterations to the appearance as possible. If the proposed development were to be for a bulky goods outlet or industrial use, there would need to be significant alterations to the existing building to accommodate such a use. It is considered that the proposed minor scale food industrial type development in addition to the retail use of the facility will prove to be a much more sympathetic land use in order to retain the character of the existing heritage place.

#### Orderly and Sustainable Development

The proposed development is consistent with Principle of Development Controls 1 and 3 as the proposal will not prejudice the development of a zone for its intended purpose and will be a sustainable expansion of the economic base of the region.

The proposal is for a distinctive form of development which is focused on local and regional food, wine and tourism industries and brings together integrated land uses to support the region. The introduction of additional uses to the existing cellar door sales, office/administration and storage use will not negatively impact upon the site's continued use for industrial and commercial purposes.

#### Tourism Development

Objective 1 encourages environmentally sustainable and innovative tourism development. The proposed development is consistent with this objective as it will introduce a new tourism experience to the Barossa region which integrates industrial elements on the site and within the region with the food and wine tourism industry.

The proposal will have a direct link to its location within the Barossa through the introduction of an integrated facility providing support for the local food, wine, culinary, education and tourism industries. In addition to a refurbished cellar door, the subject land will incorporate a restaurant and café, culinary education facility and food production operations. These key functions will be supported by small scale retail activities which might include such uses as an artisan baker, small goods maker, cheese wright, chocolatier, coffee roaster and providore. In addition, the site will also offer an opportunity for the display of local artwork and the potential for pop-up seasonal tenancies.

Objective 2 encourages tourism development that assists in the conservation, interpretation and public appreciation of significant natural and cultural features including State or local heritage places. The proposed use will encourage tourism to the site and will complement the existing uses within the local heritage place on site. The particulars of the proposed development and use of the heritage place as a tourism hub will ensure that the character of the building is retained to be appreciated by those visiting the site.

#### Transportation and Access

The proposed development is consistent with the requirements for transport and access within Council's Development Plan. The current use is served by existing entry and exit points onto Tanunda Road will be retained and unchanged.

The Applicant has engaged the services of a traffic consultant to provide advice regarding the suitability of car parking on the site. The report compiled by the consultant found that the current land use would generate a need for 28 car parks and that an additional 85 car parking spaces would be required to support the proposed additional land uses, a total of 113 car parks. This is consistent with Council staff calculations which have found that approximately 116 car parks would be required for the facility. There are currently 128 on site car parking spaces located across two car parking areas provided which are available for use by patrons of the development.

Given the adequate provision of on site parking and lack of change to existing access/egress arrangements, it is considered that the proposal is consistent with the requirements of the Development Plan in relation to transportation and access.

#### Industry (Barossa Valley Region) Zone

Objective 1 of the zone is to provide "A zone accommodating a wide range of industrial, warehouse, storage and transport land uses of regional significance, particularly wineries and other activities which support the region's viticulture and wine making industry."

The proposed development is generally consistent with this objective as it will be providing a facility for food, wine and tourism related activities which will directly support the region's economy. The introduction of a facility of this type will not compromise the use of the remaining site for industrial purposes. The proposal will support the region's viticulture and wine making industry by providing additional outlets for local and regionally produced wines, tastings and wine education and experiences.

Principle of Development Control 2 of the zone specifies that non-complying development is generally inappropriate. Whilst the application is for a non-complying form of development, the proposal is for an integrated, mixed use form of development which is generally consistent with the overall desired character for the area. Such a development however is not a listed exemption within the non-complying section of the zone.

According to Principle of Development Control 9 development should not be undertaken unless it is consistent with the desired character for the zone. The proposed development is consistent with the desired character for the zone which states that:

*'development will be primarily for industrial and commercial activities of regional significance or which support the viticulture and wine-making industry of the surrounding region. Such activities will vary in terms of scale and types of impacts having regard to the nature of surrounding activities.'*

The proposed commercial style activities on the site will support the viticulture and wine making industry by providing additional outlets for local and regionally produced wines, tastings and wine education and experiences. The proposal will have little to no impact upon the continued use of the remainder of the site for industrial activities whilst utilising an existing heritage local place in an appropriate manner.

#### Beckwith Park Policy Area 1 and Precinct 3 – Beckwith Park Mixed Use/Industry

Objective 2 suggests that development should contribute to the desired character of the policy area which encourages development that will:

*'comprise a mixture of industrial, warehouse, storage and transport/ logistics land uses together with commercial uses such as offices, service trades premises and bulky goods outlets (retail showrooms) which are primarily orientated towards Tanunda Road.'*

The proposed development is to be located within an existing local heritage place and, as such it is questionable whether a traditional industrial type development would be appropriate in such a building. The proposed development will incorporate commercial type uses which are reliant upon the industrial use of the subject land in addition to the wine making industry throughout the region.

The desired character for the precinct also suggests that the expansion of centre type facilities such as shops is not desired, although limited retail associated with the uses envisaged in the zone and policy area is appropriate. The proposed use of the retail component of the development is not catered to everyday use as a centre would be, rather for use as an integrated tourism facility. It is not considered that the retail component of the development will have a negative impact upon the town centre of Nuriootpa due to the specific nature of the intended occupants.

Principle of Development Control 1 of the Beckwith Park Policy area lists appropriate forms of development within the zone.

1        *The following forms of development are envisaged in the policy area:*

- *bulky goods outlet located within Precinct 3 Beckwith Park Mixed Use/Industry*
- *industry*
- *transport and storage land uses*
- *winery located within Precinct 2 Beckwith Park General Industry*
- *office located within Precinct 3 Beckwith Park Mixed Use/Industry*
- *warehouse*
- *service trade premises*
- *store.*

Multiple uses within the development are envisaged within the zone, such as offices, various forms of industry and storage. The retail component of the development is not specifically envisaged, however this use is linked to the wine and food industries within the region and within the site. The location of the proposed development has been selected to provide a link between the industrial use of the land and the production element of winemaking in order to provide a tourism experience.

Principle of Development Control 2 of the policy area states that:

*“Except for a bulky goods outlet, shops should only be established to service industry and other uses in the zone provided it does not hinder the development or function of established centres.”*

The proposed retail element of the development is not a general form of retail, but rather is linked to industrial use of the remainder of the site. The inclusion of retail which is complimentary to the tourism and industrial use of the site will not compromise the nearby town centre given the scale and specialised product sales.

Principle of Development Control 10 within the Beckwith Park Mixed Use/Industry Precinct specifies that development in the precinct should comprise of land uses that are of regional significance together with a variety of commercial uses which are in keeping with the core industrial role and function of the precinct. The proposed development is consistent with this principle as it has a strong commercial focus and will provide a tourism hub of regional significance. The development will promote the region's existing food and wine based industries and complement ongoing industrial and wine based activities on the subject land.

### **CONCLUSION**

While the proposal is a non-complying form of development, it will not detract from or inhibit existing land uses considered appropriate within the Industry (Barossa Valley Region) Zone, Beckwith Park Policy Area, Beckwith Park Mixed Use/Industry Precinct, or detrimentally affect potential for future appropriate land uses.

The proposed development will enhance tourism development within the region and will ensure that the local heritage place is retained and maintained to a high standard.

Having regard to the provisions of the Primary Production Zone and the Council Wide Section in the relevant Development Plan, the proposal is not seriously at variance with the provisions of the Development Plan and displays sufficient merit to warrant Development Plan Consent. The concurrence of the Development Assessment Commission will be required before issuing the consent.

**DA/DAP/R4**

**D530/2013 (111504)**

**BAROSSA VALLEY BREWING PTY LTD – CHANGE OF USE OF EXISTING  
INDUSTRY (MICRO BREWERY) AND TASTING ROOM RESTAURANT TO  
INCLUDE ENTERTAINMENT IN THE FORM OF LIGHT AMPLIFIED ACOUSTIC  
MUSIC (NON-COMPLYING)**

Mr Gregory Ennis (Representor) addressed the Panel at 5.41pm in relation to DA/DAP/R4, and answered questions regarding traffic and music noise.

Mr Alfie Spehr (Representor) addressed the Panel at 5.46pm in relation to DA/DAP/R4 and answered questions regarding patron noise.

Mr Gian Wagland (Representor) addressed the Panel at 5.50pm in relation to DA/DAP/R4 and answered questions regarding amplification of music.

Mr S Angel, on behalf of D & R Matthew (Representors) addressed the Panel at 5.58pm in relation to DA/DAP/R4.



Mr D'Silva (Applicant) addressed the Panel at 6.03pm in relation to DA/DAP/R4, and clarified details of the Office of the Liquor and Gambling Commissioner.

**MOVED** D Hughes that the Development Assessment Panel has considered all relevant assessment matters and the officer's report in relation to Development Application No. 960/530/2013 and resolves as follows:

- (A) The proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.
- (B) Grant Development Plan Consent to Development Application 960/530/2013 subject to the following Reserved Matter and conditions.

### **RESERVED MATTER**

Pursuant to Section 33(3) of the Development Act, the following matter shall be reserved for further assessment to the satisfaction of Council prior to the granting of Development Approval:

- (1) The designation of safe and convenient access and egress to the subject land potentially involving a 'Right of Way' being established over Council land and the upgrade of the driveway at the applicant's expense to the reasonable satisfaction of Council.

### **DEVELOPMENT PLAN CONSENT CONDITIONS**

- (1) The development shall be undertaken in accordance with the plans and documentation accompanying the applications 960/564/2010, 960/662/2011 and 960/530/2013 (as amended), unless varied by the following conditions.
- (2) The site shall be maintained to the reasonable satisfaction of the Council at all times.
- (3) The restaurant shall not operate outside the hours of 8.00 am until 12 midnight 7 days a week unless written approval to vary the times is given by Council.
- (4) The micro-brewery shall not operate outside the hours of 8:00 am until 9:00 pm 7 days a week unless written approval to vary the times is given by Council.
- (5) Entertainment shall not be provided, other than:
  - Light non-amplified acoustic music between the hours of midday and 7.00 pm, in the areas marked beer garden 1 and beer garden 2, and areas marked 2 to 7 inclusive on the plan accompanying the application, or
  - Light amplified acoustic music between the hours of midday and 7.00 pm, in the area marked beer garden 2 and areas marked 2, 3, 4 and 5 on the plan accompanying the application.

- (6) Noise levels shall not exceed the limits allowable under the Environment Protection (Noise) Policy.
- (7) All of the car parking, driveway, and vehicle manoeuvring area shall be covered with sufficient crushed rock and aggregate to provide a smooth and durable surface free from mud and dust, and shall be maintained in good condition to the reasonable satisfaction of Council.
- (8) Each car parking space shall comply with the relevant Australian Standard.
- (9) Each car parking space shall be provided with a vehicle wheel stop prior to the occupation or use of the development herein approved.
- (10) The maximum capacity shall not exceed 115 persons at any one time.
- (11) The internal walls, ceiling and access doors of the micro-brewery shall be suitably insulated to assist noise attenuation and the reduction of potential odours.
- (12) All existing trees shall be retained and maintained in good condition with any diseased or dying vegetation being replaced to the reasonable satisfaction of Council.
- (13) Internal floor bunding in all storage and processing areas of the micro-brewery must be designed and built to contain at least 120% of the net capacity of the largest container in accordance with EPA Guidelines for Bunding and Spill Management (June 2007), available at <http://www.epa.sa.gov.au/pdfs/guidebundling.pdf>
- (14) The finished floor level shall be 8.6 metres relative to the site plan and independent of any bunding to ensure protection from potential flood risk.
- (15) Spent Grain/Yeast and other solid waste from the brewery process shall be removed from the site on the day of production.
- (16) Provision shall be made for the appropriate storage and removal of all solid putrescible waste emanating from the restaurant.
- (17) Any openings, lids or vent pipes attached to wastewater storage tanks must be above the flood level shown in Overlay Map Baro/18 – Development Constraints, of The Barossa Council Development Plan 21 February 20.13.

**NOTES ONLY**

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

- Any information sheets, guidelines documents, codes of practice, technical bulletins etc, that are referenced in this response can be accessed on the following website://www.epa.sa.gov.au/pub.htm1.
- Wherever practicable, access doors servicing the micro-brewery should remain closed to prevent potential nuisance by way of emission of noise or odour.
- Building Rules Consent conditions relative to Development Application 960/00564/10 continue to apply to that respective application.
- Development Approval has not yet been issued and shall be withheld until the Reserved Matter has been resolved. The consent to use amplified music does not become effective until Development Approval is issued.

C. Seeks the concurrence of the Development Assessment Commission.

**Seconded S Milne**

**CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/530/2013 (Prop ID 111504)
<b>APPLICANT:</b>	Barossa Valley Brewing Pty Ltd
<b>OWNER:</b>	Barossa Valley Brewing Pty Ltd
<b>SUBJECT LAND:</b>	2A Murray Street, Tanunda
<b>PROPOSAL:</b>	Change of Use of Existing Industry (Micro Brewery) and Tasting Room Restaurant to Include Entertainment in the form of Light Amplified Acoustic Music
<b>ZONE/POLICY AREA:</b>	Recreation Zone, Map Baro/18
<b>PROCEDURE:</b>	Non-Complying
<b>REFERRALS:</b>	Nil
<b>PUBLIC NOTICE:</b>	Category 3 – Nine Representations
<b>KEY ISSUES:</b>	Noise
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Refer <i>Attachment 3</i> for extracts from:
<b>CONSOLIDATION DATE:</b> 21 February 2013	Interface between Land Uses Recreation Zone
<b>RECOMMENDATION:</b>	Grant Development Plan Consent and Seek Concurrence of the Development Assessment Commission
<b>OFFICER:</b>	Brian Irvine

### **BACKGROUND**

This application was deferred from the 3 December 2013 meeting to enable the applicant to discuss the concerns raised by the representors. A meeting has occurred with the representors but at the time of writing none have withdrawn or modified their representation.

The applicant and the management of the caravan park have also prepared a Memorandum of Understanding to address a number of issues that have arisen over time. At the time of writing, only an unsigned copy has been presented, but the applicant has indicated that it has been signed and should be received prior to the meeting. The Memorandum of Understanding does not form part of the application and can be amended or renegotiated without further reference to Council, but there is the potential that any relevant aspect of it could be addressed with a condition of consent.

The application has been amended since it was first lodged. Initially it aimed to align the development approval and the liquor licence, but has since been amended to simply change non-amplified music to amplified music. The hours and areas in which it will be played remain unchanged. The Memorandum of Understanding does not directly address the issues related to amplified music, but rather addresses behavioural issues and defines the lines of communication between the brewery and the caravan park in the event of future problems.

There is a reference in the Memorandum of Understanding to additional fencing between the brewery and the caravan park but if this is intended it should be included in the application with the type and location specified, and supported with appropriate expert advice that it will positively and significantly reduce the noise emanating from the venue.

The Memorandum of Understanding was provided with the Agenda.

The remainder of the report is the same as the December report with minor editing improvements.

### **SUBJECT LAND AND LOCALITY**

The subject land is an irregular shaped allotment fronting Murray Street at the southern end of Tanunda. The property is surrounded by the Council owned Heinemann Park on one side of Murray Street. Both Heinemann Park and the subject land are located in the Recreation Zone. A caravan park and several houses are located on the other side of Murray Street in the Recreation Zone and the Caravan and Tourist Park Zone.

The property comprises an old stone building originally built and used as a dwelling, and converted for a number of uses over the years. More recently, after a period of vacancy, the property was approved for a micro brewery in a new shed with the dwelling structure being upgraded and improved to be used as a restaurant and tasting area associated with the brewery. There are two outside licensed areas. One, comprising a small grassed area is located at the front, between the restaurant and the carparking area, with the second larger area located at the rear of the premises.

The front outside area is at the same level as the restaurant and the road, and is in view from parts of the caravan park. The rear outside area is set down lower, and has the road embankment and the restaurant to screen it from the caravan park. The rear area looks out over the Park.

The locality extends approximately 150 metres north and south, and approximately 300 metres east and west of the premises, and is characterised by the mixed uses typical of entrances to country townships.

### **BACKGROUND AND DESCRIPTION OF THE PROPOSED DEVELOPMENT**

An application (960/564/2010) to establish a micro brewery, tasting room, restaurant decking and associated car parking was presented to the August 2010 Panel meeting. The proposal was non-complying but was supported by the Panel on the basis of information presented to it including:

- The restaurant deck area will be located at the rear of the building away from the caravan park
- Restaurant hours were to be 12 noon to 10pm Tuesday to Sunday
- Noise emission was more likely to arise from patrons using the outside decks than from the tasting area and restaurant.
- Noise from patrons of the restaurant, deck and garden areas will be closely monitored and controlled by management
- No loud music or bands were contemplated

This original application did not refer to any outside entertainment areas and did not identify any areas external to the buildings, verandahs and decks that were proposed to be used for restaurant purposes.

A liquor licence was subsequently considered in January 2011. No objection was submitted but the Council response included the statement of:

*"This endorsement is given on the understanding that there will be no outdoor entertainment."*

The liquor licence was subsequently issued with the following conditions:

Entertainment may be provided between the following times:

Thursdays to Saturday 12.00 pm to 7.00 pm  
New Years Eve 12.00 pm to Midnight

Entertainment provided shall consist of light non-amplified acoustic music.

A further application (960/662/2011) was lodged with Council on 14 February 2011 to increase trading hours of the restaurant and micro brewery, inclusion of a beer garden and modifications to the car parking area. It was processed as a merit proposal, being regarded as a reasonable extension of an existing non-complying development. The proposal included a statement of:

*"entertainment will consist of light non-amplified acoustic music outside from the hours of 12.00 pm until 7.00 pm". Restaurant hours were to be increased to 8.00 am to 12 midnight.*

This application was subsequently approved (November 2011) with the standard condition that the development be in accordance with plans and details submitted. There was no restriction on the days that entertainment could be provided and therefore it is assumed that it was allowable 7 days a week, midday to 7.00 pm.

In the later part of 2012 Council received a number of verbal complaints regarding loud amplified music being played late at night and drunken behaviour. They were advised to report the matter to the Office of the Liquor and Gambling Commissioner, and the owners subsequently approached Council to lodge an application to amend the previous approvals and expand the entertainment provisions.

The current application was lodged 20 March 2013 and in its original form, proposed to amend the restaurant hours, amend the entertainment hours and change the entertainment to light amplified music. It was initially accepted as a variation to the earlier approvals, but upon review and receipt of legal advice, it was amended to be a new development application of a non-complying nature.

The application has subsequently been amended to only change "light-non-amplified acoustic music" to "light amplified acoustic music". No other changes are proposed in this application. It was decided that in its amended form it was still a non-complying form of development because the restaurant and entertainment has evolved from being an ancillary activity to the brewery as originally approved to being a major activity and a land use in its own right.

The application detail including plans and the Statement of Effect was provided with the Agenda.

#### **PROVISIONS OF THE DEVELOPMENT PLAN**

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

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

Extracts from the Development Plan were provided with the Agenda.

#### **CONSULTATION**

No consultations with government agencies are required.

#### **PUBLIC NOTIFICATION**

The proposal does not meet any of the criteria set out in Schedule 9 of the Development Regulations or the Development Plan for Category 1 or 2 forms of public notification. The public notification category therefore defaults to Category 3.

The application has been publicly notified and 9 representations were received. Four raised a number of concerns with noise being the principle concern, and 5 expressed support for live entertainment.

A copy of the representations and response were included within the Agenda.

### **PLANNING ASSESSMENT**

The existing approvals remain in place and the brewery, restaurant and entertainment may continue to operate within the constraints set by those approvals. The current application proposes to add light amplified acoustic music to the development. Consideration of the application also gives recognition to the change to the relationship between the restaurant and the brewery that has occurred.

It can be reasonably assumed that non-amplified music was originally proposed to remove the possibility of annoyance to neighbours, and it was approved on that basis. The testimonials accompanying the current application and the representations in support indicate that the provision of live entertainment is an integral part of the restaurant and that non-amplified music is impractical, and hence the application has been made to include amplified music. This is proposed to apply to both the front and rear outside areas but retain the existing hours of between midday and 7.00 pm, 7 days a week.

Objective 1 of the Recreation Zone states:

*A zone accommodating sporting, entertainment, cultural and recreational activities and associated spectator and administrative facilities.*

Principle 2 of the Recreation Zone states:

*Development listed as non-complying is generally inappropriate*

The entertainment is part of the restaurant activity which is a form of shop, which is listed as a non-complying form of development. Because the restaurant was already in existence with entertainment in the form of non-amplified music and entertainment is referred to in Objective 1, a decision was made to proceed with the assessment of the application. The Statement of Effect states that it has been impractical to operate within the constraints of the previous approval and that better control over sound levels can be achieved with an amplifier.

Objective 1 of the Interface between Land Uses section of the Development Plan states:

*Development located and designed to prevent adverse impact and conflict between land uses.*

A number of Principles for the same section also address noise, including:

*1 Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:*

*(b) noise  
6 Development should be sited, designed and constructed to minimise negative impacts of noise and to avoid unreasonable interference.*

*7 Development should be consistent with the relevant provisions in the current Environment Protection (Noise) Policy.*

The applicant has indicated that it is intended to comply with the Environment Protection (Noise) Policy and that the performers will be monitored and controlled. However, irrespective of whether the noise levels are below the limits set by the Environment Protection (Noise) Policy, noise should not cause unreasonable interference or annoyance to neighbours.

The front area has been used for amplified music. In the later part of 2012, the music was played both loud and late on Saturday nights to the annoyance to the permanent residents in the caravan park. This stopped when complaints were pursued. A number of Limited Licenses for the use of amplified music on Saturday afternoons were subsequently supported to enable the applicant to experiment with noise levels. The front outside area was used for this purpose and the feedback received was that although the noise levels were lower than before, there were a number of occasions when the noise was still annoyingly loud, and there were also a number of occasions

when amplified music was played without the knowledge of Council. This indicates that for all the good intentions expressed by the applicant, it has not been practical or possible to adequately monitor or control the noise levels to ensure that annoyance to neighbours does not occur.

There has been no use of the rear outside area to Council's knowledge. It has better prospects of reducing the noise levels to residents in the caravan park because it is located behind and lower than the restaurant building and road embankment.

One representor has raised the issue of interpretation of "light amplified acoustic music". The subjective nature of the terms of "light" and "acoustic" may not adequately define the limits of what is being sought and what can be enforced.

### **CONCLUSION**

Objective 1 for the Recreation Zone does provide some support for the provision of entertainment in the zone, but other provisions require a balanced approach to be adopted to ensure that the negative impacts of noise are minimised and unreasonable interference does not occur to other people and land uses in the locality. The location of the outside entertainment is a significant factor in the degree of annoyance suffered by neighbouring residents. An appropriate balance would therefore be to approve of amplified music only in the rear outside area, within the limits of the Environment Protection (Noise) Policy, and retain the front area for non-amplified music.

The alternative is to refuse the application if there is not sufficient confidence that noise levels can be controlled to avoid annoyance to neighbours.

The following recommendation incorporates the conditions of consent attached to earlier approvals with minor modifications regarding changes to references to the Development Plan, and adding condition 5 regarding entertainment and condition 6 regarding noise levels.

**DA/DAP/R5**

**D766/2012 (109136)**

### **G FRATER – MOTEL – FOUR TOURIST ACCOMMODATION CABINS (NON-COMPLYING)**

K Goldstone left the meeting at 6.32pm, due to a stated conflict of interest.

Mrs Lois Jenke (Representor) addressed the Panel at 6.32pm regarding DA/DAP/R5, and answered questions in relation to boundaries

Mr James Miller and Mr John Iacopetta (Multi Design) addressed the Panel on behalf of G Frater (Applicant) at 6.36pm regarding DA/DAP/R5, and answered questions from the Panel relating to access, potential tree limb fall, bushfire prevention, potential impact of neighbouring land use and integration.

**MOVED** S Milne that the Development Assessment Panel, having considered all relevant matters and the provisions of the Development Plan in relation to development application 960/766/2012, resolves as follows:

- (A) The proposal is at variance with the relevant provisions of the Development Plan.
- (B) Refuse Development Plan Consent for the following reasons:
  - The accommodation units are placed too close to the trees, thereby placing the trees at risk of removal, and increasing the bushfire risk to the buildings.

- There is an insufficient buffer between the accommodation units and the adjoining viticulture, and winery activities.

Seconded S Roehr

CARRIED

<b>DEVELOPMENT APPLICATION NO:</b>	960/766/2012 (Prop ID 109136)
<b>APPLICANT:</b>	G Frater
<b>OWNER:</b>	M Frater
<b>SUBJECT LAND:</b>	Lot 22 Barossa Valley Way, Rowland Flat
<b>PROPOSAL:</b>	Motel – Four Tourist Accommodation Cabins
<b>ZONE/POLICY AREA:</b>	Primary Production (Barossa Valley Region) Zone – Map Baro/23, Medium Bushfire Risk – BPA Map Baro/8
<b>PROCEDURE:</b>	Non-Complying
<b>REFERRALS:</b>	Nil
<b>PUBLIC NOTICE:</b>	Category 3 – 1 Representation
<b>KEY ISSUES:</b>	Land use, character, vehicle access, potential native vegetation clearance, flooding
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Refer <u>Attachment 3</u> for extracts from:  Advertisements Design and Appearance Hazards Heritage Places Interface between Land Uses Natural Resources Orderly and Sustainable Development Siting and Visibility Tourism Development Transportation and Access Waste Character Preservation Overlay Primary Production (Barossa Valley Region) Zone  The Barossa Council Development Plan, amended by the Ministerial Barossa Valley and McLaren Vale – Revised – Protection Districts Development Plan Amendment (DPA effective from the 11 April 2012)
<b>RECOMMENDATION:</b>	Refusal
<b>OFFICER:</b>	Brian Irvine

### **SUBJECT LAND AND LOCALITY**

The subject land comprises a single allotment contained in Certificate of Title Volume 5179 Folio 672, described as Allotment 22 in Deposited Plan 38082, situated at 1929 Barossa Valley Way Rowland Flat. There are no easements, rights of way or encumbrances over the land, although the land does have a right of way over a strip of neighbouring land on the southern side.

The subject land is situated opposite the Orlando Winery at Rowland Flat and runs between the Barossa Valley Way and the North Para River.

The site is roughly regular in shape, except for the north-eastern corner where 2 residential lots have been cut out in the past, and along the river boundary which is irregular. The land is approximately 325 metres long, 80 metres wide and 2.3 hectares in area. The land has an older house and sheds listed on the local heritage list and a small vineyard, as well as vacant and treed areas. The area adjacent to the river is flood prone and is lined with mature gum trees in a parkland setting. The land has a moderate slope from the road to the river.



The land on the opposite side of the road is used as a large winery and is industrial in nature. However, the winery is effectively screened from public view by residential style buildings and vegetation. The land to the south of the subject land is used as a car park and effluent treatment and stormwater detention in association with the winery. Again it is effectively screened from view, although noise from the car park can sometimes be heard. The land to the north is used as a commercial vineyard. The land on the other side of the river is remnant vegetation and appears to act as a buffer to quarrying operation further away. A number of houses are located along the road.

The abundance of mature trees, houses, and rural land uses collectively create a pleasant character that is typical of a small rural settlement.

### **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

The application seeks to construct 4 separate units which will collectively form a motel as defined by the Development Regulations. An associated car park and driveway is also proposed.

Three of the units will be elevated with floor levels approximately 2.7 metres above ground level and the 4th unit will be near ground level to enable disabled access. The 3 elevated units are proposed to be located adjacent to trees so that visitors will have an impression of being amongst the trees. The design attempts to reach a compromise between being close enough to the trees to enhance the image of being amongst the canopies of the trees and being sited to minimise the risk of falling branches or damaging the trees.

The units will be located between the existing house and the river, approximately between 210 and 250 metres from Barossa Valley Way, 480 metres from Golf Links Road and 40 metres from the winery boundary to the south. The units will be between approximately 45 metres and 115 metres from the existing house. The building sites (at ground level) are approximately 9.5 metres below road entrance level. The site is near level and has the appearance of being a secondary flood plain.

The motel accommodation comprises four separate units, each with a bed/living space and en-suite bathroom, as well as combined lounge, dining and kitchen area. The units will be 4.8 metres wide and 6.3 metres long with a 3.6 metre long verandah at the front. The units will be clad with a fire resistant timber cladding and a Colorbond iron roof. Access will be by external stairs, and by a ramp for the disabled unit. It is proposed that the under-floor areas will not be enclosed. The frame supporting the units appears to be indicative only, with a stated intent to engineer the units to withstand the force of potential falling branches.

The existing access driveway will be upgraded with passing bays and extended to provide a common parking area near the units for 6 parking spaces. The driveway, parking area and pathways will be unsealed.

### **NATURE OF DEVELOPMENT**

The nature of development has been determined to be a 'motel' and a non-complying form of development.

Schedule 1 of the Development Regulations 2008 defines a motel as:

*"a building or group of buildings providing temporary accommodation for more than 5 travellers, and includes an associated restaurant facility, but does not include a hotel or residential flat building."*

(The Strath Hub P/L and Alexandrina Council (ERD 80/06) the Court held that the proposal was a motel notwithstanding the fact that it did not include a restaurant.)

In the Primary Production (Barossa Valley Region) Zone all forms of development are non-complying except for a list of exemptions. A motel or other forms of tourist accommodation are not listed, (except for a limited extension to a motel existing in 1990, or bed and breakfast in a building existing in 1990 or limited expansion of an B & B in existence in 1990).

### **AGENCY CONSULTATION**

No agency consultation was required.

### **PUBLIC NOTIFICATION**

The application has been publicly notified as a Category 3 Development.

One representation was received from the northern neighbour. A copy of the representations and response from the applicant were included within the Agenda.

### **PROVISIONS OF THE DEVELOPMENT PLAN**

The subject land is situated within the Primary Production (Barossa Valley Region) Zone of The Barossa Council Development Plan, consolidated 10 November 2011, and subsequently modified by the Ministerial Barossa Valley and McLaren Vale – Revised - Protection Districts Development Plan Amendment (DPA) effective from the 11 April 2012. (No consolidated version of the Development Plan incorporating this DPA was published.)

The relevant Zone and Council Wide provisions of the Development Plan were provided with the Agenda.

### **PLANNING ASSESSMENT**

#### **Land Use/Form of Development/Character**

Although the proposed development is non-complying and therefore could be considered inappropriate by virtue of Zone principle 2, there are a number of references that speak favourably to tourist accommodation in the zone, namely objective 5, and principles 1 and 19. Similarly there is a reference to limited non-agricultural development in the Desired Character Statement. Although these provisions identify restricted circumstances for tourist accommodation, they also indicate that tourist accommodation is envisaged in appropriate circumstances notwithstanding the fact that it is non-complying. A decision was therefore made to proceed with the assessment of the application and present it to the Panel for a decision.

The decision to elevate the units and to place them near the trees appears to have been made for marketing purposes rather than for planning reasons. (Alternative sites on the property do exist that do not require the units to be elevated or placed near trees.) The visual appeal of the elevated units is a debatable point but they are unlikely to be seen from public places. They may be partially visible from Golf Links Road, 480 metres away, when the vines are dormant but if so, they will not be prominent in any view.

Although the nature of development has been determined to be a motel, it is nevertheless small scale tourist accommodation referred to in zone principle 1. However it is not located in an existing building or form an integral part of a farm building complex referred to in that principle. Similarly it is within 300 metres of an existing winery referred to in zone principle 19. Whilst these may speak against the proposal, it is appropriate to interpret these principles within the context of Objective 1; ie "small-scale tourist facilities only where the character and function of viticulture activities are not adversely affected."

Because of the relative isolation of the proposed buildings, it is unlikely that they will have an adverse or significant effect on the character and amenity of the locality. In fact, it appears that the applicants are attempting to exploit the existing character rather than modify or change it.

However, whether nearby viticultural activities will be adversely affected is a debatable point. Whilst there are no direct effects, the neighbour has expressed a concern over indirect effects. There is a potential for existing standard viticultural practices of spraying and night time harvesting to be regarded as an environmental nuisance after the units are built. Environmental legislation and enforcement action may therefore force practices to change to the detriment of the viticultural activity. This concern is addressed by various provisions of the Development Plan in the "Interface between Land Uses" and "Orderly and sustainable Development" sections, and principle 14 in the Tourism development Section. This is difficult to address with conditions of consent because environmental nuisances are remedied under other legislation independent of the planning system.

#### **Native Vegetation**

Building near the trees remains a concern. The applicant will obviously wish to retain the trees because that is part of their current design and marketing concept. However, once the units are approved, the Native Vegetation Regulations will not restrict or inhibit their removal. There is a valid concern that future owners (or insurance companies) will reassess the risk the trees represent as they age (or as risk assessment criteria become more stringent over time), and conclude that the trees should be removed to save the units. Given the level of investment involved, it is reasonable

to assume that once the level of risk becomes unacceptable, it will be the trees that will be removed rather than the units.

The principle risks associated with the trees are falling branches and trees falling over. They have attempted to minimise the risk by seeking expert advice on the placement of the buildings and undertaking to design the buildings to withstand the force of the impact of any falling branches. The difficulty with this approach is that the trees will grow and change substantially over the lifetime of the buildings and it simply isn't possible to reliably predict the future impact of the trees on the units. It is reasonable to expect that if insurance premiums rise as a result of a number of minor incidents to a point where the business will not be viable, the owners at the time will choose to remove the trees rather than remove the units and close the business.

No mechanism has been proposed by the applicants to ensure that the trees are not removed. The trees will therefore remain at risk of removal and that needs to be weighed against the reasonable possibility of achieving the objective of the Zone by resiting the units to a location that does not place the trees at risk.

The "Natural Resources" section of the Development Plan contains a number of provisions related to protecting native vegetation. They do need to be weighed against other provisions in the final analysis, but given that the Zone gives limited support to small-scale tourist accommodation and that other options are available, it is appropriate that they be given a high weighting.

#### Flooding

It has not yet been conclusively resolved whether the site floods. The neighbour has indicated by reference to fixtures on the land that the 1983 flood covered the site of the units by between 1 and 1.5 metres. The current owners of the site contacted the previous owner who has provided a statement that the flood did not reach the plateau where the units are proposed. The Council's engineer believes that the 'lay of the land' suggests that the plateau has been formed over the millennium by flooding and therefore may be subject to flooding, but cannot determine the extent or intensity of flooding.

The standard used for assessment purposes is that development should be safe from a 1 in 100 year flood. Whether the site is subject to such floods is unknown. If it is subject to such a flood, the consensus of opinion is that the finished floor levels are safely above the flood level. However, a concern remains that flood waters or floating debris may damage the buildings supports, and people in the units may not be able to safely exit the units during a flood event.

Because the cost of undertaking a flood study in these circumstances is high, it is suggested that the applicants only be requested to commission a study if the Panel otherwise supports the proposal and considers flooding to be a significant issue.

#### Heritage

The existing house on the site is listed on the local heritage list. The site of the units is remote from the house and does not impact upon the heritage value of the building.

#### Access

The existing driveway is proposed to be upgraded with a wider entrance and passing bays, as well as being extended to the building site. The number of car parks is adequate but both the driveway and parking area will be unsealed. A rubble driveway is adequate for the expected traffic but the disabled car-parking space and pedestrian access to the disabled unit should be sealed. This could be addressed with a condition of consent.

#### Bushfire

The site is in the medium Bushfire Risk Area. A CFS referral is not required, but the Minister's Code and the relevant objectives and principles in the "Hazards" section of the Development Plan continue to apply. The site is near flat and there is no undergrowth around the trees or the proposed buildings. The risk could be minimised with a condition requiring the grass to be cut during the bushfire season. However, placing elevated units under gum trees increases the difficulty of keeping leaf matter and other minor debris under control, thereby increasing the risk to the units from sparks and embers during a fire.

Some minor improvements to the car parking area would be required to meet requirements for the manoeuvring of fire-fighting vehicles but this could be addressed with a standard condition.

Similarly a minimum of 5000 litres of water per unit should be reserved for fire fighting purposes with pumps and hoses. Again this could be addressed with a standard condition.

#### Tourism Development

There are a number of objectives and principles for the Zone that provide some support to tourist accommodation whereas the "Tourism Development" section sets out a number of matters requiring consideration. Zone objective 5 refers to small-scale tourist facilities only where the character and function of viticulture activities are not adversely affected. Zone principle 1 envisages small scale tourist accommodation, but in existing buildings, as a means of diversification of existing farming activities. Similarly, "Tourism Development" objective 7 refers to increasing opportunities for visitors to stay overnight.

However a number of "Tourism Development" objectives and principles display a theme of not putting the natural environment or farming activities at risk while others aim to ensure that the scale, form and location of tourism development is appropriate. For example, "Tourism Development" principle 14 states that tourism development in rural areas should occur only where it incorporates a separation distance or buffer to avoid conflict with rural industries or agriculture or otherwise is designed to overcome the potential impacts associated with the adjoining land use.

#### CONCLUSION

Heritage, access and bushfire matters could be either adequately addressed or could be with appropriate conditions.

It is debatable whether the design conforms with a number of design and visibility related principles, but given that the site itself is largely out of view, the weight given of those principles in the assessment process can be low.

The flooding issue has not been conclusively resolved although the previous owner's observation that the proposed building site did not flood is probably the most reliable evidence available at the current time. If the Panel is generally supportive of the proposal but remains concerned about flooding potential, the appropriate course of action would be to defer consideration and request a flood study.

The decision to elevate the units and place them adjacent to the trees appears to have been made for business and marketing purposes rather than for planning purposes. There is no valid planning reason supported by the provisions of the Development Plan to elevate the units and place them close to the trees. In fact, the opposite is the case. The placement of the units will put the trees at risk, which can be avoided by placing the units elsewhere. The risk presented to the trees is unnecessary and avoidable.

Similarly there is a reasonable risk that the proposal will cause the neighbour to modify the management practices of their vineyard to his detriment.

Although there are a number of objectives and principles that support the proposal, there are also a number that speak against the proposal. On balance, and given that the risk to the trees is unnecessary and avoidable, it is recommended that the proposal be refused in its current form.

An alternative approach may be to defer a decision to give the applicants an opportunity to resite the units away from the trees, but this may result in a significantly different proposal requiring a new assessment.

K Goldstone returned to the meeting at 7.09pm.

#### OTHER BUSINESS

**MOVED** S Milne that the report be received.

**Seconded** S Roehr

**CARRIED**

**DEVELOPMENT ASSESSMENT COMMISSION CONCURRENCE APPLICATIONS**

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

To date the following non-complying applications, in which the Panel were the decision authority, have been received from the Commission as follows:

<b>DA NUMBER</b>	<b>APPLICANT</b>	<b>ADDRESS</b>	<b>NATURE OF DEVELOPMENT</b>	<b>DAC DECISION</b>
960/854/2013	W & M Forster	524 Yettie Road, Williamstown	Land Division	Concurrence Granted 10/01/2014 (12/11/2013 panel meeting)

**NEXT MEETING**

Tuesday, 4 March 2014 commencing at 5.00pm.

**CLOSURE OF MEETING**

Mr Ballantyne declared the meeting closed at 7.10pm.

Confirmed

Date: ..... Chairman: .....