



*The Barossa Council*

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

Held on Tuesday, 2 December 2014 commencing at 5:01pm in  
the Council Chambers, 43-51 Tanunda Road, Nuriootpa

---

### **WELCOME**

Bruce Ballantyne opened the meeting and welcomed new Panel Members Deidre Reiman, James Miller and Tony Hurn.

### **PRESENT**

Bruce Ballantyne (Presiding Member), David Hughes, Deidre Reiman, James Miller, Scotty Milne, Richard Miller, and Tony Hurn – Panel Members.

Ian Baldwin (Director – Development and Environmental Services), Louis Monteduro (Senior Manager, Planning Services), Paul Mickan (Principal Planner), Brian Irvine (Senior Planner), Phil Harnett (Planner), Steve Kaesler (Manager – engineering Services), Sam Hosking (Heritage Advisor) and Christine Kruger (Minute Secretary) – Council Staff.

### **APOLOGIES**

Nil.

### **LEAVE OF ABSENCE**

Nil.

### **ELECTION OF DEPUTY PRESIDING MEMBER**

**MOVED** S Milne that the Development Assessment Panel appoint D Hughes to the position of Deputy presiding Member

**Seconded** D Reiman

**CARRIED**

### **MINUTES OF PREVIOUS MEETING**

**MOVED** R Miller that the Minutes of the Development Assessment Panel meeting held on Tuesday, 11 November 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**

R Miller declared an interest in DA/DAP/R1 (JBG Architects – Restaurant extension) and DA/DAP/R3 (Australian Transit Enterprises – Bus Depot) R Miller advised that in his capacity as a Registered Conveyancer, advice had been sought by the owners.

T Hurn declared a conflict of interest in relation to DA/DAP/R3 (Australian Transit Enterprises – Bus Depot) due to being an employee of the Applicant.

**APPLICATIONS FOR DECISION****DEBATE AGENDA****DA/DAP/R1****D512/2014 (105213)****JBG ARCHITECTS – RESTAURANT EXTENSION - MERIT**

R Miller left the meeting at 5.04pm due to a stated conflict of interest.

Brian Irvine (Senior Planner) addressed the Panel and confirmed that letters of support for the application had been received by Council, and circulated a letter received from Tuoi Thi Do and Robert Dickson (Business Owners).

Mr Robert Dickson (Business Owner) answered questions from the Panel in relation to patron/customer numbers and modes of transport, and the perceived impact of any proposed restrictions by Council.

**MOVED** S Milne that the Development Assessment Panel has considered all relevant assessment matters and the officer's report prepared in relation to Development Application 960/512/2014 and resolves as follows:

- (A) That pursuant to Section 35(2) of the Development Act, the proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.
- (B) Pursuant to Section 6(2) of the Character Preservation (Barossa Valley) Act 2012, the Development Assessment Panel has had regard to the objects of that Act and, in determining this application, seeks to further the objects of that Act.
- (C) That pursuant to Section 33(1)(a) of the Development Act, Development Application 960/512/2014 be granted Development Plan Consent subject to the following conditions:
  - (1) The development shall be undertaken in accordance with the plans and documentation accompanying the application (as amended), unless varied by the following conditions.
  - (2) The service yard be paved and drained prior to the utilisation of the extension for restaurant purposes.

- (3) A wastewater system, (approved pursuant to the SA Public Health Act), shall be installed to service the building prior to utilisation of the extensions.
- (4) Roof water and storm water shall be disposed of to the street watertable. Where roof water is directed to a rainwater tank the overflow shall be piped to the street watertable.
- (5) Entertainment provided to the outside area shall cease at 9.30 pm. When entertainment is provided in the new Lounge and/or new Dining Room, the doors between the Lounge and Terrace areas shall be closed.

**NOTES ONLY**

- Please be advised that where a Private Certifier is appointed to undertake the building assessment, Council does not provide a service of advising the Private Certifier of site conditions or any matters relevant to the building assessment. It is recommended that a Private Certifier undertakes his or her own investigations and inspection of the site to become acquainted with site conditions and any other relevant matter.
- Please note that no work can commence on the land as a result of this consent. This consent relates solely to the planning assessment. An application for Building Rules Consent is required to be assessed and approved before Development Approval can be issued to enable work to commence.

Seconded T Hurn

**CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/512/2014 (Prop ID 105213)
<b>APPLICANT:</b>	JBG Architects
<b>OWNER:</b>	Nem Handoi Pty Ltd
<b>SUBJECT LAND:</b>	90 Murray Street, Tanunda
<b>PROPOSAL:</b>	Restaurant Extension
<b>ZONE/POLICY AREA:</b>	District Town Centre Zone (Map Baro/18), Historic Conservation Area – Murray Street Tanunda Area 8 (Map Baro/18)
<b>PROCEDURE:</b>	Merit
<b>REFERRALS:</b>	Internal – Heritage Advisor
<b>PUBLIC NOTICE:</b>	Category 1
<b>KEY ISSUES:</b>	Design and Appearance, Advertisements, Waste, Parking
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Refer <u>Attachment 3</u> for extracts from:
<b>CONSOLIDATION DATE:</b> 21 February 2013	<ul style="list-style-type: none"> <li>• Advertisements</li> </ul>

	<ul style="list-style-type: none"> <li>• Centres and Retail Development</li> <li>• Design &amp; Appearance</li> <li>• Historic Conservation Area</li> <li>• Interface between Land Uses</li> <li>• Orderly &amp; sustainable Development</li> <li>• Siting &amp; Visibility</li> <li>• Tourism Development</li> <li>• Transportation and Access</li> <li>• Waste</li> <li>• Character Preservation District Overlay</li> <li>• District Town Centre Zone</li> </ul>
<b>RECOMMENDATION:</b>	Grant Development Plan Consent
<b>OFFICER:</b>	Brian Irvine

#### **SUBJECT LAND AND LOCALITY**

The subject land comprises a single allotment contained in Certificate of Title Volume 5731 Folio 857, described as Allotment 708 Filed Plan 172159, situated at 90 Murray Street Tanunda, on the corner of Elizabeth Street.

The subject land is rectangular in shape, 30.58 metres wide (Murray St frontage), 40.84 metres deep (Elizabeth Street frontage), and 1249m<sup>2</sup> in area. The existing building appears to have been converted to a restaurant and modified internally and had minor extensions and modifications in the past to facilitate its use as a restaurant. The building's style and design, its stone construction and good condition, has resulted in a building with historic character. Two large brick water tanks are located behind the building and although in public view from Elizabeth Street, are not prominent.

The existing building is set back approximately 6.4 metres from the front boundary. This area is used for a formal garden that compliments the small reserve in front of the premises with the fountain. The building is also approximately 19 metres from the rear boundary. This area is used as an unsealed, informal car park.

The site is surrounded by other business uses, with the exception of a small park immediately in front of the premises, another park on the corner of Bilyara Road and Murray Street, and a church on the opposite side of Murray Street. The busy part of the 'main street' extends for approximately 100 metres along Murray Street in a north easterly direction and for approximately 500 metres in a south westerly direction. Business uses extend for only a short distance along Elizabeth Street, after which land on the southern side of the street is used for residential purposes and the land on the northern side is used predominantly as a recreation ground. Business uses in Murray Street utilise a large number of older style buildings which collectively create an area with a historic and commercial character. Most business uses in Murray Street are composed of relatively small tenancies with little or no on-site car parking available. A supermarket is located behind the tenancies opposite the subject land with its own off-street car park with entrances off Murray Street and Basedow Road. Other nearby off-street car parks are located:

- on the corner of Basedow Road and MacDonnell Street utilised by the Tanunda Club
- a public car park adjacent to the hall near the railway crossing in Basedow Road
- a shared car park behind the businesses between 76 and 88 Murray Street with access off Julius Street
- A public car park behind the CWA hall with access of Julius Street

On-street car parking is well utilised in Murray Street, Basedow Road and Elizabeth Street adjacent to the businesses. Most other side streets are not suitable for on-street parking because of their narrowness.

Murray Street has all of the characteristics of a busy country town main street derived from a constant stream of slow moving traffic (during business hours), a high concentration of business premises, a large number of older buildings of historic character, and pedestrian traffic on the footpaths, including a high proportion of tourists. The busyness of the street is heightened by the added traffic congestion around the Elizabeth Street, Bilyara Road and Basedow Road intersections, but the small park in front of the subject land provides a degree of separation for the

restaurant from the hustle and bustle of the street, whilst still enabling it to be perceived to be part of its general character.

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

The application proposes to substantially enlarge the existing restaurant to cater for up to 150 patrons. This involves:

- Extensions on the side of the building, to the southern boundary for food preparation, office and staff areas
- Extensions on the rear of the building, in the current car park for a new dining and lounge room of approximately 130m<sup>2</sup>
- An external terrace sitting area between the new lounge and Elizabeth Street
- Creating a new principle entrance to the building from Elizabeth Street
- Closing the existing vehicular entrance off Elizabeth Street and opening a new entrance, and driveway along the western boundary to a dedicated service yard, including 3 proposed parking spaces
- 2 new signs
- Demolition of the 2 tanks

The extensions will have either rendered finished walls in off-white or featured timber cladding in natural finish. Roofs will have a low pitch, with 'Shale Grey metal cladding.

Existing trading hours are expected to continue, being:

- Lunch – Thursday to Sunday – 12 noon till 2.30 pm
- Dinner – Wednesday to Sunday – 6.00 pm to 9.30 pm

The proposed plans and documentation were included within the Agenda.

### **CONSULTATION**

No agency consultation was required. The application was referred to Council's Heritage advisor for comment. His comments were provided with the Agenda.

### **PUBLIC NOTIFICATION**

The application was determined to be a Category 1 application for public notification purposes subject to Schedule 9 of the Development Regulations. No public notification was required.

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

The subject land is situated within the District Town Centre Zone of the Development Plan, consolidated 21 February 2013.

The relevant Council Wide and Zone provisions of the Development Plan are included within the Agenda.

### **PLANNING ASSESSMENT**

The property has existing use rights for use as a restaurant. The existing building changed its use from a dwelling to offices with 4 parking spaces in 1987, and then to a coffee house and photo gallery in 2002. In 2007 approval was given for a change of use to a restaurant. Stage 1 approval was given for modifications to the toilet facilities, but stage 2, for an alfresco deck between the building and Elizabeth Street was never applied for or given approval. The approved plans depicted 16 car parking spaces and the conditions of consent required the car park to be sealed and line marked. The planning application did not indicate the proposed number of patrons, but the related waste system application submitted to Council quoted the number of people using the system as "20/day – 50 max, as an average, possible one day 100 on large event". The liquor licencing authorities have granted a liquor licence for up to 122 people, although it appears that this includes a licenced area over the car park for 50 people.

The nature of the proposal is not listed as either complying or non-complying development and is therefore a 'merit' form of development for procedural purposes.

### Land Use

A restaurant is an envisaged land use in the zone (zone Principle 1), and is compatible with the zone objective that states that the purpose of the zone is to accommodate a range of town centre uses including cultural and entertainment facilities to serve the community and visitors. This is reinforced by the Objectives and Principles of the Centres and Retail Development Section of the Development Plan.

### Design and Appearance/Siting and Visibility/Historic Conservation

The extensions are contemporary in appearance and will be identifiable as new construction, but in a manner to complement the existing building without detracting from the character of the area (Design & Appearance Principle 1, and Historic Conservation Area Principle 7). "The design is articulated well and not of a scale, bulk or mass that will overwhelm the existing building" (Heritage advisor's report) and conforms with Design and Appearance Principle 3 and Siting and Visibility Principle 1. Although the extensions on the southern side of the building will be visible from Murray Street, the use of feature timber cladding will ensure that the stone façade of the existing building will remain dominant. The extensions at the rear will not be dominant in any view from Murray Street. When viewed from Elizabeth Street, the differences in the roof line tends to create a visual separation of the new dining, lounge and terrace areas from the older structure.

The colour scheme of the additions is compatible with the existing structure and the surrounding area.

### Advertisements

The proposed signs are in general conformity with the objectives and principles of the Advertisement section of the Development Plan and Principle 14 of the Historic Conservation Area section. The number of signs has been minimised (Advertisements Principle 2), the content relates to the use of the land (Advertisements Principle 4) and the message is simple, clear and concise (Advertisement Principle 10. Although the signs are up to 3 metres high, their design and siting are in harmony with the building and the general character of the locality (Advertisements Principle 1, and Historic Conservation Area Principle 14)).

### Waste Control

A waste control system application has not been lodged for the septic tank and plumbing design. This can be addressed with a condition of consent.

### Entertainment

No details of entertainment have been provided other than the liquor licence that applies to the current building. Entertainment in outside areas has the potential to create a nuisance to nearby residential properties. Entertainment provided inside is unlikely to create an unreasonable nuisance to nearby residents. The site is in the District Town Centre Zone and nearby residents should be expected to tolerate a level of activity usually associated with such a Zone, but should not be expected to be exposed to unreasonable levels of noise. This matter can be addressed with a condition of consent.

### Parking and Access

Transportation and Access Principle 31, together with Table Baro/1 states that car parking for a restaurant should be provided at a ratio of 1 per 3 seats. Fifty parking spaces would therefore be expected for a new restaurant for 150 people. However, the current approved restaurant envisages a maximum 50 patrons and 16 parking spaces. An additional 33 spaces are therefore envisaged by Principle 31 for the additional 100 patrons, resulting in an overall requirement for 49 spaces.

The District Town Centre Zone Principle 12 highlights the significance of the parking issue in Murray Street. This principle states "Development in Murray Street and Basedow Road Tanunda, should address the flow of traffic and pressure for parking along Murray Street."

The site plan depicts 3 parking spaces in the service yard, presumably for staff vehicles. However, there is insufficient space in the service yard to conveniently reverse out of the spaces and exit the land in a forward direction. Furthermore, the space closest to Elizabeth Street cannot be conveniently accessed. In summary, the 3 spaces are not safe and convenient to use, and are unlikely to be used in practice, with staff resorting to parking in the street. It has been suggested in conversation that staff could park in the driveway. However, this is likely to interfere with deliveries and service vehicles, and the shifting of vehicles as staff leave at different times would be disruptive

to providing a quality service in the restaurant. Again, staff are most likely to prefer parking in the street.

Moving the driveway will result in a net loss of 3 parking spaces in Elizabeth Street. 4 angled spaces will be lost but 1 additional parallel space could be added. The proposed development will cause the 16 approved on-site parking spaces to be lost, resulting in an overall reduction of 19 parking spaces. An alternative view is, because only four vehicles use the unimproved parking area, only seven spaces are lost in practical terms.

The applicant has put forward a number of arguments for why it is not necessary to provide parking spaces. These include:

- A liquor licence has been issued for 122 people and therefore there are only 28 additional patrons to be catered for. (Response - This is not considered to be a valid argument because planning consent has never been granted for 122 customers and parking needs are not taken into consideration in the issuing of a liquor licence. Furthermore, 28 additional patrons equates to 9 additional parking spaces which should be additional to the previously required 16 spaces for the existing restaurant, whereas no usable parking spaces are proposed.)
- If all businesses provided the required number of car parks, Tanunda would become one big car park, there would be an oversupply of car parks and the character of the town would be destroyed. (Response - There is some merit to this argument. It is true that too many parking spaces can have a detrimental effect, but it is equally true that insufficient number of parking spaces will also have a detrimental effect. If there is to be deviation from the requirements of the Development Plan, it is necessary to strike the correct balance having regard to the actual need and practical considerations of the issue.)
- No complaints regarding car parking have been received by the owners of the business
- The rear car park is underutilised, implying that there is no need for additional parking spaces. (Response - The parking area has not been improved as required by the previous conditions of consent and does not present as a public parking area. It is capable of more use if properly presented.)
- Many customers are tourists, and for a variety of reasons do not require a parking space.
- There are alternative parking spaces available

The applicant's submission regarding car parking is included in the application detail provided within the Agenda.

A suggestion has been made that a 400 metre radius is acceptable to calculate the available kerb side parking spaces available. This is an over simplified approach to the issue and does not take into consideration the other competing interests for the parking spaces, the manner in which they are used, or the variety of walking distances that will be tolerated by different types of customers. (For example many people will tolerate a 400m walk for an evening of entertainment in the city but would not tolerate a 400m walk for a 2 minute visit to the bakery in Elizabeth Street.)

There are, nevertheless, a number of reasons to consider reducing the number of parking spaces. A restaurant has 2 peak trading times, lunch time and dinner time, with the occasional function during the day. On most evenings there is a surplus of kerb-side parking spaces after other businesses have closed, and parking is not expected to be an issue after approximately 5.30 to 6.00pm. Similarly, it appears that the nature of weekend trading is different and competition for kerb side parking at lunch time and during the afternoons of Saturdays and Sundays is reduced and unlikely to be an issue.

The lunch time trading time is when there is most competition for kerb side parking spaces, and is of the most concern. It is valid to consider that a number of customers will arrive by other means and will not require a parking space. It is also valid to consider that a number of customers also visit other business premises and therefore does not require an additional space. Similarly, the current level of parking appears to be adequate for the level of business in the street, although it could be equally argued that the current level of business activity is constrained from expansion by the fixed level of parking available.

Many of the kerb side parking spaces have a quick turnover, as people pay short visits to other businesses. This is particularly so for the bakery in Elizabeth Street and similar businesses elsewhere in Murray Street. While restaurant customers may be prepared to walk longer distances

than other customers, they will nevertheless occupy the closest spaces first, for longer periods of time, thereby preventing other short term customers accessing other businesses. Given the extent of the proposed expansion, the deficiency of parking spaces is expected to have a significant detrimental effect on other nearby businesses if the restaurant trades at maximum capacity during the lunch time week day trading period.

The absence of any customer parking is therefore in conflict with Transportation and Access section Principle 31 and as a result, also in conflict with Interface between Land Uses Objective 1 and Principle 1. This cannot be adequately addressed by fine tuning the design but could be addressed with a condition of consent that limits the extent of lunch time trade to the current levels. There has been some discussion on what is the current level of trading. The previous planning consent envisages a maximum of 50 customers, but it appears that the restaurant has regularly traded with 70-80 customers without any apparent parking issues.

A dedicated service yard is proposed for waste and recyclable bins in conformity with Waste Principles 5 and 6. Some minor rearrangement of the mechanical equipment boxes may be required to ensure that the Community Wastewater Management Scheme connection point and flushing point is not obstructed. The layout of the yard will require trucks (including delivery trucks) to reverse out onto Elizabeth Street. This is undesirable but it is noted that it occurs regularly in the town centre.

### **CHARACTER PRESERVATION (BAROSSA VALLEY) ACT**

Section 6(2) of the Act requires any person or body to have regard to and seek to further the objects of the Act when exercising powers under any other Act (e.g. the Development Act).

The objects of the Character Preservation (Barossa Valley) Act are:

- (a) to recognise, protect and enhance the special character of the district while at the same time providing for the economic, social and physical well being of the community; and
- (b) to ensure that activities that are unacceptable in view of their adverse effects on the special character of the district are prevented from proceeding; and
- (c) to ensure that future development does not detract from the special character of the district; and
- (d) otherwise to ensure the preservation of the special character of the district.

The special character values relevant to this application are:

- (a) the rural and natural landscape and visual amenity of the district
- (b) the heritage attributes of the district
- (c) the built form of the townships as they relate to the district
- (d) the viticultural, agricultural and associated industries of the district
- (e) the scenic and tourism attributes of the district.

It is considered that the proposed development does not offend the objects of the Character Preservation (Barossa Valley) Act.

### **CONCLUSION**

The land use is an envisaged form of development in the zone and the design of the built form is satisfactory and in general meets the design, character and amenity provisions of the Development Plan. The proposed advertisements are also satisfactory and compliment both the nature of the business and the character of the property and the locality.

Stormwater disposal has not been specifically addressed in the application. However, the service yard to fall towards Elizabeth Street and roof water is capable of being taken to the street. This matter is capable of being satisfactorily addressed with a condition of consent.

A separate application for the plumbing design and septic tank has not been lodged, but there does not appear to be any impediments to installing an adequate system. This matter can also be addressed with a standard condition.

Car parking is a significant issue requiring careful consideration. While there may be some justification for reducing the number of parking spaces from the required overall 49 spaces, the applicant is, in effect, proposing no parking spaces (the 3 proposed spaces are not safe and

convenient to use). This will cause all staff and customers to use kerb side parking. This is unlikely to have a significant impact on other businesses during the evening and night time trading period, but will detrimentally affect other existing businesses during the lunch time week day trading period if the restaurant trades above the current limitations. Nearby businesses that rely on a steady turnover of kerb side parking spaces will be particularly affected.

The inadequacy of car parking and the detrimental effect that it will have on other businesses in the locality, if the restaurant is permitted to trade at its maximum capacity during regular week day business hours, is considered to be significant enough to conclude that the proposal is seriously at variance with the provisions of the Development Plan. Proposals that are seriously at variance with the provisions of the Development Plan must be refused pursuant to Section 35(2). However, the current trading regime and parking arrangements appear to be satisfactory, and therefore the parking issue can be addressed with a condition of consent limiting the capacity of the restaurant to current levels during normal business hours.

Therefore it is concluded that if adequate conditions are attached, the proposal does not undermine the Objectives and Principles of the Development Plan and on balance, is not seriously at variance with the provisions of the Development Plan and displays sufficient merit to warrant the granting of Development Plan Consent.

R Miller returned to the meeting at 5.48pm.

**DA/DAP/R2**

**D019/2014 (107491)**

**LOUISE SMITHSON, (CARE OF MATTSSON & MARTYN SURVEYORS) –  
LAND DIVISION (1 ALLOTMENT INTO 2) - MERIT**

P Harnett (Planner) addressed the Panel and clarified Principles of Development Control.

**MOVED** J Miller that the Development Assessment Panel has considered all relevant assessment matters and the officer's report prepared in relation to Development Application No. 960/401/2014 (960/D019/14) and resolves as follows:

- (A) That pursuant to Section 35(2) of the Development Act, the proposal is seriously at variance with the relevant provisions of The Barossa Council Development Plan consolidated 21 February 2013.
- (B) That Development Plan Consent and Land Division Consent be refused for the Development Application 960/401/2014 (960/D019/14) for the following reasons:
  - (1) The proposal is significantly at variance with the 'Desired Character' of the Township Zone as derived from the open rural surrounds, as the proposal is not consistent with the relatively low density typical of country settlements and would result in development that fails to reflect the prevailing generous front, side and rear boundary setbacks.
  - (2) The proposal is significantly at variance with Objectives 2 and 5 of the Township Zone as the development would not maintain a small country township character and would not contribute to the desired character of the Township zone.
  - (3) The proposal is significantly at variance with Principle of Development Control 3, within the Township Zone, as the proposal

would increase the density beyond the low density envisaged within the locality.

- (4) The proposal is significantly at variance with the 'Desired Character' of Residential Policy Area 7 resulting in a form of development inconsistent with the maintenance of a small country township character at low densities and failing to maintain and enhance existing residential amenity.
- (5) The proposal is significantly at variance with Objectives 1 and 2 of Residential Policy Area 7 as it is contrary to the low density development within the locality and does not contribute to the desired character of Residential Policy Area 7.
- (6) The proposal is significantly at variance with Principles of Development Control 2 and 7(b) of Residential Policy Area 7 in that the development is inconsistent with the desired character of the policy area and that the proposal would not have a minimum frontage to a public road of at least 12 metres.

Seconded D Hughes

**CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/401/2014 (960/d019/14) (Prop ID 107491 )
<b>APPLICANT:</b>	Louis Smithson, Care of Mattsson & Martyn Surveyors
<b>OWNER:</b>	Stephen Smithson & Louise Randall
<b>SUBJECT LAND:</b>	Lot 20, 8 Fergusson Court, Lyndoch
<b>PROPOSAL:</b>	Land Division (1 allotment into 2)
<b>ZONE/POLICY AREA:</b>	Township Zone (Map Baro/35), Policy Area 7 – Residential (Map Baro/35), Area Excluded from Character Preservation District (Map Baro/35)
<b>PROCEDURE:</b>	Merit
<b>REFERRALS:</b>	Development Assessment Commission, SA Water
<b>PUBLIC NOTICE:</b>	Category 1
<b>KEY ISSUES:</b>	Character, streetscape, frontage width
<b>DEVELOPMENT PLAN PROVISIONS: CONSOLIDATION DATE: 21 February 2013</b>	Township Zone Objectives 2, 3 & 5. Township Principles of Development Control 3 & 6. Policy Area 7 Residential Objectives 1 & 2. Policy Area 7 Residential Principles of Development Control 2 & 7. General Section Land Division Principle of Development Control 7
<b>RECOMMENDATION:</b>	Refusal
<b>OFFICER:</b>	Philip Harnett

**SUBJECT LAND AND LOCALITY**

The subject land fronts Fergusson Court and contains a dwelling and ancillary outbuildings.

The subject land slopes north-east, down toward Fergusson Court and is serviced by Councils CWMS (Community Wastewater Management Scheme) for the purposes of effluent disposal. The prevailing character of the wider locality includes low density residential dwellings and allotments. Some smaller allotments exist in particular locations of the wider locality.

A map showing the location of the subject land, Zoning and Policy Area was provided with the Agenda.

**DESCRIPTION OF THE PROPOSED DEVELOPMENT**

The applicant seeks Development Plan and Land Division Consent to create an additional allotment within the Township Zone and Policy Area 7 – Residential at Lyndoch.

Proposed allotment 200 would be 1,267 square metres in area. Proposed allotment 201 would be in the form of a 'battle axe' shaped allotment, having an area of 1,761 square metres (including the 'handle') and would contain the existing dwelling and outbuildings.

Both proposed allotments would have access to Fergusson Court.

The plan of division and related detail was included within the Agenda.

An additional submission in support of the proposal was received on the 17 November 2014 and was provided with the Agenda.

**CONSULTATION**

Agency reports have been received from the Development Assessment Commission and SA Water.

Copies of the reports were included within the Agenda.

**PROVISIONS OF THE DEVELOPMENT PLAN**

The subject land lies within the Township Zone and Policy Area 7 – Residential of the authorised Development Plan, consolidated 21 February 2013.

The provisions of the Development Plan most relevant to the consideration of the proposal are contained below.

***TOWNSHIP ZONE******Objectives***

- 2 *Residential development consistent with maintaining a small country township character.*
- 3 *Conservation and enhancement of the main road streetscape and scenic rural setting of the township.*
- 5 *Development that contributes to the desired character of the zone.*

***Principles of Development Control***

- 3 *Residential development should be mainly in the form of low-density detached dwellings, with a limited range of increased density development.*
- 6 *Development should not be undertaken unless it is consistent with the desired character for the zone.*

***POLICY AREA 7 – RESIDENTIAL******Objectives***

- 1 *A policy area primarily for low-density residential development.*
- 2 *Development that contributes to the desired character of the policy area.*

**Principles of Development Control**

- 2 *Development should not be undertaken unless it is consistent with the desired character for the policy area.*
- 7 *Allotments should vary in size and be suitable to facilitate a use of land consistent with the objectives of the policy area and should:*
- (a) *be not less than 500 square metres in area*
  - (b) *have a minimum frontage to a public road of at least 12 metres.*

**GENERAL SECTION – LAND DIVISION****Principle of Development Control**

- 7 *Allotments in the form of a battle axe configuration should:*
- (a) *have an allotment area consistent with that desired located within the relevant zone or policy area (excluding the area of the 'handle' of such an allotment.*
  - (b) *provide for an access onto a public road, with the driveway 'handle' being not less than 6 metres in width nor more than 50 metres in length.*
  - (c) *contain sufficient area on the allotment for a vehicle to turn around to enable it to egress the allotment in a forward direction.*
  - (d) *not be created where it would lead to multiple access point onto a road which would dominate or adversely affect the amenity of the streetscape.*
  - (e) *be avoided where their creation would be incompatible with the prevailing pattern of development.*

**PLANNING ASSESSMENT**

The 'Desired Character' of the Township Zone expects that development will maintain the overall low scale, low density character and will reflect the prevailing generous front, side and rear boundary setbacks.

The 'Desired Character' of Residential Policy Area 7 expects that development will be at low densities consistent with the maintenance of a small country township character. In addition, the 'Desired Character' states that Lyndoch has a relatively low density typical of country towns and that sensitively designed infill development is appropriate located within the larger rural residential allotments on the western fringe of the township.

The subject land is located on the southern fringe of Lyndoch. Each resulting allotment would exceed 500 square metres in area (excluding the handle of allotment 201) and would be able to facilitate residential development. The handle of proposed allotment 201 would not be less than 6 metres in width and the length would not exceed 50 metres, in accordance with General Section – Land Division Principle of Development Control 7(b). Notwithstanding this, the frontage of allotment 201 as proposed, would fail to comply with Residential Policy Area 7 Principle of Development Control 7(b), not having a minimum frontage to a public road of at least 12 metres. It is worth noting that 'General Section' provisions apply across the whole council area whilst 'Policy Area' provisions apply to a portion of a zone seeking a particular form of development.

The failure to achieve the minimum frontage is considered to undermine the low density objectives of Residential Policy Area 7 and the Township Zone. To relax the minimum frontage width would also degrade the streetscape of Fergusson Court and the inherent, desired small country township character. A number of allotments throughout the wider locality are capable of achieving 6 metre wide driveway handles and the minimum allotment size. The cumulative effect of allowing hammerhead shaped allotments with 6 metre frontages rather than the minimum 12 metre frontages as per Residential Policy Area 7, would outweigh the impact upon the character and amenity of the locality.

Notably the subject land has a total frontage to Fergusson Court of 43 metres and a total area of 3,028 square metres. Based on these figures alone and not considering desired character, the subject land is capable of accommodating 3 total allotments in accordance with Residential Policy Area 7 Principle of Development Control 7.

Allotments situated within the wider locality at 7/7A Lord Lynedoch Street (960/298/2009, lodged 23/10/2008) and 9A/9B Fergusson Court (960/536/2009, lodged 11/02/2009) have been divided in a similar manner to the proposal. Given lodgment dates, application 960/298/2009 was assessed against The Barossa Council Development Plan Consolidated 02 April 2008 whilst application 960/536/2009 was assessed against The Barossa Council Development Plan Consolidated 15 January 2009. Neither of these Development Plans required 12 metre frontages and are significantly different when compared to the relevant Development Plan.

**CONCLUSION**

Proposed allotment 201 would have a frontage to Fergusson Court that is 5.92 metres narrower than the minimum frontage specified in Residential Policy Area 7 Principle of Development Control 7(b). Despite the land divisions at 7/7A Lord Lynedoch Street and 9A/9B Fergusson Court the wider locality largely has an intact pattern of division. It is acknowledged that lower densities are possible, given the size and width of several allotments in the locality, however, the configuration of proposed allotment 201 promotes a form of development no longer appropriate or desired within the locality. The provision of narrow frontages are not considered conducive to the low scale, low density character sought by the Township Zone or Residential Policy Area 7. Allotment frontages are considered to be a key component to acknowledging the character of the locality and are influential in determining the resulting built form.

**DA/DAP/R3****D583/2014 (1167466)****AUSTRALIAN TRANSIT ENTERPRISES – BUS DEPOT – NON-COMPLYING**

R Miller and T Hurn left the meeting at 5.58pm due to stated conflicts of interest.

Ms Stephanie Jacobs (Representor) addressed the Panel at 6.02pm, relative to DA/DAP/R3, and answered questions from the Panel in relation to vehicle movements and acoustic concerns.

Marcus Rolfe, Ashley Barnes and Jason Turner (on behalf of the Applicant), addressed the Panel at 6.14pm, clarifying details of hours of operation, results of acoustic studies, traffic movements, and surface treatment of parking bays, driveways and manoeuvring areas.

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

- (A) That pursuant to Section 35(2) of the Development Act, the proposal is not seriously at variance with the relevant provisions of The Barossa Council Development Plan.
- (B) Pursuant to Section 6(2) of the Character Preservation (Barossa Valley) Act 2012, the Development Assessment Panel has had regard to the objects of that Act and, in determining this application, seeks to further the objects of that Act.
- (C) That pursuant to Section 33(1)(a) of the Development Act, development application number 960/583/2014 be granted Development Plan Consent subject to the following conditions:

- (1) The development shall be undertaken in accordance with the plans and documentation accompanying the application (as amended), unless varied by the following conditions.
- (2) The bus and motor car parking bays shall be sealed with compacted rubble/gravel, while the driveways and manoeuvring areas shall be sealed with reconstituted bitumen, prior to occupation of the site as a bus depot so as to minimize the creation of dust.
- (3) The concrete block walls near the southern, eastern and western boundaries shall be completed prior to using the site as a bus depot.
- (4) The landscaping along the side and rear boundaries of the site shall comprise primarily of quick growing bushy plants with a mature height higher than the adjacent wall or fence. Planting shall be completed in the next growing season following the granting of Development Approval, and any plants that die or are removed shall be replaced.
- (5) Used wash bay water shall be treated to remove oil and grease and be disposed of by irrigation in the landscaped areas. Treated water shall not be permitted to discharge into neighbouring land.
- (6) External yard lights shall be positioned to avoid light spill into neighbouring residences.
- (7) Road intersections be improved to the satisfaction of Council so that busses can safely negotiate the Light Pass Road/Angaston Road and Saleyards Road/Angaston Road intersections, as per Swept Path Diagrams dated 2 December 2014 submitted in relation to DA 960/583/2014. All works shall be completed prior to the occupation of the site.
- (8) Busses shall not make a right hand turn from Angaston Road into Saleyards Road or make a left hand turn from Saleyards Road onto Angaston Road.

#### NOTES ONLY

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

reasonable and practicable measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

(D) Seek the concurrence of the Development Assessment Commission

Seconded J Miller

**CARRIED**

<b>DEVELOPMENT APPLICATION NO:</b>	960/583/2014 (Prop ID 1167466)
<b>APPLICANT:</b>	Australian Transit Enterprises
<b>OWNER:</b>	AD & ME Chapman
<b>SUBJECT LAND:</b>	Lot 11 in CP28433 Saleyards Road, Nuriootpa
<b>PROPOSAL:</b>	Bus Depot
<b>ZONE/POLICY AREA:</b>	Primary Production (Barossa Valley Region) Zone and Character Preservation District (Map Baro/06) Medium Bushfire Risk (BPA Map Baro/3)
<b>PROCEDURE:</b>	Non-Complying
<b>REFERRALS:</b>	Nil
<b>PUBLIC NOTICE:</b>	Category 3 – 3 Representations
<b>KEY ISSUES:</b>	Potential land use conflicts
<b>DEVELOPMENT PLAN PROVISIONS:</b>	Refer <i>Attachment 3</i> for extracts from:
<b>CONSOLIDATION DATE:</b> 21 February 2013	<ul style="list-style-type: none"> <li>• Advertisements</li> <li>• Design &amp; Appearance</li> <li>• Industrial Developments</li> <li>• Interface between Land Uses</li> <li>• Landscaping, Fences and Walls</li> <li>• Natural Resources</li> <li>• Orderly &amp; sustainable Development</li> <li>• Siting &amp; Visibility</li> <li>• Transportation &amp; Access</li> <li>• Waste</li> <li>• Primary Production (Barossa Valley Region) Zone</li> </ul>
<b>RECOMMENDATION:</b>	Grant Development Plan Consent and Seek Concurrence of the Development Assessment Commission
<b>OFFICER:</b>	Brian Irvine

### **SUBJECT LAND AND LOCALITY**

The subject land is located near the edge of the township of Nuriootpa and comprises a recently created single allotment described as Allotment 11 in CP 28433 with certificate of title 6147/163. The site is known locally as “Pa’s Pavers”. The site is part of a community scheme that provides for mixed uses. (Any change of use will also require the approval of the Community Corporation.)

The site is flat and near square in shape, with a kink in the rear boundary. The allotment is 102 metres wide, 112.38 metres deep along the eastern boundary and 97.95 metres deep along the western boundary, with an overall area of 1.099 hectares. The land is currently occupied by a business known as “Pa’s Pavers” and used for the display, storage and sale of paving and other

landscaping materials. Improvements include a large shed and office located centrally on the land and storage bays for landscaping materials constructed with large concrete blocks.

The land to the west (to the Sale Yards Road/Angaston Road intersection) and immediately to the south is used for residential purposes on allotments that vary in area. This includes 2 bed and breakfast facilities, one at the rear of 155 Angaston Road that faces Sale Yards Road, and the other at 161 Angaston Road. The land to the north and east is used for vineyards. Another house is situated 170 metres to the east on Sale Yards Road.

Sale Yards Road is a sealed rural road with no significant roadside vegetation. While the vineyards and open spaces on the northern side of the road are typically rural, the houses, associated fencing and the business use of the site creates a semi-rural character often associated with mixed development found at the edges of rural townships.

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

The proposal involves changing the use of the land to a bus depot. A detailed account is provided in both the Statement of Support for the proposal and the Statement of Effect and includes:

- 15 bus parking bays behind the current building
- 26 car parking spaces in front of the building
- A concrete block wall along the southern boundary (ie rear boundary) adjacent to the bus parking bays and along parts of the eastern and western boundaries (ie side boundaries), and chain mesh fencing across the front between the building and the proposed car park, and along the remaining parts of the side boundaries.
- Using the workshop/ shed for bus maintenance
- Continuing to use the existing office
- Creating a bus washing area
- Workshop and office hours are intended to be from 7.00 am to 5.00 pm. Buses used for the school bus routes will leave from approximately 7.00 am and return up to 5.00pm, but a smaller number of buses operating the public bus service will operate from 6.00 am to 7.30 pm.
- Existing yard lighting will be modified to meet WHS requirements
- The surface of the yard is proposed to be compacted rubble
- Perimeter landscaping is proposed
- Buses will use Sale Yards Road and access Angaston Road through the Sale Yards Road and Light Pass Road intersections.

### **NATURE OF DEVELOPMENT**

The nature of development has been determined to be a 'bus depot' which is an undefined term. All forms of development in the Primary Production (Barossa Valley Region) Zone are non-complying except for a specific list of exemptions. A bus depot is not on the list of exemptions, nor does it 'fit' any of the listed exemptions, and therefore is a non-complying form of development.

### **AGENCY CONSULTATION**

No agency consultation was required.

### **PUBLIC NOTIFICATION**

The application has been publicly notified as a Category 3 development pursuant to Section 38 of the Development Act 1993.

Three representations were received. A copy of the representations and response from the applicant were provided with the Agenda.

The Council's notice stated that representations should have been received by 5.00pm 5 November, being the last business day of the public notification period. One representation was received at 9.40pm on the 5 November and was initially considered as a late submission. However, after further research no authority could be found to determine that the public notification period finishes at 5.00pm. The legislation requires that the public notification period be 10 business days but does not define when a business day finishes. 5.00pm has traditionally been used because delivery and receipt of submissions in the past was by either post or personal delivery which occurred during normal business hours. However, in the electronic era it is possible to deliver (and receive) submissions electronically after hours on a business day. Although the representation was

received outside of normal business hours, it was determined that the representation was received on a business day during the public notification period and was accepted as a valid representation.

The representations raised concerns regarding:

- Early morning bus movements creating a noise nuisance to B & B clients, and possible loss of business
- The Light Pass Road/Angaston Road and the Sale Yards Road/Angaston Road intersections being unsuitable for regular bus movements
- Ineffective landscaping and dust nuisance
- The additional traffic and general activity on the site, including noise, will adversely affect the general amenity of the nearby residential properties

### **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 21 February 2013.

The relevant Zone and Council Wide provisions of the Development Plan were included within the Agenda.

### **PLANNING ASSESSMENT**

Zone Principle number 2 states that development listed as non-complying is generally inappropriate. This implies that such developments should not receive consent unless the development can be demonstrated to be appropriate in the circumstances or that there are other compelling reasons for it to be considered as an exemption from the general rule.

In this instance the applicant has pointed out that the site is already used for a non-complying activity, the site is unsuitable for the envisaged uses in the zone (see zone Principle 1), and that the proposal does not adversely affect any envisaged uses or otherwise offend the objectives of the zone. On the positive side, it also assists in providing a necessary local service. This is largely correct and justifies considering the application, but does not by itself adequately address a range of other relevant considerations.

#### Noise

Nuisance from noise has been raised in the representations. It is a relevant consideration by virtue of Industrial Development Principle 7, Interface between Land Use Principles 1, 2, 6, and 7.

Noise will be generated early in the morning as buses start and leave the premises. The concrete block will assist in blocking some of the noise but it is reasonable to assume that nearby residents will nevertheless hear some noise. No noise study has been undertaken but it is reasonable to assume that the noise level of an individual bus will be no greater than that experienced from general traffic noise on Angaston Road. However, the total amount of noise experienced by nearby residents will be increased by the additional 15 bus movements in the morning. Other bus movements throughout the day will generally be less annoying because of higher levels of background noise. Similarly, workshop noise will be intermittent and is expected to be comparable to the intermittent noise generated from the existing landscape yard with trucks arriving, being loaded and leaving intermittently.

Noise experienced in the nearby dwellings from the buses using Sale Yards Road is unlikely to be any greater than from traffic on Angaston Road, except for the B & B on Sale Yards Road, which will experience more traffic noise, at louder levels, because of its close proximity to the road.

#### Safety of Intersection, Parking and Site Access

Buses going in the direction of Angaston are expected to use the Light Pass Road/Angaston Road intersection to access (or leave) Angaston Road. Similarly, buses going in the direction of Nuriootpa will use the Light Pass Road/Angaston Road intersection.

The representations have expressed concern with the suitability of those intersections. The applicants have advised in their response that they have undertaken their own studies and that the intersections provide for safe manoeuvring procedures. General visibility or safety concerns have not been expressed by truck drivers who use those intersections.

The number of parking spaces for both buses and motor vehicles is satisfactory. Access points are satisfactory and separate entrances for buses and motor vehicles are desirable.

However, Transportation and Access Principle 37 states that parking areas should be sealed to minimise dust and mud nuisance. The frequent turning of vehicles in the parking areas will grind the gravel to powder, and given the large area involved this will become a dust nuisance in summer time. This matter can be addressed with a condition of approval. However, to minimise stormwater disposal problems from large areas of sealed pavement, the sealed areas should be minimised to driveways, vehicle manoeuvring and parking areas.

#### Siting and Visibility

The site is not adjacent to a tourist route, and is well shielded from view from Angaston Road. The high concrete wall will not be in any prominent views except from the immediate neighbouring properties. Some landscaping between the wall and the boundaries is proposed. Chain mesh fencing is proposed along parts of the side boundaries and across the front of the building. This will be more prominent than the existing fencing but will be 'softened' by some landscaping. While this will have limited effect, overall it is considered that the proposal does not offend Siting and Visibility Principle 1 and the Landscaping, Fences and Walls Principles.

#### Waste Disposal

Adequate arrangements are proposed for waste disposal.

### **CHARACTER PRESERVATION (BAROSSA VALLEY) ACT**

Section 6(2) of the Act requires any person or body to have regard to and seek to further the objects of the Act when exercising powers under any other Act (eg the Development Act).

The objects of the Character Preservation (Barossa Valley) Act are:

- (a) to recognise, protect and enhance the special character of the district while at the same time providing for the economic, social and physical well being of the community; and
- (b) to ensure that activities that are unacceptable in view of their adverse effects on the special character of the district are prevented from proceeding; and
- (c) to ensure that future development does not detract from the special character of the district; and
- (d) otherwise to ensure the preservation of the special character of the district.

The special character values relevant to this application are:

- (a) the rural and natural landscape and visual amenity of the district
- (b) the heritage attributes of the district
- (c) the built form of the townships as they relate to the district
- (d) the viticultural, agricultural and associated industries of the district
- (e) the scenic and tourism attributes of the district

It is considered that the proposed development does not offend the objects of the Character Preservation (Barossa Valley) Act.

### **CONCLUSION**

The application is for a non-complying form of development. The arguments that the site is already used for a non-complying development, the site is not suitable for a use envisaged in the zone, and the proposal does not conflict with objectives of the zone has some merit, but needs to be balanced against other considerations.

Noise is the principal issue to consider. The amount of noise can reasonably be expected to be more than the current activity, but the loudness of noise can equally be expected to be no worse than the current traffic noise, except for the B & B located on Sale Yards Road.

General aesthetics of the new use are adequate given the nature of the activity, and the existing use. Visual impact is limited by the relative isolation of the site and the proposed landscaping.

Waste storage and disposal is satisfactory. Similarly traffic management matters are satisfactory. However, sealing of the parking and manoeuvring areas is considered necessary to avoid creating a dust nuisance.

It is concluded that the proposal does not undermine the Objectives and Principles of the Development Plan, and on balance, the proposal is not seriously at variance with the provisions of the Development Plan and displays sufficient merit to warrant granting Development Plan Consent subject to conditions.

R Miller and T Hurn returned to the meeting at 7.01pm.

## **OTHER BUSINESS**

### **DEFERRAL OF DISCUSSION AND DECISION OF LAND DIVISION DEVELOPMENT APPLICATION 960/457/2014 – COLIN AUSTEN (Prop ID 1165961)**

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

**Seconded** D Hughes

**CARRIED**

At its meeting held on the 11 November 2014, the Development Assessment Panel deferred their discussion and decision in relation to development application 960/457/2014 for a land division - 1 allotment into 2, at the request of the applicant to allow them time to discuss the matter with a planning consultant.

The planning consultant has now been engaged by the applicant and has advised Council that the timeframes for information to be supplied, for the December meeting of the Development Assessment Panel, were not sufficient for him to supply additional information. The planning consultant has advised that the information will be supplied so that the application can be considered at the February meeting of the Development Assessment Panel.

### **DEVELOPMENT ASSESSMENT PANEL MEETING SCHEDULE FOR 2015 (B61)**

**MOVED** S Milne that the Development Assessment Panel agree to continue to meet on the first Tuesday of each month (with the exception in November 2015) at The Barossa Council Chambers commencing at 5.00pm.

**Seconded** D Hughes

**CARRIED**

The next Development Assessment Panel Meeting will be held on Tuesday 3 February 2015, with the possibility of a special meeting in late January 2015 which will be advised to the Panel Members if necessary.

Thereafter, Panel meetings will be held on the first Tuesday of each month (subject to Panel concurrence), with the exception of the November 2015 meeting, due to the Melbourne Cup, which will be held on the second Tuesday of November.

The following schedule of meeting dates is provided for confirmation.

3 February 2015  
3 March 2015  
7 April 2015  
5 May 2015  
2 June 2015  
7 July 2015  
4 August 2015  
1 September 2015  
6 October 2015  
10 November 2015  
1 December 2015

**NEXT MEETING**

Tuesday 3 February 2015 commencing at 5.00pm.

**CLOSURE OF MEETING**

Mr Ballantyne declared the meeting closed at 7.07pm, and extended Christmas Greetings to Panel Members and Council Staff.

Confirmed

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