

COUNCIL ASSESSMENT PANEL MEETING
10 July 2019
AGENDA – ITEM 8.1

Applicant: Mark Musolino	Landowner: M A Musolino & R P Musolino
Agent: James Levinson – Botten Levinson	
Development Application: 13/30/473	Originating Officer: Melanie Scott
Application Description: Filling of land to a maximum depth of 6.2 metres (non complying)	
Subject Land: Lot:100 Sec: P957 DP:63108 CT:5917/721; Lot:1 Sec: P957 FP:104215 CT:5141/301; Lot:101 Sec: P957 DP:63108 CT:6137/929	General Location: 24 & 28 & 32 Emmett Road Crafers West Attachment – Locality Plan
Development Plan Consolidated : 12 April 2012 Map AdHi/22	Zone/Policy Area: Hills Face Zone
Form of Development: Non-complying	Site Area: 1.3 hectares
Public Notice Category: Category 3 non complying	Representations Received: 2 Representations to be Heard: 2
Notice published in The Advertiser on 21 April 2017 & 10 May 2019	Application re notified Representations Received: 1 Representations to be Heard: 0

1. EXECUTIVE SUMMARY

The purpose of this application is to enable extensions to the existing apron of fill to the north and north-west of a dwelling existing at 28 Emmett Road Crafers West. The works will also enable better access to the northern portion of the land for management purposes and enable the applicant to meet CFS access requirements for fire-fighting purposes. The fill also extends onto two adjoining properties at 24 and 32 Emmett Road, which are owned by others and not the applicant.

This report was prepared for the May 2019 CAP meeting before it was realised 2 years had passed since the date (21 April 2017) on which a notice of the application was given under section 38(5)(c) of the Act. Development Regulation 22(5) requires in these circumstances that the relevant authority must not give its consent unless a new notice of the application has been given under section 38(5) of the Act. At the request of Council staff, the Council Assessment Panel deferred consideration of this application to allow this to occur. The description of the subject land was expanded to include all three properties the fill is on the receipt of advice from Council's lawyers.

As per the CAP delegations, the CAP is the relevant authority for Category 3 non-complying development where representors wish to be heard.

The subject land is located within the Hills Face Zone and the proposal is a non-complying form of development. The property is not in the watershed area. Two (2) representations in opposition to the proposal were received during the first Category 3 public notification period and one (1) further representation in opposition was received during the second notification period.

The focus of the view for dwellings in this locality is to the north. The dwelling at 28 Emmett Road is the most northerly positioned of the dwellings and is located at a lower level than the neighbouring dwellings. By virtue of this difference in elevation anything on this land has the potential to impact on the amenity of the neighbouring dwellings. The works are largely screened from the neighbours by the applicant's dwelling, the proposal is considered reasonable. Whilst the filling of land is retrospective development, the passage of time and the further improvements proposed for landscaping of the fill have ensured the proposal on balance meets the expectations of the zone as detailed in the Development Plan.

The main issues relating to the proposal are amenity, bushfire risk, natural character, encroachment and the appropriate nature of fill up to 6.2m in the locality.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel (SCAP) be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Retrospective filling of land to a maximum depth of 6.2m
- Access track 3m in width and approximately 15m in length with a gradient between 1:4 and 1:8, contouring from the western side of the dwelling to the land on the north side of the dwelling at 28 Emmett Road.
- Landscaping including rock pitching, sandstone steps and a series of gabion walled terraces (maximum height .8m)

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant's Professional Reports**.

3. BACKGROUND AND HISTORY

28 Emmett Road

August 21 17, 2003	02/D506/47 3	Council approved a land division boundary realignment
April 1990		Carport and verandah
November 1973		Brick dwelling and associated earthworks

24 Emmett Road

March 3, 2014	10/269/47 3	Council approved Horse keeping (3 Horses), Construction of stable (13.8m x 6m x 3m wall height), associated earthworks, horse yards, tack room & wash bay, manure pit (max. 1.2m in height), 2 x 22,000 litre rainwater tanks
February 17, 2006	06/117/47 3	Council approved significant tree removal - four (4) exotic trees
September 17, 2002	02/765/47 3	Council approved an in ground swimming pool, pavilion and landscaping
April 19, 2002	02/294/47 3	Council approved a variation to development application 473/618/01 amended outbuilding design

February 22, 2005	01/618/473	Council approved alterations and additions to a detached dwelling
	3	

32 Emmett Road

January 29, 2015	14/915/473	Council approved outbuilding in association with existing tennis court (7m x 6m x 5m above natural ground level) including attached deck (maximum height 1.1m)
February 27, 2008	08/1119/473	Council approved dwelling additions including deck, inground swimming pool, domestic outbuilding (pool pavilion) retaining walls (max height 2.7m on boundary) & verandahs
August 21, 2003	02/D6/473	Council approved a land division – boundary realignment
December 8, 2000	00/518/473	Council approved garage addition and filling of dam
March 17, 2000	00/218/473	Council approved sandstone wall and pillars
February 23, 2002	98/217/473	Council approved a boundary fence 6’6(green)

Historical aerial photography indicates the earth works began around October 2010. An enforcement Notice to remove the fill was issued 6 August 2012 as a result of a customer complaint. The direction in the Notice was suspended while the applicant went through an application process. An application for the filling of land was lodged 17 January 2013. A resolution to proceed with assessment of a non-complying application was agreed on 9 May 2016. A statement of effect was received in March 2017, non-complying fees were paid in April 2017 and the application was publically notified in April 2017. Two representations were received.

There have been attempts by the applicant and their lawyer to negotiate with the neighbours and representors. These negotiations are ongoing. As the development involves encroachment dealt with under the Encroachment Act 1944 these negotiations remain a civil matter to be resolved separately from this application process. Further, there is some contention over the extent of works on 32 Emmett Road. The survey data provided would indicate a minimal incursion of fill. Site inspection and historical aerial photography indicated minimal changes in vegetation on the boundary between 32 and 28 Emmett Road supporting the argument the issue is a civil matter between the neighbours. Further the applicant has proposed to remove the fill that has encroached onto 32 Emmett Road to which there has been no response from the owners. Therefore 32 Emmett Road is included in this proposal as subject land because there is no agreement for the fill to be removed.

The negotiations with the owners of 24 Emmett Road are more complicated and involve a long existing encroachment and practicalities of access to 28 Emmett Road. These negotiations have resulted in advice from the representor confirming the extent of works that have been agreed. At some time in the future there may be an application for a boundary realignment to better reflect the practicalities of access for 24 and 28 Emmett Road.

Council staff received legal advice that this application should be resolved and the ongoing boundary issues with 32 Emmett Road are a civil matter that can be dealt with separately. For this reason the exact boundary treatment of the proposed fill may be subject to future resolution and a variation in the future. CAP should give consideration to delegating future resolution to Council staff.

4. REFERRAL RESPONSES

- **CFS – informal**
The CFS have no objection to the proposal and state that it will not increase fire risk on the subject or neighbouring land. The CFS advice is in the attachments.
- **NVC – informal verbal advice**
NVC advise the reports and plans provided by the applicant are from consultants known to NVC and represent good remediation.
- **AHC EHU**
It appears the onsite waste system predates the requirement to lodge an application (1980) and is most likely a 1620 litre tank with a 9m soakage trench. The applicant is aware of the location of both components of the system and the breather vent is still visible. EHU advise this indicates the onsite system is still intact.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2)(c) of the Development Act 1993 requiring formal public notification and a public notice. Two (2) representations were received. Both representations are opposing the proposal and are from adjacent properties. The original representors did not put in new representors. One new representation was received.

Re-notification resulted in an additional representation who did not wish to be heard. The original representors did not make new representations, noting their land was described in the amended proposal as the subject land. They were not heard at the previous CAP meeting as the application was deferred to enable re-notification.

The following representors wish to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Jan Tomlinson	24 Emmett Road Crafers West	Not indicated
D Simmons & V Bullock	32 Emmett Road Crafers West	Masterplan – Graham Burns

The applicant and his representative – James Levinson of Botten Levinson may be in attendance.

The issues contained in the representations can be briefly summarised as follows:

- Increased fire risk
- Amenity considerations
- Encroachment across boundaries (Encroachment Act 1944)
- Form of development
- Impact on natural character
- Erosion and weed management

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**. Copies of the plans which were provided for notification are included as **Attachment – Publically Notified Plans 1 and 2**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site’s Physical Characteristics

28 Emmett Road

The land at 28 Emmett Road located on the western side of Emmett Road and is 13210m² in area. The high point of the land is the access point onto Emmett Road. The land slopes away to the north and the dwelling is located at the end of a narrow access point and then the remainder of the land is steep with remnant native vegetation cover. The portion of the land with the dwelling is the narrowest section of the land with the dwelling being located approximately 100 metres from Emmett Road.

24 & 32 Emmett Road

The adjoining properties at 24 and 32 Emmett Road are similar in size. The dwelling at 24 Emmett Road is some 12 metres from the road and the dwelling at 32 Emmett Road is approximately 45 metres from the road. Views from all dwellings are to the north-west. Notably the dwelling on 28 Emmett Road is located at a lower level and projected forward into the potential view for the neighbouring properties, being further from Emmett Road. 24 and 32 Emmett Road are included as part of the site by virtue of the subject fill being on their land to varying degrees. There is a very small portion of fill on 32 Emmett Road which has no known effect on existing fencing, access or landscaping. The fill which has extended to 24 Emmett Road has altered access to the northernmost portions of this land and resolution of this application and agreement between the applicant and the owner of 24 Emmett Road is likely to result in better land management opportunities for both.

ii. The Surrounding Area

The locality consists of large residential allotments with dwellings on the flatter land near Emmett Road. The lower portions of allotments particularly on the northern side of Emmett Road (the same side as the subject land) contain large areas of native vegetation. There are winter watercourses at the northern lower end of the allotments in the area.

iii. Development Plan Policy considerations
a) *Zone Provisions*

The subject land lies within the Hills Face Zone and these provisions seek:

- Preservation of natural character whilst limiting the visual intrusion of development in the zone when viewed from local roads and the Adelaide Plain.

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2

PDCs: 1, 2, 3, 4, 14, 22, 23, 24, 26

Accordance with Zone

The dwelling on the subject land has a modest footprint when compared to many in the locality. The proposal to extend the useable living space and improve access to the property is reasonable. The proposal is considered in accordance with PDC 1 as the earthworks are associated with an existing dwelling and will result in native landscaping to preserve, enhance and re-establish the natural character of the subject land.

Form of Development

PDC 2 requires excavation and filling of land to be kept to a minimum and it could be argued the scale of the proposed fill is not minimal. However the proposed landscaping and the stabilisation of the slope will result in minimisation of the visual impact of the proposal on the amenity of the locality in the longer term. Arguably the finished landscape will be more in accordance with the natural character of the zone than the extensive exotic landscaping and recreational uses found on other land in the locality. On balance the proposal is considered in accordance with PDC 2.

The proposal incorporates vehicle access to the northern lower slopes of 28 Emmett Road and by agreement, to 24 Emmett Road for bushfire and property maintenance purposes. The access works across the new contour of the fill ensure the proposal is in accordance with PDC 14 which seeks development to work with contours and preserve natural amenity.

Given the fill has been in situ for approximately 7 years and has been stabilised with various vegetation, erosion concerns have not been reported as emanating from the works on 28 Emmett Road. In any event formal landscaping is proposed to enhance and further stabilise the fill. Additionally, the proposed landscaping and access track will facilitate management of the land to the west of the fill, in particular ongoing weed control.

Appropriateness of Proposal in Locality

The proposed fill will be stabilised and is distant (greater than 100 metres) from mapped surface water resources. The applicant has undertaken remedial work around some larger native trees (in accordance with an arborist's recommendations) in the vicinity of the works and proposes extensive landscaping of the slope with native vegetation planting. The CFS has confirmed they do not believe the works have altered the bushfire risk for the area. It is acknowledged whilst the works were

new the amenity of adjoining land would have been impacted upon as the site is north and in the view zone of, the two neighbouring dwellings. However it is considered the proposed landscaping minimises the loss of amenity created. On balance the proposal is considered in accordance with PDCs 3 and 4.

Conservation

More than two thirds of the subject land is colonised native vegetation with invaded species which is proposed to be restored, maintained and improved. This will be more achievable once access is more readily available. Proposed plantings on the fill slope are proposed to improve the biodiversity of the site and a barrier, being a 1 metre wide buffer of bare ground or wood chips, is proposed to limit further colonisation of the native vegetation from invasive weeds. For these reasons the proposal is considered in accordance with PDCs 22, 23 and 24.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- orderly and economic development
- conservation and preservation of scenically attractive areas
- preservation of the amenity of localities
- minimisation of the threat of bushfires
- conservation of trees

The following are considered to be the relevant Council Wide provisions:

Objectives: 1, 2, 4, 5, 9

PDCs: 2, 3, 4, 7, 9, 13b, d& g, 15, 82, 202, 203, 204, 209, 227, 229, 230, 234, 244, 300, 333, 337

Form of Development

The amount of fill and its apparent depth may seem extreme in the zone however it needs to be considered in context of a large, steep and difficult to manage site. On balance the extension of the level "apron" to the north of the existing dwelling which is at a narrow part of the site is considered a modest extension of useable area for recreation purposes on the land at 28 Emmett Road. When compared to extensive recreational uses found elsewhere in the locality, it is noted that these properties required similar extensive remodelling of the natural form of the land. The proposal is considered orderly and economic as it is in association with an existing dwelling and could reasonably be expected on the subject land, in accordance with PDCs 2, 3 and 7.

There is arguably a small amount of fill on 32 Emmett Road. There is a larger amount of fill on 24 Emmett Road and arguably an encroachment which has existed since the dwelling on 28 Emmett Road was built in 1973. The existing encroachment enabled reasonable vehicle access to the garage on 28 Emmett Road and also ensures CFS vehicle access to the dwelling. The location of the dwelling and the shape of the subject land at the dwelling do not enable a CFS turnaround within the current boundaries of the land. Historically there has been an encroachment by the driveway of 28 into 24 Emmett Road. There is now a further encroachment with additional fill and an opportunity to resolve access. This is more difficult to resolve and is the

subject of ongoing negotiations between the owners of 24 and 28 Emmett Road. The applicant's representative has argued that the resolution of this is beyond the scope of the Development Act and is rather a civil matter to be negotiated under the Encroachment Act 1944. Further the applicant and the neighbour (24 Emmett Road) have reached an agreement on the extent of works to allow attainment of shared goals of access and better land management, including fencing. The owner of 32 Emmett Road has not responded to the applicant's correspondence resulting in the inclusion of that land in the description. A further variation may be necessary depending upon the outcome of the encroachment civil action. Should Development Plan Consent be granted to this application, staff recommend the CAP provide delegation to staff to resolve any further application to vary the proposal.

In principle the proposal is considered in accordance with PDCs 9 and 13 notwithstanding the location of the fill which is on the northern side (view side) of both the neighbours. Over time the visual impact for the immediate neighbours has become the form of the land and the extent of the works is not visible from the public road. The proposal will ensure better access to the northern portions of 28 Emmett Road and by agreement, to 24 Emmett Road and, enable better enjoyment of the full extent of both parcels of land.

Residential Development

PDC 82 requires minimising potential for personal and property damage arising from natural hazards including bushfires. Bushfire protection measures have changed significantly since the dwelling on the land was built and the extension of the turnaround area for the dwelling to accommodate CFS turning is considered to assist in ensuring the site is able to be managed for bushfire protection and the proposal is considered to be in accordance with this PDC and PDCs 244 and 300.

Conservation

As previously mentioned in the zone provisions the proposal represents a net gain to native vegetation on the site with proposed reparation works. The proposal is considered to be in accordance with PDCs 15, 202, 204, 211, 213 and 227.

PDC 229 requires minimising the alteration to existing land form and it can be argued this proposal does not achieve this with the maximum depth of fill being 6.2m. However the earthworks are not extensively visible from surrounding localities, they do not skyline or impact the natural character of the Mount Lofty Ranges and on balance the proposal is considered to be in accordance with PDCs 230 and 234.

Stormwater Management & any potential for Flooding, Subsidence or Erosion of the land

The fill has been in place for 6-8 years, and there have been some very long and wet winters during this time and the fill has not subsided. The proposed landscaping includes rock stabilisation and will ensure the proposal is in accordance with PDCs 4 & 7.

Vegetation & Land Management

It is noted there was one significant eucalyptus tree and two larger but not regulated or significant eucalyptus trees impacted on by the works. Remedial works were undertaken to protect these trees in 2014 in accordance with an arborist report

commissioned by and provided to Council, by the applicant. Council undertook an inspection to ensure the remedial work was undertaken and subsequent site inspections reveal those trees are still alive. The applicant engaged Ecological Associated Pty Ltd to assess the conservation values and propose vegetation restoration at 28 Emmett Road. Final works for the fill propose removal of exotic species, addition of topsoil and recommends planting of tussock grasses and rushes along with some other plants between 1 and 2m high, all of native species to improve the ecological qualities of the site. These plantings are detailed in approval documents. The report goes on to recommend some trees, however acknowledges these need not be planted. Resolution of this application will lead to long term improvements on the site beginning with “finishing” proposed landscaping which includes .8m high gabion terraces and the plantings described above.

Other Matters

There are unresolved encroachment issues which are not solely the result of the works proposed in this application that may mean the plan if approved as part of this application may not be the final plan with regards to 24 and 28 Emmett Road. The application is described as works on 24, 28 & 32 Emmett Road. The application represents a resolution of a long standing situation. It is hoped the resolution of this application will assist in further resolution by way of civil arrangements of the encroachments between 24, 28 & 32 Emmett Road Crafers West. Of significance to the applicant and the representors, any fencing on all three properties is the subject of further development applications per the requirements of the Development Act and Regulations related to fencing in the Hills Face Zone.

7. SUMMARY & CONCLUSION

This report was prepared for the May CAP meeting, however it was discovered that Regulation 22 (5) requires that where at least 2 years have passed since the date (21 April 2017) on which a notice of the application was given under section 38(5) (c) of the Act the relevant authority must not give its consent unless a new notice of the application has been given under section 38(5) of the Act. At the request of Council staff, the Council Assessment Panel deferred consideration of this application to repeat the public notification process in order to comply with the requirements of Regulation 22(5) of Development Regulations 2008. The description of the subject land was expanded to include all three properties the fill is located on. The original representors did not put in new representors. One new representation was received from the second round of public notification.

The application is retrospective for extensive filling of land in the Hills Face Zone. Because of the age of the existing dwelling (poor records surround the access and earthworks arrangements) and time elapsed since the fill was undertaken, there is speculation regarding the form of the land prior to the works and the extent of the works is contestable. There is no doubt when the work was first undertaken it was a very visible scar on local amenity. The fill extends onto two neighbouring properties which are now included as part of the subject land. Further the works will permit better land management practices on 28 Emmett Road and extensive landscaping is proposed to minimise the visual impact of the works and improve the quality of the vegetation on the subject land. One representor’s planning consultant has suggested the proposal is seriously at variance with the Development Plan and should be refused. It is considered by Council staff that there are many properties in the locality with more extensive land modification to accommodate recreational uses. Thus in the context of

the locality this proposal is considered a modest proposal with return of much of the land to its natural character, particularly on the steeper parts of the land. Whilst the proposal does not return the land to its natural form, it does seek to minimise the visual impact through landscaping of the fill and creates opportunities for improved vegetation and fire management. The CFS has confirmed there is no increased fire risk as a result of this proposal and that the proposal assists in emergency vehicle access to the dwelling on the site.

It is considered that the proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and variance with some provisions. These variances are not viewed to be significant and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

- A. That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent to Development Application 13/30/473 by Mark Musolino for Filling of land to a maximum depth of 6.2 metres (non complying) at 24 & 28 & 32 Emmett Road Crafers West subject to the following conditions:**

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- **Statement of support from owner dated January 17 2013**
- **Statement of effect from Botten Levinson dated March 2017**
- **Landscape plans SKO1 and O2 from JPE Design Studio Pty Ltd dated 18 December 2017**
- **Vegetation Restoration Report from Ecological Associates Pty Ltd dated 23 November 2017**
- **Plan labelled Track Design Option 1 from Olden Van Senden Surveys reference 3856 dated 1 February 2017 and stamped received by Council 30 March 2017**
- **Drawings from Olden and Van Senden Pty Ltd reference 3856 plan 3856XI dated 4 October 2012 and 1 August 2014 Sheets 1, 2 and 3 of 3**
- **Tree Management Plan by Gordon Sykes dated 23 July 2014 and received by Council 25 February 2016**

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Timeframe For Landscaping To Be Planted

Landscaping detailed in plan Landscape plans SKO1 and O2 from JPE Design Studio dated 18 December 2017 shall be planted in the next planting season after this approval and maintained in good health and condition at all times. Any such vegetation shall be replaced in the next planting season if and when it dies or becomes seriously diseased.

REASON: To maintain and enhance the visual amenity of the locality in which the subject land is situated and ensure the survival and maintenance of the vegetation.

(3) Establishment Of Tree Protection Area

Prior to the commencement of any work on site appropriate measures shall be taken to protect the 'significant' tree Eucalyptus Leucoxylon as identified by the report from Gordon Sykes dated 23 July 2014. In particular, the area in which the tree's branches and roots are located shall be protected by the erection of a secure fence. The fencing shall:

- a) consist of a 2.0 metre high solid, chain mesh, steel or similar fabrication with posts at 3m intervals;
- b) incorporate on all sides a clearly legible sign displaying the words "Tree Protection Area"; and
- c) not be erected closer to the tree than a distance equal to half of the height of the tree or the full width of the branch spread (whichever is lesser).

REASON: To protect the regulated tree from the impact of the development.

NOTES

(1) Development Approval Expiry

This development approval is valid for a period of twelve months commencing from the date of the decision notification. However if the development hereby approved is substantially commenced within the twelve (12) month period then it shall be completed within three (3) years of the date of such notification. This time period may be further extended beyond the 3 year period by written request to and approval, by Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee. Please note that in all circumstances a fresh development application will be required if the above conditions cannot be met within the respective time frames.

(2) Requirement For Further Applications

The applicant is reminded any fencing and earthworks greater than 9cubic metres is the subject of separate application.

(3) Existing Encroachment Identified

The fill which encroaches over the side boundary into 24 Emmett Road remains unresolved. This development authorisation in no way implies approval from Council for this encroachment. The applicant is encouraged to continue negotiations with 24 Emmett Road to resolve this new and historical encroachment which will likely require a further application to Council to rectify this situation.

(4) Works On Boundary

The development herein approved involves work within close proximity to the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a survey being carried out by a licensed land surveyor prior to the work commencing.

(5) Erosion Control During Construction

Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

(6) EPA Environmental Duty

The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, 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.

(7) Department of Environment, Water & Natural Resources (DEWNR) – Native Vegetation Council Note

The applicant is advised that any proposal to clear, remove limbs or trim native vegetation on the land, unless the proposed clearance is subject to an exemption under the Regulations of the Native Vegetation Act 1991, requires the approval of the Native Vegetation Council. The clearance of native vegetation includes the flooding of land, or any other act or activity that causes the killing or destruction of native vegetation, the severing of branches or any other substantial damage to native vegetation. For further information visit:

www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation

Any queries regarding the clearance of native vegetation should be directed to the Native Vegetation Council Secretariat on 8303 9777. This must be sought prior to Full Development Approval being granted by Council.

- B. Should Development Plan Consent be granted to this application, staff recommend the CAP provide delegation to the Assessment Manager to resolve any further application to vary the proposal.**

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Referral Responses
Representations
Applicant's Response to Representations
Publically Notified Plans 1 & 2
Development Plan Extracts Consolidated version 12 April 2012

Respectfully submitted

Concurrence

Melanie Scott
Senior Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING

10 July 2019

AGENDA – 8.2

Applicant: Caroline Croser-Barlow & Sam Barlow	Landowner: S R Barlow & C M Croser
Agent: Emma Barnes – Planning Studio	Originating Officer: Doug Samardzija
Development Application:	17/937/473
Application Description: Change of use to include store (commercial storage) - domestic outbuilding to store, farm building to include store & outdoor storage area (non-complying)	
Subject Land: Lot:40 Sec: P38 FP:129294 CT:6096/709	General Location: 24 Smokes Hill Road Summertown Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/1	Zone/Policy Area: Watershed (Primary Production) Zone - Water Protection (Marble Hill) Policy Area
Form of Development: Non-complying	Site Area: 5.3 hectares
Public Notice Category: Category 3 Non Complying Notice published in The Advertiser on 22 March 2019	Representations Received: 1 Representations to be Heard: 1

1. EXECUTIVE SUMMARY

The purpose of this application is for a partial change of use of land and existing buildings to commercial storage.

The subject land is located within the Watershed (Primary Production) Zone - Water Protection (Marble Hill) Policy Area Zone and the proposal is a non-complying form of development. One representation in opposition was received during the Category 3 public notification period.

As per the CAP delegations, the CAP is the relevant authority for Category 3 non-complying development where a representor wishes to be heard.

The main issues relating to the proposal are intensification of urban development, impact on the agricultural use of the land and visual impacts.

Whilst the development is retrospective, it should be noted that the commencement of work without development approval first being obtained is not a relevant consideration in the assessment of a proposal and therefore should not be a contributing factor in reaching a decision on the proposal.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel (SCAP) be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Change to the use of an existing outbuilding (decommissioned former dwelling) for commercial storage of plumbing equipment associated with Steve Little Plumbing
- Partial change of use of a farm building to commercial storage of plumbing equipment associated with Steve Little Plumbing which would mainly include forklift and vehicle storage (truck and trailer)
- Partial change of use of the land for outdoor storage of septic tanks (area in front of farm building which is encircled by the driveway)
- Landscaping to the outdoor storage area to provide a screening buffer from Bonython Road

Whilst the change of use is retrospective development the landscape screen that forms part of the proposal is not in place.

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
20/05/2019	19/131/473	Single storey dwelling alteration and additions, verandah and deck (maximum height 600mm), 22,000 litre water storage tank and associated earthworks
05/04/2018	17/107/473	Domestic outbuilding, deck (maximum height 1m), masonry wall (maximum height 1m)
28/02/2018	17/938/473	Change of use from horticulture to farming
06/05/2013	13/13/473	Single storey dwelling, associated earthworks and decommission of dwelling

4. REFERRAL RESPONSES

- **EPA**
EPA is satisfied that the proposal would result in a neutral impact on water quality, provided no additional materials are stored onsite that haven’t been referenced in this development application.

The above responses are included as **Attachment – Referral Responses**.

5. CONSULTATION

The application was categorised as a Category 3 form of development in accordance with Section 38(2) (c) of the Development Act 1993 requiring formal public notification and a public notice. One (1) representation from an adjacent property was received opposing the proposal.

The following representor wishes to be heard:

Name of Representor	Representor's Property Address	Nominated Speaker
Genevieve Theseira-Haese and Martin Haese	94 Bonython Road, Summertown	Marcus Rolfe - URPS

The applicant and/or their representative – Emma Barnes from Planning Studio may be in attendance.

The issues contained in the representation can be briefly summarised as follows:

- Inconsistency with the Objectives of the zone
- Impacts on agricultural activities
- Intensification of urban development
- Protecting and enhancing the country town atmosphere and character
- Visual impacts of outdoor septic tank storage from Bonython Road

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the applicant's response is provided in **Attachment – Applicant's Response to Representations**.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject land is an irregular shaped allotment of approximately 5.3 hectares in area. It has two road frontages with the primary frontage being to Smokes Hill Road and secondary frontage being to Bonython Road. Existing site improvements include a new dwelling and associated domestic outbuilding adjacent to Smokes Hills Road. Other structures include a domestic outbuilding which was the original homestead decommissioned as part of the 2013 dwelling application and also farm buildings located west of Bonython Road. Other site features include a watercourse running along the northern property boundary and approximately 40 metres away from the farm building whilst the remainder of the allotment is vacant undulating land used for farming purposes.

ii. The Surrounding Area

The locality is characterised by a mixture of allotment sizes ranging from 357m² (being the allotment immediately adjacent to the subject land) to approximately 25 hectares (being land further west of the subject land along Smokes Hill Road). The use of land in the locality is predominantly residential but also includes farming, horticulture and viticulture. The closest residential property is the representor's land which is approximately 18m south of the decommissioned dwelling that is now an outbuilding.

iii. Development Plan Policy considerations
a) *Policy Area/Zone Provisions*

The subject land lies within the Watershed (Primary Production) Zone - Water Protection (Marble Hill) Policy Area and these provisions seek:

Policy Area

- *Retention of agricultural industry uses which have low pollution impacts*
- *No intensification of urban development*
- *Protection of the surrounds of the township of Summertown and Uraidla to enhance the country town atmosphere and character*

The following are considered to be the relevant Policy Area provisions:

Objectives: 1, 4 and 5

PDCs: 5, 6, 7, 8 and 12

Objective 1 of the Policy Area seeks the retention of the agricultural activities whilst PDC 7(b) states that development should not prejudice primary production within the locality. Current use of the land is primarily for residential and grazing purposes and the proposal is not impacting on any agricultural activity and is therefore considered to be consistent with PDC 7(b). In addition the proposal seeks to utilise existing structures for non-agricultural uses with the exception of minor outdoor use and as such, whilst the proposal might not be of use which is contributing to the agricultural use of the land, it is important to acknowledge that the scale of the proposal is such that it does not preclude the land being use for agricultural purposes in the future and is therefore sufficiently consistent with Objective 1. If the intent of the objective is to encourage future uses which would contribute to the agricultural activities of the area then the proposal is not considered to be consistent with Objective 1.

Objective 4 states that there should not be intensification of urban development and as such the proposal is not considered to be consistent with this Objective. However given that the nature of the proposal is small scale and is seeking to utilise and reuse existing structures on site, the failure to meet Objective 4 is not considered to be detrimental to the proposal.

PDC 5 states that store and warehouse development should involve, but necessarily be limited to, the storage and carrying out of commercial transactions of produce grown on the property and PDC 6 states that the floor area of the warehouse should not exceed 2000m². In the Statement of Effect prepared it states that the property and the shedding have in the past been used for commercial horticulture. A small part of the former horticultural building (47m²), 100m² of the outdoor area and 241m² of the existing outbuilding is proposed to be used as commercial storage. The proposal is therefore considered to be consistent with PDC 6. Whilst PDC 5 seeks that a store and warehouse development should be for produce grown on the property it does not limit it to such use exclusively. As such it is considered this PDC allows for some flexibility for commercial storage to be utilised for uses generally not associated with primary produce. Given that the previous horticultural use has ceased on the property but the structures associated with this use remain, the proposal is considered to be acceptable in this instance given that it is predominantly utilising

these structures. The proposal is therefore considered to be partly consistent with PFC 5.

PDC 12 states that landscaping to screen buildings should form an integral part of the development. As part of the proposal, applicant is intending to plant native trees for screening along the eastern side of the outdoor storage area to screen the septic tanks from view from Bonython Road. The proposal is therefore consistent with PDC 12.

Watershed (Primary Production) Zone

The zone provisions seek (in summary)

- *Maintenance and enhancement of the natural resources of south Mount Lofty Ranges*
- *The enhancement of the Mount Lofty Watershed as a source of high quality water*
- *The long-term sustainability of rural production in the south Mount Lofty Ranges*

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2 and 3

PDCs: 10, 14, 16, 17, 31, 42 and 44

The main goals of the Watershed (Primary Production) Zone are for maintenance and enhancement of the natural resources of the Mount Lofty Ranges with long term sustainability of rural production. These goals are reinforced by Objectives 1 and 3 as well as PDCs 14, 16 and 44 which seek that land suitable for primary production is maintained and primary production activity is not prejudiced by development. As mentioned earlier in the report, whilst the proposed storage is not associated with the primary production, the proposal is not considered to be of a nature which will have an impact on the primary production activities or capabilities of the land to be used for such purposes. At present the property is predominantly used for residential and small farming and grazing purposes. The proposal is seeking to utilise some of the existing structures on site for small scale storage which is not considered to be of a scale or nature which will impact on the natural resources of the Mount Lofty Ranges or, which would have any impacts on future potential use of land for primary production purposes. The proposal is therefore considered to be consistent with Objectives 1 and 3 and PDCs 14, 16 and 44.

As mentioned earlier in the report, the property has in the past been used for horticultural purposes and there is every opportunity for the allotment to offer the possibility of such use in the future. As such it is important that uses not associated with primary production retain the usable primary production land for such purposes as envisaged by PDC 17 and 42. It is considered that the proposed commercial storage achieves the intent of PDC 17 and 42 by utilising a small part of the farm building and a small area of land not fit for primary production purposes and also by utilising existing outbuilding which is not used for any primary production purposes. In the response to the representation the applicant has also offered to amend the proposal and accept a condition restricting the commercial storage to Steve Little Plumbing and that upon cessation of the use, the buildings and land would revert back to previous use (refer to recommended condition 6).

PDC 31 states that changes of land use should not occur in areas near or around native vegetation. The proposed change of use does not involve any additional building work or clearance of land or vegetation and is therefore consistent with PDC 31. To provide screening from Bonython Road of the outdoor store area the applicant is proposing to plant a screen of native vegetation along the eastern side of the store area and this achieves the intent of PDC 10. The planting of the vegetated screen is reinforced by recommended condition 7. Objective 2 of the zone seeks the enhancement of the Mount Lofty Ranges Watershed as a source of high quality water. As part of the non-complying process this application was also referred to the EPA for comment and the EPA advised that they are satisfied with the proposal provided no additional materials are stored onsite than specified in this application.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek (in summary):

- *Maintenance of the natural environment and systems by limiting development in areas susceptible to natural hazards*
- *Retention, protection and restoration of the natural resources and environment*
- *Protect desired land uses from encroachment of incompatible development*
- *Prevention of the continued encroachment of urban development in rural areas*

Hazards and Natural Resources:

COUNCIL WIDE	OBJECTIVES & PDCs
Council Wide: <ul style="list-style-type: none"> • Hazards • Natural Resources 	<u>Hazards:</u> Objectives: 1, 5 and 10 PDCs: 8, 23 and 24 <u>Natural Resources:</u> Objectives: 1, 2, 6, 13 and 14 PDCs: 1, 2, 3, 6, 10, 21 and 35

The water resources in the Watershed need to be protected for a range of environmental reasons, including aquatic ecosystems and agricultural use. Adelaide’s Mount Lofty Ranges Watershed is a multi-use catchment, which is largely open and subject to a diverse range of land uses. It is an area of high value agricultural production, the catchment for Adelaide’s water supply, and both a tourist destination and wine region which contains a variety of economic activities. In assessing the impacts on the watershed the EPA takes a balanced approach applying a risk-based planning hierarchy where land use and development is matched to the risk posed to the drinking water supply. This is also enforced by Objectives 1 and 2 and PDCs 1, 2 and 35 within Natural Resource section of the Development Plan which seek retention and protection of natural resources and water quality and compliance with the current Environment Protection (Water Quality) Policy. The subject land is located in Watershed Priority Area 2 as identified by EPA, which is an area within 2km of secondary water supply reservoirs and where land within 100m of watercourses is used to convey River Murray water into the Hills reservoirs. The EPA considers that in these areas, new development would only be permitted if it has neutral or beneficial effects on water quality. As mentioned earlier in the report, this application was referred to EPA for assessment and the proposal was supported with the EPA being satisfied that it would result in a neutral impact on water quality, provided no

additional materials are stored on site. There were no additional conditions recommended with the approval.

Within the Hazards section of the Development Plan, Objective 10 and PDCs 23 and 24 seek that any hazardous material associated with the development should be stored and contained in a manner that minimises the risk to public health and safety and the potential for water, land and air contamination. Whilst the proposed use does not include storage or use of any hazardous material, the associated parking and storage of vehicles could pose an additional contamination risk by way of chemicals and oils leaking from engines. This was also raised as a concern by the EPA. As a response to the concerns, the applicant has advised that the 75m² area within the farm building is going to be used only for the parking of three vehicles, comprising a truck, forklift and trailer used for the transport of (empty) septic tanks associated with the plumbing business. There is no fuel stored on site, and no repair or maintenance of vehicles is undertaken on site. None of the vehicles are washed on site. In addition while there is no bunding within the existing building, it does contain a concrete floor, with a solid wall extending to the ground on the northern side. The area immediately forward (east) of the building is also sealed, minimising any intrusion of hazardous material into the soil and groundwater. The proposal is therefore considered to be consistent with Objective 10 and PDCs 23 and 24.

Objective 1 and 5 as well as PDC 8 within Hazards section of the Development Plan refer to development not being of a nature and location which are susceptible to natural hazard risks such as flooding and bushfires. Whilst the proposal is located in a high bushfire area, the nature of the proposed use being storage of plumbing supplies is not considered to create additional fire risk. There is an existing water course traversing the site along the northern boundary, this water course is approximately 40m away from the existing shedding and is of a size and nature which is unlikely to result in flooding of the land. The proposal is therefore consistent with Objectives 1 and 5 and PDC 8.

Interface Between Land Uses & Orderly and Sustainable Development

COUNCIL WIDE	OBJECTIVES & PDCs
Council Wide: <ul style="list-style-type: none"> • Interface Between Land Uses • Orderly and Sustainable Development 	<u>Interface Between Land Uses</u> Objectives: 1, 2 and 3 PDCs: 1, 2 and 7 <u>Natural Resources:</u> Objectives: 1, 3, 6, 8, 9, 10, 11 and 12 PDCs: 1, 2, 9, 15, 16 and 17

Interface between land uses

Given the rural landscape of the locality there are often conflicting land uses which range from residential to different varieties of primary production as generally envisaged for the locality. Objective 1 and 2 seeks that development be located and designed to minimise adverse impacts and conflict between land uses. This is also reinforced by PDCs 1, 2 and 7 which seek noise, odour, dust and light spill impacts are managed effectively to ensure that the amenity of the locality is not unreasonably affected. It is considered that the proposed use is of a nature which would be

consistent with Objectives 1 and 2 and PDCs 1, 2 and 7. Whilst the nature of the use is one which is not generally consistent with the land uses in the locality, the small scale nature of it will ensure that it does not impact on the nearby residential properties.

The biggest noise source from the use would be a truck delivery once a month and forklift use when loading and unloading septic tanks. Whilst these activities might be a source of some noise, it is not considered that this would be any greater than the noise that might be associated with horticultural use of the land. Other issues such as dust, odour and light spill are not considered to be of concern with the proposed development. Given that the proposal is for storage of general plumbing supplies and new septic tanks only there will be no issues as far as odour. Light spill and dust generation are also considered to be normal because of the infrequent and small traffic movement and activity on the land. Planning consultant has confirmed that the employees would predominantly access the site twice a week. Once on Monday morning at 7:30 to pick up the necessary vehicles and supplies and the other time would be Friday afternoon around 4:30 to return the supplies and vehicles. It is anticipated that on odd occasions mid-week pick-ups might be required as the need arises (refer to condition 6 which restricts the hours of entry and exit). In total there are currently 3 staff members plus Steve Little associated with the business. There will be no staff car parking associated with the proposal given that all of the staff members are provided with company vehicles that they use to commute to work and home. In the Statement of Effect it was outlined that workers would generally attend the site first thing in the morning to pick up the necessary equipment and vehicles and then return at the end of the day to return the vehicles. In addition the two tracks from Bonython Road leading to the storage areas are bituminised ensuring that there is minimal dust generated from vehicle movements.

As mentioned earlier in the report, the main objective of the zone is for the land to be used for primary production purposes. Objective 3 also seeks that the desired land uses be protected from the encroachment of incompatible development. Whilst the proposed use is generally not envisaged, it is considered that the small scale nature plus the utilisation of existing structures will ensure that the property still maintains its potential to be utilised for primary production purposes.

Orderly and Sustainable Development

Objectives and PDCs within Orderly and Sustainable Development section of the Development Plan put a lot of emphasis on preventing encroachment of urban development into rural areas and ensuring that it does not prejudice the zone for its intended purposes. As such it is considered that the proposed commercial storage is generally not consistent with Objectives 8 and 9 as well as PDC 2 which seek that watershed area and rural land be protected from urban development. Failure to satisfy these Objectives and PDCs is not considered detrimental to the proposal given that existing structures are proposed to be utilised and there is no further encroachment or limitations put on the land to prevent it still being used for primary production purposes. On this basis the proposal is considered to be consistent with Objectives 10 and 11 and PDC 1.

PDC 9 states that development should take place on land suitable for the intended use having regard to the location and condition of land. At the same time PDCs 15, 16 and 17 refer to commercial developments being located in appropriate zones and being of appropriate nature and design not to impair the amenity of the locality. Whilst the envisaged use of the subject land is predominantly for primary production, the proposal is still considered to be relatively consistent with PDC 9 given that it is seeking to utilise existing structures on land which in part have in the past been used for primary production purposes. As such considering the small scale nature of the proposal and the limited impacts, the use is considered a good reuse of existing buildings and land. The proposal fails to satisfy PDC 15 which states that storage development should be located in commercial or industrial zones. However whilst the proposal is contrary to PDC 15, through the reuse of existing buildings which have a deep setback from front boundaries, along with the provision of landscaping to screen the outdoor storage area and through infrequent access and use of the site, the proposal is considered to be sufficiently consistent with the intent of PDCs 16 and 17.

Industrial Development

COUNCIL WIDE	OBJECTIVES & PDCs
Council Wide: <ul style="list-style-type: none"> Industrial Development 	<u>Industrial Development</u> Objectives: 1 PDCs: Nil

Acknowledging that the proposal is for commercial storage and not industrial use as defined in Development Regulations, Objective 1 of this section of the Development Plan is still considered relevant. Objective 1 refers to industrial, warehousing, storage and distribution developments being on appropriately located land which are integrated with transport networks and designed to minimise potential impacts on these networks. In applying this Objective to the proposal it is important to consider the business and the nature of the storage. In this instance the storage is for plumbing supplies and septic tanks by a local plumbing business operating within the Adelaide Hills area which has a reliance on septic tanks and onsite waste systems due to the lack of mains sewer infrastructure. In this instance it is considered that the location is well integrated with traffic networks to allow the business to operate efficiently without having any significant impacts on the locality or the road network.

Sitting and Visibility

COUNCIL WIDE	OBJECTIVES & PDCs
Council Wide: <ul style="list-style-type: none"> Sitting and Visibility 	<u>Sitting and Visibility</u> Objectives: 1 PDCs: 1 and 10

Objective 1 seeks that scenically attractive areas be protected whilst PDC 1 and 10 seek that development should be sited and designed to minimise its visual impacts and screened through implementation of landscaping. Given that the proposal is seeking to utilise existing structures on site, there are no additional building works required. As such, the only visual concern with the proposal is the outdoor storage of septic tanks. To address the visual concerns the applicant has indicated they are

proposing to plant a screen of native plant species to screen the tanks from view on Bonython Road, which will be reinforced by recommended condition 7. The proposal is therefore considered to be consistent with Objective 1 and PDCs 1 and 10.

Transportation and Access

COUNCIL WIDE	OBJECTIVES & PDCs
Council Wide: <ul style="list-style-type: none"> • Transportation and Access 	<u>Transportation and Access</u> Objectives: 2 PDCs: 8, 12, 16 and 25

The nature of the storage is such that the anticipated traffic movements are going to be minimal. As mentioned earlier in the report, it is anticipated that the employees would potentially come to the site twice a week, once in the morning at the start of the week to pick up the vehicles and necessary equipment and once at the end of the week to return the vehicles. In addition it is anticipated that a larger truck would attend the site once a month to deliver new septic tanks. The proposal is therefore considered to be consistent with PDC 16.

Two existing bitumen access tracks will be utilised from Bonython Road and ample turning area is available on site to allow the vehicles to enter and exist in a forward direction. The proposal is therefore consistent with Objective 2 and PDC 8. Given that the proposal is for storage only and will act as a pick-up and drop off area for the employees who are using company vehicles to commute to work and home and given that there will be no customers attending the site car parking is not considered an issue. The proposal is therefore considered to accord with PDC 25.

7. SUMMARY & CONCLUSION

The proposal is for a retrospective change of use to include store (commercial storage) - domestic outbuilding to store, farm building to include store with an additional outdoor storage area which would be accessed via two existing driveways from Bonython Road. The proposal does fail to meet some of the Objectives and PDCs of the Development Plan which seek that properties within Watershed (Primary Production) Zone be utilised for primary production purposes. However given the small scale of the proposal and the fact that existing buildings are proposed to be utilised, it is considered that the use is not going to hinder the allotment from being used for primary production purposes in the future.

The small scale of the proposal will also ensure that there are minimal impacts on neighbouring properties by way of traffic movements, noise, odour, light or dust nuisance. The Applicant has also offered to accept a sunset clause which would restrict the commercial storage to Steve Little Plumbing and that the use would end and revert back to the current use as an outbuilding and farm building at the time that Steve Little Plumbing vacates the land. This will ensure that the nature of storage remains as proposed with this application and that water quality impacts and the potential impacts on adjoining properties are all managed by ensuring that the nature of storage does not change without the opportunity for further assessment.

It is considered that the proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature and variance with some provisions. These variances are not viewed to be significant and it is therefore considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the

State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the **CONCURRENCE** of the State Commission Assessment Panel to **GRANT** Development Plan Consent to Development Application 17/937/473 by Caroline Croser-Barlow & Sam Barlow for Change of use to include store (commercial storage) - domestic outbuilding to store, farm building to include store & outdoor storage area (non-complying) at 24 Smokes Hill Road Summertown subject to the following conditions:

(1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Full site plan date stamped by Council 08/03/2019
- Farm building floor plan and outdoor storage area plan date stamped by Council 12/03/2019
- Amended outbuilding floor plan date stamped by Council 03/07/2019
- E-mail correspondence with Emma Barnes from Planning Studio dated 8 March 2019
- Response to representation letter prepared by Emma Barnes from Planning Studio dated 5 June 2019 and date stamped by Council 06/06/2019
- E-mail correspondence with Emma Barnes from Planning Studio dated 27/06/2019

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

(2) Commercial Lighting

Flood lighting shall be restricted to that necessary for security purposes only and shall be directed and shielded in such a manner as to not cause nuisance to adjacent properties.

REASON: Lighting shall not detrimentally affect the amenity of the locality.

(3) Unloading And Storage Of Materials And Goods

All materials and goods shall at all times be loaded and unloaded within the confines of the subject land. Materials and goods shall not be stored on the land outside the areas delineated for storage on site plan date stamped by Council 08/03/2019.

REASON: To provide safe and efficient movement of people and goods.

(4) Nature Of Storage

Storage of equipment and vehicles shall only be in association with the use and operations of Steve Little Plumbing and shall not include any other form of storage.

Septic tanks stored on site shall only be new empty tanks and shall not include storage of any decommissioned tanks.

REASON: To ensure the proposed development is undertaken in accordance with approved plans and documents.

(5) Outdoor Storage

Outdoor storage are shall only be used for the storage of septic tanks. The outdoor storage area shall be limited to maximum of 100m² and shall only include the area in front of the farm building which is encircled by the driveway. The maximum number of septic tanks stored in the outdoor area at any one time shall not exceed ten (10).

REASON: To ensure the proposed development is undertaken in accordance with approved plans and documents.

(6) Timeframe For The Use Of Land

The herein approved change of use of land to include store (commercial storage), is only for the duration of use by Steve Little Plumbing. Upon cessation of the use by Steve Little Plumbing, the subject buildings and land shall revert back to the previous land use of farming, outbuilding and farm building, unless altered by separation development approval.

REASON: To maintain the amenity of the locality.

(7) Requirement For Screening Strip

Landscaping consisting of densely planted semi mature native vegetation shall be established for a width of 20 metres for the full length of the outdoor storage area as depicted on the site plan within one (1) month of Development Approval. The plants shall be maintained in good health and condition at all times with any dead or diseased plants being replaced in the next planting season.

REASON: To minimise the visual impact of the development from Bonython Road and ensure the maintenance of the vegetation for the duration of the approved use.

(8) Employees Entering And Existing The Site

Employees shall only enter the site between 7.00am and 5.00pm Monday to Friday.

REASON: To ensure the development operates in accordance with the approval

NOTES

(1) Development Plan Consent

This Development Plan Consent is valid for a period of twelve (12) months commencing from the date of the decision (or if an appeal has been commenced, the date on which the appeal is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the Development Plan Consent, or a fresh development application will be required. The twelve (12) month period may be further extended by written request to, and approval by, Council. Application for an extension is subject to payment of the relevant fee.

- (2) **EPA Environmental Duty**
The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, 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.
- (3) **EPA Information Sheets**
Any information sheets, guideline documents, codes of practice, technical bulletins, are referenced in this decision can be accessed on the following web site:
<http://www.epa.sa.gov.au/pub.html>
- (4) **Signage Requires Separate Development Application**
A separate development application is required for any signs or advertisements (including flags and bunting) associated with the development herein approved.

9. **ATTACHMENTS**

Locality Plan
Proposal Plans
Applicants' Professional Reports
Referral Responses
Representation
Applicants' Response to Representations

Respectfully submitted

Concurrence

Doug Samardzija
Statutory Planner

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING
10 July 2019
AGENDA – ITEM 8. 3

Applicant: Mark & Felicity Donald	Landowner: M Donald & F A Donald
Agent: Glen Donges	Originating Officer: Sarah Davenport
Development Application:	19/240/473 19/D017/473
Application Description: Boundary realignment (2 into 2)	
Subject Land: Lot:22 Sec: P827 FP:33106 CT:5217/187 Lot:20 Sec: P827 FP:33105 CT:5217/186	General Location: 728A & 724 Montacute Road, Montacute Attachment – Locality Plan
Development Plan Consolidated : 24 October 2017 Map AdHi/9	Zone/Policy Area: Hills Face Zone
Form of Development: Non-complying	Site Area: 27.4 ha
Category: Category 1 Non Complying	Representations Received: N/A Representations to be Heard: N/A

1. EXECUTIVE SUMMARY

The purpose of this application is for a minor boundary realignment between two contiguous allotments, notionally referred to as Allotment 20 (CT 5217/186) and Allotment 22 (CT 5217/187) Montacute Road, Montacute. The realignment intends to award Allotment 22 with 1.1 ha of land, containing an existing historical farm building which currently sits within the boundary of Allotment 20 and to provide the allotment with full access to existing stormwater infrastructure.

The change in the boundary will be approximately 3 percent or, a total of 11001m².

The subject land is located within the Hills Face Zone and the proposal is a non-complying form of development. In accordance with Schedule 9 (3)(c) of Part 1 of the *Development Regulations 2008*, a proposed land division is considered to be category 1 form of development where the number of allotments resulting from the division remain equal to the number of existing allotments.

As per the CAP delegations, the CAP is the relevant authority for non-complying land division applications.

The main issues relating to the proposal are the potential future impact on native vegetation.

Following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for a minor boundary realignment involving two titles which will not result in the creation of an additional allotment. The breakdown of the existing and proposed allotment configurations are listed below:

Existing Allotments

Allotment	Area (ha)	Currently containing
20	14.7 ha	Dwelling, associated outbuilding and historic farm building (the Gate House)
22	12.7 ha	Historic dwelling, swimming pool and associated outbuildings

Proposed Allotments

Allotment	Area (ha)	Containing
51	13.7 ha	Dwelling and associated outbuilding
52	13.8 ha	Historic dwelling, swimming pool, associated outbuildings and historic outbuilding (the Gate House)

The plan of division includes:

- Re-alignment of the boundary between existing allotments 30 and 31, to transfer approximately 1.1ha from existing allotment 20 (proposed allotment 51) to existing allotment 22 (proposed allotment 52)
- The purpose of the realignment is to rationalise the configuration of existing stormwater infrastructure which services allotment 22
- The realignment will also encapsulate the stone farm building on allotment 20, placing it within the bounds of allotment 22.

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Applicant’s Professional Reports**.

3. BACKGROUND AND HISTORY

Allotment 20 Montacute Road Montacute

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
3/6/2012	2012/004/473	Domestic Outbuilding
23/11/2010	2008/1002/473	Dwelling with garage under main roof, decommissioning of existing dwelling and change of use to domestic outbuilding
5/7/1991	1991/107/030	Garage

Allotment 22 Montacute Road Montacute

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
10/12/2012 (Lapsed)	12/872/473	Dwelling alterations (balustrading and replacement floor to balcony)
14/11/2003	2003/1139/473	Repair and reinstatement of fire damaged dwelling

4. REFERRAL RESPONSES

- **Native Vegetation**

- The subject land contains remnant native vegetation most likely to be SA Blue Gum (*Eucalyptus leucoxylon* ssp)
- Native vegetation present on the subject land is protected under *Native Vegetation Act 1991* unless covered by exemption under *the Native Vegetation Regulations 2017*
- The proposed new boundary is not particularly sensitive to vegetation and does not seek to rationalise the location of fencing or an access track
- Concerns around new boundary fencing posing an increased risk to remnant vegetation
- Any new boundary fence should be placed at least 5m from remnant vegetation so as to protect that vegetation from clearance for a fence line
- Suggested condition of approval to restrict fencing along the amended boundary (refer to recommended Planning Note 1)

- **SCAP Consultation Report**

Standard response from SCAP provided in relation to providing a final plan complying with the requirements for plans as set out in the Manual of Survey Practice.

- **SA WATER**

SA Water Corporation has no requirements pursuant to *the Development Act 1993*

The above responses are included as **Attachment – Referral Responses**.

5. CONSULTATION

In accordance with Schedule 9(1)(3)(c) of Part 1 of the Development Regulations 2008, this non-complying land division proposal was categorised as a Category 1 form of development, not requiring formal public notification.

6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

i. The Site's Physical Characteristics

The subject allotments are relatively regular in shape with a combined area of 274000m². At present, Allotment 20 measures in the order of 14.7ha and Allotment 22 measures in the order of 12.7 ha. Both of the allotments are used for residential purposes and each contains a single dwelling with associated outbuilding. The dwelling on Allotment 22 is a historic stone dwelling which previously was associated with the 'Gate House' located on Allotment 20. Though both the dwelling and 'Gate House' are historic in nature, neither are listed as heritage items. It should be noted that the 'Gate House' was decommissioned as a dwelling via application 2008/1002/473 and is currently being utilised as an outbuilding in accordance with this approval.

Both allotments are densely vegetated and slope considerably. A drainage line runs parallel to the boundary between Allotment 20 and 22, crossing over into Allotment 20 and feeding into Fifth creek, which runs along the Northern side of Montacute road.

Both allotments gain direct access to Montacute Road via independent access points which are located in the North Western corners of the allotments. Neither property has access to mains water or sewer. Subsequently, both allotments are serviced by an on- site waste water management system.

ii. The Surrounding Area

Neighbouring properties within the immediate locality vary in size and nature. Allotments range between 4 ha and 37 ha in area with irregular boundary composition and considerable slope.

Land within the immediate locality is primarily being used for rural- residential purposes, with some examples of agricultural and viticultural use on properties to the East. Both of the subject allotments address Black Hill Conservation Park to the North, with Allotment 20 also sharing its Western boundary with the reserve.

iii. Development Plan Policy considerations

The subject land lies within the Hills Face Zone and these provisions seek:

- *A zone in which the natural character is preserved and enhanced or in which a natural character is re-established in order to:*

(b) preserve the native vegetation and fauna habitats close to metropolitan Adelaide;

(e) ensure that the community is not required to bear the cost of providing services to land within the zone.

- *A zone accommodating low intensity agricultural activities and public/private open space and one where structures are located and designed in such a way as to:*

The following are considered to be the relevant Zone provisions:

(c) not create, either in themselves, or in association with other developments, a potential demand for the provision of services at a cost to the community

Objectives: 1(b) (e), 2(c)

PDCs: 1, 10, 12, 22,

The zone anticipates the protection and retention of the natural scenic character of the hills face, through sensitive development location and conservation of native vegetation. PDCs 1 and 22 reinforce the necessity for native vegetation protection and careful development of sites to avoid overdevelopment.

Furthermore, the desired character statement and PDC 10 designate that development shall not rely upon new service provision, therefore stormwater and wastewater must be appropriately managed on site. The purpose of the development is to ensure the orderly provision of existing stormwater infrastructure to allotment 22, as well as appropriately positioning an existing stone outbuilding within the boundary of Allotment 22. This outbuilding is positioned adjacent the entrance point for the allotment and historically related to the dwelling on the site. This outcome is consistent with PDC 12 which speaks to the grouping and appropriate location of outbuildings.

The development will not require removal of vegetation and in fact aims to resolve a problem with invasive weeds, assisting natural resource management. The proposal is deemed to uphold the overall intent of the Hills Face Zone provisions.

Appropriateness of Proposal in Locality

The extent of the realignment is minor in relation to the overall size of the subject allotments, and it is not anticipated that the character or amenity of the immediate locality will be impacted as a result of the development. The amended allotment sizes will be appropriate in the context of the locality and will not undermine the continuation of nearby primary production uses.

The Council Wide provisions of relevance to this proposal seek (in summary):

- Orderly and economic development

- Land division that occurs in an orderly sequence allowing efficient provision of new infrastructure and facilities and making optimum use of existing underutilised infrastructure and facilities

Animal Keeping and Rural Development

Objectives: 1

PDCs: 1

The proposal does not intend to change the current use of the land and arguably better supports the retention of native vegetation through maintenance and eradication of invasive weeds in accordance with PDC 1.

Hazards

Objectives: 1, 2, 4

PDCs: 2, 3, 14

The subject sites are both located within a high Bushfire Risk Area, however the proposed boundary realignment will not intensify development on the properties or alter the existing access points and vehicle turning circles. Objectives 1 and 2 discourage development whereby it will present an increased risk to life and safety.

The proposal intends to improve the operation of the stormwater drainage system by appropriately locating infrastructure on the site of the dwelling which it services. In affording the control of this land to the owners of Allotment 22, ongoing maintenance of the drainage line and channel can be undertaken, and prevention works to limit localised flooding which occurs on Montacute Road will be possible. Objective 4 and PDCs 2 and 3 speak to development which will mitigate or avoid threat of floodwaters, the realignment is considered to accord with these provisions as the intent of the development is to alleviate ongoing flooding issues through appropriate site management. The realignment will not result in an intensification of the use of the site and thus is deemed to uphold the overall intent of the Hazard policies in the Development Plan.

Land Division

Objectives: 1

PDCs: 2(b), 5, 6, 7, &11

The proposal is for a minor boundary readjustment between two allotments which will not result in the creation of a new allotment or impact on the existing or future uses of the land. The proposal is therefore considered to be orderly, and therefore consistent with Objective 1, and PDCs 2(b) and 7.

PDC 6(c) states that the design of a land division should incorporate safe and convenient access for each allotment to an existing or proposed road or thoroughfare. Both allotments currently have direct access to Montacute road - the development will not alter or affect the existing access arrangement.

As mentioned elsewhere in the report, the realignment of the boundary will not directly result in clearance of any vegetation. It is noted that remnant vegetation exists on site, but is protected by the *Native Vegetation Act 1991*-and any future

removal would require approval. The proposal is therefore considered to accord with PDCs 5 and 11(d).

Natural Resources:

Objectives: 1, 2, 3, 4 and 8

PDCs: 37, 38, 39

Objectives 1, 2, 3, 4 and 8 are primarily concerned with protection of natural resources as a result of development with particular reference to the protection of waterways and native flora and fauna. The realignment aims to improve the functionality and quality of the drainage line by allowing legal access to remove weeds which currently disrupt natural flows, threaten native vegetation and undermine water quality. Allowing access to the channel will assist in improving management of the site overall and protection of its ecosystems.

Schedule 1- Division 2 part 14 of *Native Vegetation Regulations 2017* prescribes circumstances in which native vegetation may be cleared. As per Section 27(1) (b) of the *Native Vegetation Act 1991*, native vegetation may, subject to any other Act or law to the contrary, be cleared if the clearance is for the purpose of providing a strip of cleared land of not more than 5 metres in width on either side or both sides of an existing fence or, of a fence in the course of construction to provide access for the purpose of maintaining or establishing the fence. As the Native Vegetation Council (NVC) have discussed, the proposed boundary is not particularly sensitive to existing vegetation locations and establishment of fencing may present a risk to existing remnant vegetation on site. Conversely, they have noted that the existing boundary remains unfenced and is disorderly with relation to access. The NVC have concluded that while a risk is present, it is not greater than the current scenario and therefore the undertaking of the development can be supported.

PDC 38 states that development should be designed to minimise the loss and disturbance of native flora and fauna whilst PDCs 37 and 39 refer to conservation of native vegetation. As mentioned above, the realignment of the boundary will not directly result in the removal of native vegetation and aims to assist in better land management by providing legal access to the drainage line to clear invasive weeds. Whilst the establishment of fencing may take place in the future, the outcome of the alignment is anticipated to improve and better manage the natural resources on site.

Orderly and Sustainable Development

Objectives: 2, 3, 4

PDCs: 5 & 9

As previously discussed, the development intends to better manage stormwater on Allotment 22 Montacute Road by locating services within the bounds of the allotment where the dwelling exists. In alignment with orderly and sustainable development objectives 2, 3 and 4, the development will facilitate the orderly provision of infrastructure without undermining ongoing adjoining land uses, upholding the provisions of Council's Development Plan. PDC's 5 and 9 envisage development which will maximise use of existing infrastructure services and is suitable for the intended use of the land. The undertaking of the realignment will

optimise the efficiency of the existing stormwater infrastructure, facilitating the better enjoyment of the existing land use.

The proposed development is considered to closely align with the orderly and sustainable development objectives and policies.

7. SUMMARY & CONCLUSION

The proposal involves rearrangement of a boundary between two existing allotments and does not involve creation of new allotments nor does it impact on the current or future use of the land or neighbouring land.

The proposal will primarily affect current Allotment 22. The development aims to rationalise boundary configuration between the two allotments to provide the property with direct access to stormwater infrastructure, which it currently relies upon. Furthermore, the realignment will place a stone outbuilding which exists on allotment 20, onto allotment 22 as it contextually relates to the historic dwelling and is located at the access point into allotment 22.

It is considered that the proposal is sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, and as such it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that **CONCURRENCE** from the State Commission Assessment Panel be sought to **GRANT** Development Plan Consent, subject to conditions.

8. RECOMMENDATION

That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and seeks the CONCURRENCE of the State Commission Assessment Panel to GRANT Development Plan Consent and Land Division Consent to Development Application 19/240/473 (19/D017/473) by Mark & Felicity Donald for Boundary realignment (2 into 2) at 728A and 724 Montacute Road, Montacute subject to the following conditions:

Planning Conditions

- (1) The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:
 - Plan of division prepared by John C Bested & Associates, reference 19905, drawing no 19905-DIV, version 1 received by SCAP 12 March 2019

REASON: To ensure the proposed development is undertaken in accordance with the approved plans.

Planning Notes

- (1) The applicant is advised that any proposal to clear, remove limbs or trim native vegetation on the land, unless the proposed clearance is subject to an exemption under the Regulations of the Native Vegetation Act 1991, requires the approval of the Native Vegetation Council.

Schedule 1 of the *Native Vegetation Regulations 2017* exempts the requirement to seek approval for clearance of vegetation, where the clearance strip measures no greater than 5 metres in width and is for the purposes of establishing a fence. Should fencing be established at a later date, it is advised that the landowner liaise with the Native Vegetation Council to negotiate a location which will be sympathetic to remnant vegetation on the land.

Any queries regarding the clearance of native vegetation should be directed to the Native Vegetation Council Secretariat on 8303 9777. This must be sought prior to Full Development Approval being granted by Council.

For further information visit:

www.environment.sa.gov.au/Conservation/Native_Vegetation/Managing_native_vegetation

Council Land Division Requirements

Nil

Council Land Division Notes

(1) **Land Division Development Approval Expiry**

This development approval is valid for a period of three (3) years from the date of the decision notification. This time period may be further extended beyond the 3 year period by written request to, and approval by, Council prior to the approval lapsing. Application for an extension is subject to payment of the relevant fee. Please note that in all circumstances a fresh development application will be required if the above conditions cannot be met within the respective time frames.

SPC Land Division Statement of Requirements

(1) **Requirement For Certified Survey Plan**

A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the State Commission Assessment Panel for Land Division Certificate purposes.

REASON: Statutory requirement in accordance with Section 51 of the Development Act 1993.

9. ATTACHMENTS

Locality Plan
Proposal Plans
Application Information
Applicant's Professional Reports
Referral Responses

Council Assessment Panel Meeting – 10 July 2019
Mark & Felicity Donald
19/240/473

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Respectfully submitted

Concurrence

Sarah Davenport
Statutory Planner

Deryn Atkinson
Manager Development Services