

COUNCIL ASSESSMENT PANEL MEETING

12 August 2020

AGENDA – 9.1

Applicant: Reginald Fiora	Landowner: C Fiora
Agent: Jeff Smith- Planning Chambers	Originating Officer: Sam Clements Presented by: Melanie Scott
Development Application:	15/1014/473 15/D44/473
Application Description: Land division: 1 into 2 allotments and Boundary Realignment: 3 into 2 allotments (non-complying) (SCAP decision authority)	
Subject Land: Lot:45 Sec: P3932 FP:129499 CT:5465/524 Lot:101 Sec: P3927 DP:77335 CT:6020/59 Sec: 505 CT:5666/31 Lot:42 Sec: P110 FP:217949 CT:5885/776 Lot:10 Sec: P110 FP:129464 CT:5809/533 Lot:1 Sec: P107 FP:129455 CT:5274/987 Lot:4 Sec: P110 FP:129458 CT:5809/663 Lot:1 Sec: P3926 DP:18164 CT:5701/727	General Location: Lot 45 Gallasch Road, 83 & 143 Beaumont Road, 34 Ambulance Road, 19 & 39 Grivell Road, and Lot 1 Onkaparinga Road, Verdun Attachment – Locality Plan
Development Plan Consolidated : 9 January 2014 Map AdHi/3 & 42	Zone/Policy Area: Watershed (Primary Production) Zone & Onkaparinga Slopes Policy Area
Form of Development: Non-complying	Site Area: Boundary realignment site- 36.6 Ha Additional allotment site- 9.25 Ha
Public Notice Category: Category 3 Non Complying Notice published in the Mt Barker Courier 3 October 2018 by SCAP	Representations Received: 5 Representations to be Heard: 4 (heard by SCAP)

1. EXECUTIVE SUMMARY

The purpose of this application is for two land divisions combined into the one application, namely a boundary realignment (3 into 2 allotments) and a land division to create one additional allotment (1 into 2 allotments) at Verdun. The two elements are separated by four (4) intervening allotments. The proposal is essentially to relinquish the development rights on the existing Allotment 45 Gallasch Road in order to justify the creation of an additional allotment some 1.2km to the south-west on existing Allotment 1 Onkaparinga Road. Hence the reason for combining the boundary realignment and land division proposals within the one application, noting the outcome will still be 3 allotments overall. Both Allotment 45 and Allotment 1 Onkaparinga Road are in the ownership of the Fiora family.

The subject land is located within the Watershed (Primary Production) Zone and the Onkaparinga Slopes Policy Area and the proposal is a non-complying form of development as it results in the creation of an additional allotment. The State Commission Assessment Panel (SCAP) is the relevant authority in accordance with Clause 7 of Schedule 10 of the *Development Regulations 2008* as the division will create additional allotments within the Mount Lofty Ranges Watershed Area.

The Council Assessment Panel (CAP) reviewed the proposal at its meeting on 14 November 2018 and resolved:

The Council Assessment Panel considers that the proposal is not seriously at variance with the provisions of the Adelaide Hills Council Development Plan, and advises the State Commission Assessment Panel that it SUPPORTS the proposal in Development Application 15/1014/473 (15/D044/473) by Reginald Fiora for Land division: 1 into 2 allotments and Boundary Realignment: 3 into 2 allotments (non-complying) (SCAP decision authority) at Lot 45 Gallasch Road, 83 & 143 Beaumont Road, 34 Ambulance Road, 19 & 39 Grivell Road, and Lot 1 Onkaparinga Road Verdun subject to the CFS recommended requirements relating to vegetation management and the widening of the access to proposed Lots 205 & 206 achieving compliance with the Minister's Code Undertaking development in Bushfire Protection Areas December 2009, and the following condition:

The CAP did not make any previous comment on the boundary realignment creating proposed lots 199 and 200, confining their comments to the division of Allotment 1 Onkaparinga Road into two for the creation of proposed lots 205 and 206.

After a lengthy appeal process on the nature and form of development in both the ERD Court and Supreme Court, the SCAP considered the application on 28 May 2020 and 25 June 2020 and is now seeking the concurrence of Council to grant Development Plan and Land Division Consent to this non-complying proposal. Council staff are recommending that CAP advises the State Commission Assessment Panel (SCAP) that it **CONCURS** with the decision to **GRANT** Development Plan and Land Division Consent.

2. DESCRIPTION OF THE PROPOSAL

The essential nature of the development comprises two (2) discrete elements:

- A. A boundary realignment (3 into 2) with no additional allotments created: affecting Existing Allotment 1 in DP 18164, Allotment 101 in DP 77335, and Allotment 45 in FP 129499, located at the northern end of the allotment string. The existing three allotments will be rearranged in two allotments, proposed Lots 199 and 200, with areas of 30.7ha and 4.46ha respectively.
 - Proposed Lot 200 comprises the consolidation of existing Lot 45 with existing Lot 101 for primary production purposes (and associated residential).
 - Proposed Lot 199 comprises existing Lot 1 with an altered boundary and a reduced land area from 5ha to 4.46ha. Its existing use will continue.

Existing Allotments

Allotment	Area (ha)	Containing	Access	Proposal
101	30.7	House and cattle dairy/livestock grazing	Via Beaumont Road	Boundary realignment
45	0.0946	Vacant	No access- 'land locked'	Boundary realignment
1 (Beaumont Road)	5	House and livestock grazing	Via Beaumont Road	Boundary realignment

Proposed Allotments

Allotment	Area (ha)	Containing	Access	Proposal
200	31.3	House and cattle dairy/livestock grazing	Via Beaumont Road	Boundary realignment
199	4.46	House and livestock grazing	Via Beaumont Road	Boundary realignment

- B. A land division (1 into 2) creating one additional allotment: affecting existing Allotment 1 in FP 129455, at the southern end of the allotment string. Allotment 1 will be divided into two allotments, proposed Lots 205 (6.71ha) and 206 (2.54ha). Vehicular access to proposed Lots 205 and 206 is provided via the existing right of way across an adjoining allotment to Onkaparinga Road.

Potential dwelling sites and water disposal sites are identified on the plan of division for proposed Lots 205 and 206 as follows:

- Lot 205: the proposed dwelling site for Lot 205 is located at an existing quarry and is accessible via an unsealed track. A possible water disposal site is located near the proposed boundary of Lots 205 and 206 in a cleared area.
- Lot 206: the proposed dwelling and water disposal site for Lot 206 is located relatively central to the site in a cleared area.

Existing Allotments

Allotment	Area (ha)	Currently containing	Access	Proposal
1 (Onkaparinga Road)	9.25	Vacant, abandoned quarry and bushland	Via a right of way over allotment 6 (30A Onkaparinga Road)	Site for the creation of an additional allotment

The two elements are separated by a series of four (4) intervening allotments; Allotments 4 in FP 129458, Allotment 10 in FP 129464, Allotment 42 in FP 217949, and Section 505 in HP 105600. The intervening allotments are not altered in any way by the Plan of Division (except to be assigned new legal descriptors) and have only been included to allow the two elements to be lodged in one single Plan of Division.

Proposed Allotments

Allotment	Area (ha)	Containing	Access	Proposal
206	2.54	Vacant, bushland	Via a right of way over allotment 6 (30A Onkaparinga Road)	Creation of a vacant allotment
205	6.71	Vacant, abandoned quarry	Via a right of way over allotment 6 (30A Onkaparinga Road)	Creation of an additional allotment

3. BACKGROUND & HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
Not yet determined	10/D064/473	Boundary realignment (7 into 7) (non-complying)
Lodged 4 August 2020	20/773/473	Existing Lot 1 Onkaparinga Valley Road, Verdun (at the western end of the land wholly within proposed lot 205) - Change of use to include horticulture - raspberries (2434 sqm)

In 2010 the original land division application 473/D064/10 was lodged that involved these titles. This was lodged as a boundary realignment (7 into 7) and was originally treated as an on-merit development by the Development Assessment Commission (DAC now SCAP) and referred to Council for comment. Council's then Development Assessment Panel (CDAP now CAP) advised DAC that it did not support the proposal. The resolution from the 6 December 2011 CDAP meeting was as follows:

That the Council Development Assessment Panel considers the proposal to be at variance with the relevant provisions of the Adelaide Hills Council Development Plan and does not support the proposal for boundary realignment (DAC Decision) by R M Fiora & M Fiora at 143 Beaumont Road, 34 Ambulance Road, 19 & 39 Grivell Road and Lots 45 Gallasch Road and Lot 1 Onkaparinga Valley Rd, Verdun for the following reasons:

- (1) The Land Division will not improve management of the land for primary production purposes and does not correct a boundary anomaly, which is contrary to Watershed (Primary Production) Zone Principles of Development Control 20(b).*
- (2) It has not been adequately demonstrated that current Lot 45 and proposed Lots 205 and 206 are suitable for rural residential use without impacting on primary production having regard to location and size of the allotments, which is contrary to Watershed (Primary Production) Zone Principles of Control 16 and Council Wide Principles of Development Control 3 and 28.*

Following receipt of Council's comments it is understood that the DAC later determined the proposed boundary realignment to be non-complying development as the proposal created an additional allotment in the Watershed (Primary Production) Zone. This determination was then challenged in the Environment, Resources and Development Court (ERD) and was considered at a hearing on 20 October 2015. The Court upheld the decision to treat this proposal as non-complying and further advised that the proposal was not boundary realignment in the order made on 28 October 2015 by His Honour Judge Costello. His Honour determined that 'there were several factors pointing to the proposal being for two discrete developments, as opposed to one composite development.' He concluded that the 'essential nature of the proposed development represented two discrete, independent land divisions, one of which seeks to divide a single allotment into two.'

The applicant did not progress the above mentioned application and chose to lodge the subject application 15/D044/473 (15/1014/473) on 9 October 2015. This proposed a minor amendment (when compared to DA 473/D064/10) with a boundary realignment and consolidation of 3 allotments into 2 allotments at the northern end of the allotment string. It is noted that the lodgement was prior to a determination by the Court on whether the original application 10/D064/473 had been determined correctly as non-complying development.

The decision made by the ERD Court on the original application 10/D064/473 was appealed by the applicant to the Supreme Court. The Supreme Court found that both the DAC and the ERD Court were correct in treating the proposal as non-complying development as the application represented two discrete, independent land divisions.

Since these judgements, the proposal itself has not been amended but the description of the development has now been described differently by the SCAP. Whilst the proposals have been determined to be discrete from one another, the SCAP has allowed the two land divisions to be processed in the one application. The proposal is now re-termed as a boundary realignment (3 into 2) and a land division to create an additional allotment and was determined to be non-complying in nature. The SCAP resolved to proceed with an assessment, referred the proposal to the relevant agencies and have undertaken the category 3 public notification process.

Further to the above, the land division plan has been updated to show more detail, mostly on allotments 205 and 206. The plan now shows contour data, watercourses, and indicative building envelopes and effluent disposal areas but the proposal remains the same as that lodged on 9 October 2015.

Following the receipt of the comments on this application from the then CDAP on 14 November 2018, the assessment of the application was effectively placed on hold to consider how the Environment and Food Production Area controls impacted on this proposal now that the proposal was no longer described as only a boundary realignment and also involved the creation of the additional allotment.

The Council comments to the SCAP are included in **Attachment – Council Comments**.

This was considered at the SCAP Meeting held on Thursday 28 May 2020, with a recommendation to refuse the application under Section 7(5) (d) of the *PDI Act 2016* as the development involves the division of land that will create an additional allotment to be used for residential development. The SCAP heard from the Applicant's agents, and subsequently resolved that:

In considering this matter, the SCAP notes that the intended land division and boundary realignment generally supports a more efficient arrangement of land for primary production purposes.

- 1. Section 7(5) of the PDI Act 2016 applies to the development application, however it was not conclusively determined that the additional allotment created would be used for residential purposes.*
- 2. Proceed with the assessment of DA 473/D044/15 to determine the merits of the land division and boundary realignment application in accordance with the provisions of the Adelaide Hills Development Plan (Consolidated 9 January 2014).*

As above, the SCAP determined to proceed with an assessment on this application to determine the merits of the land division and boundary realignment. The SCAP at its meeting on 25 June 2020 resolved:

- 1. The proposed development is NOT seriously at variance with the policies in the Development Plan.*
- 2. The State Commission Assessment Panel is satisfied that the proposal generally accords with the related Objectives and Principles of Development Control for the division of land in the Watershed (Primary Production) Zone, Adelaide Hills Council Development Plan (Consolidated 9 January 2014).*
- 3. To grant Development Plan Consent (and Land Division Consent) to the proposal by Reginald Fiora for a Land Division (1 into 2) and Boundary Realignment (3 into 2) at Onkapinga Road, Grivell Road, Beaumont Road, Gallasch Road and Ambulance Road, Verdun (various land parcels) subject to the following and conditions of consent and the concurrence of the Adelaide Hills Council and the Minister for Planning.*

The SCAP planning report (agenda item) is included as **Attachment – SCAP Agenda Item** and the SCAP minutes are included as **Attachment – SCAP Minutes**.

The SCAP also included an advisory note in their resolution as follows:

- a. The applicant's attention is drawn to the requirements of Section 7(5) (e) of the *Planning, Development and Infrastructure Act 2016* as it applies to this development approval, which states that:
A development authorisation granted in relation to the proposed development will be taken to be subject to the condition that the additional allotments created will not be used for residential development.

The SCAP Planning Officer confirmed it was applied as an advisory note rather than a condition as the Section 7 of the Act itself prevents the additional allotment being used for residential purposes. However the note refers to additional allotments, with creates further uncertainty both now and into the future, in relation to which allotment the note applies to. As written it indicates the note applies to both allotments. As there is no intention for a notation on the certificate of title, it is the opinion of the Council administration that this note should be amended to provide further clarity. It is understood the applicant is offering that the additional allotment is allotment 205.

The SCAP Planning Officer response is attached as Attachment – ***SCAP Planning Officer Email 5 August 2020***

4. PLANNING ASSESSMENT & DISCUSSION

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

- i. The Site's Physical Characteristics

Boundary Realignment

Allotment 45

This 946m² allotment is essentially 'land locked' with an approximate cross fall of 1 in 5 from the north-west to the south-west which forms part of a drainage area for two creeks to the south east. The parcel of land is an irregular triangular shape, specifically 38.42 metres wide, narrowing to a point in the south-western corner, with the longest boundary being 80 metres in length. No vegetation exists on the allotment. The average rainfall for the area is 987mm and it is located in a 'high' bushfire prone designated area.

Access to allotment 45 would only be possible by extending a portion of the current unmade section of Gallasch Road from the north-east and then developing a suitable safe crossing over the existing railway line. Alternatively, a right of way could be negotiated across the adjacent property which is also owned by Mr Gallasch (allotment 101). A right of way would be approximately 500m length and provide access to Beaumont Road. This is the option the applicant pursued and it has been indicated in the statement of effect that Mr Gallasch would be willing to grant such.

Based on a historical title search back to 1921, this allotment was previously part of an allotment comprising two pieces. This allotment was one piece on the southern side of the railway line and the other piece was on the northern side, which is now lot 4 (16 Gallasch Road). This allotment comprising two pieces divided by the railway line was described as portions of Section 3932 on the 1921 Certificate of Title (CT 1219/198). Based on the plan the road reserve appears to have passed the southern frontage of this piece at that time. In 1974, these parcels were separately titled.

Allotment 101

Council's records indicate that this property is used for residential purposes and as a dairy. Inspection of the land indicates the dairy does not seem to be operational. The dwelling and shedding are grouped together in the north-eastern corner of the site with two crossovers to Beaumont Road. There are two watercourses that flow through the site joining in the north-eastern portion of the land. This watercourse then flows to the south-east towards the adjacent allotment to the south and then passes under Beaumont Road. The allotment is undulating with a slope of approximately 1 in 6 to 1 in 10. The steeper portion of the land is the higher lying land in the south-western corner of the site.

Allotment 1 Beaumont Road

This allotment features a dwelling and shedding in the south-eastern corner of the site. The land is used for residential and livestock grazing purposes. Watercourses pass through the northern portion of the site. This allotment has a relatively mild slope of approximately 1 in 15.

Land division - creation of an additional allotment

Allotment 1 Onkaparinga Road

This allotment is a vacant bushland block that was once a quarry for rubble. Based on the site history provided, the subject land has been owned by Reginald Fiora (Quarryman) since 18 May 1970. Historical aerial imagery shows the quarry was operational in the 1980's and was located in the north-western portion of the site closer to the railway line. This quarry area is now more vegetated but is still evident on aerial imagery. The access track to this part of the site is narrow and overgrown and at the end of this access track there is a weighbridge. The allotment is densely vegetated with a mixture of vegetation. Substantial clusters/areas of native vegetation are located in the northern and south-western portions of the site. These native vegetation areas are mapped on standard government mapping. A blue marker indicates that high value native vegetation is located on the southern boundary, along the western end. Two watercourses pass through the north-western portion of the site.

ii. The Surrounding Area

Allotment 45 is significantly smaller than the vast majority of the allotments within the locality. The average size of the larger allotments is in the order of 45ha with the largest being approximately 109ha. The average size of the smaller allotments is approximately 5ha with the smallest being 2ha in area.

The dominant land use within the locality is primary production particularly on the larger allotments, and generally consists of grazing and some horticulture, whilst the smaller parcels are generally rural living lifestyle allotments. The allotments in the southern portion of the locality are predominantly rural living allotments. The topography of the surrounding locality ranges from rolling hills in the north to steeper valleys closer to the South Eastern Freeway with meandering watercourses draining along the valleys.

iii. Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Watershed (Primary Production) Zone and the Onkaparinga Slopes Policy Area and these provisions seek:

Policy Area

- The retention of low density rural development by the exclusion of rural living
- Areas or uses which would require division of land into smaller holdings

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

Objectives: 1

PDCs: -

The boundary realignment component of the proposal would remove a historical small holding that is not consistent with the size of allotments within the locality. This allotment is not visible from roadways in the locality and has never been developed due to its constraints and low level of amenity created by its proximity to the railway line. The other component of the proposal is to create an additional allotment likely to be used for rural living purposes, which is contrary to the Policy Area Objective. Allotment 45 is a historic small allotment that was originally one of two pieces comprising one allotment. These parcels were allowed to be separately titled in 1974. On balance, the proposal is considered to be inconsistent with Objective 1.

Zone

- *Seeks to maintain and enhance the natural resources as well as amenity and the landscape of the south Mount Lofty Ranges*
- *Maintain water quality and ensure the long-term sustainability of rural production*

The following are considered to be the relevant Zone provisions:

Objectives: 1, 2, 3, 4 & 5

PDCs: 1, 2, 3, 4, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 31, 32, 34, 36, 37, 42 & 44

Form of Development

It is considered that if increased development potential is created in rural areas (creation of additional allotments), water quality will be incrementally diminished and primary production prejudiced. A fundamental consideration in this application is whether the proposal will increase the development potential on the land. Existing allotment 45 is a small, 'land locked' site that is very constrained with a low level of amenity given its proximity to the railway line. However, it is considered that acoustic matters can generally be overcome. The allotment is extremely small within a rural area and would not have a sufficient buffer from adjacent rural land. Whilst development of this existing allotment could prejudice primary production land, this does not make this allotment undevelopable. Based upon the fundamental matters of waste control, access and demonstration that a small dwelling could be developed it was acknowledged previously that the allotment could be developed.

The incorporation of existing Lot 45 into the surrounding primary production land in Lot 101 is logical and a desirable outcome. The proposed boundary realignment addresses an historical anomaly and supports the ongoing use of the site for its intended purpose.

The land division should not cause the loss of primary production land. The realignment between allotments 101, 1 and 45 transfers approximately 0.5946 of a hectare between these allotments to create an allotment of approximately 31.3 ha and an allotment of 4.46 ha. As this increases the largest of the allotments and places a portion of land that is naturally divided by a watercourse into the neighbouring allotment, this part of the proposal is not considered to result in a loss of primary production land and is also considered to improve the management of land for primary production purposes.

The land to the south which is proposed to be divided has limited primary production potential as proposed allotment 205 is densely covered in native vegetation. The indicative dwelling site and effluent disposal area are the only areas that are not densely vegetated on the site. Allotment 206 has more cleared areas, but it is still constrained for primary production purposes. The proposal therefore is considered to have no impact on primary production activity occurring on the subject land. The proposal is not considered at odds with Objective 3. The creation of the additional allotment on the southern site should also not prejudice primary production (currently livestock grazing) on adjacent allotment 3 to the north. The proposal is considered to accord with PDCs 16 and 17.

Albeit that proposed allotments 205 or 206 were considered to be much more likely to be developed for residential purposes and these allotments could be developed with considerably larger dwellings, the proposal should not result in the pollution of water resources as there is theoretically no increase to development potential on the subject land. The proposal demonstrates that a suitable site for a dwelling could be located on either proposed allotment 205 and 206 to comply with Table AdHi/5. The separation distances to watercourses for both an indicative dwelling and effluent disposal area, depth to bedrock and slope comply with these criteria. The proposal is consistent with PDC 18. The proposal also is considered to be sufficiently consistent with PDC 19 and Objectives 1 and 2.

Land division

As detailed above, the proposed boundary realignment part of the proposal is considered to be relatively minor. This realignment is considered to improve the management of land for primary production as this portion of land is physically divided by a watercourse.

Whilst the boundary realignment is its own distinct proposal, it is included in the application for the creation of an additional allotment to justify the creation of the additional allotment. The Zone does not contemplate the creation of additional allotments and therefore the proposal is considered to be largely inconsistent with PDC 20.

The EPA has previously accepted that the proposal will not result in a greater risk to water quality, consistent with PDC 21. The re-arrangement of boundaries does produce allotments that are consistent with the locality and the proposal is consistent with PDC 22.

Environment Food Production Area (EFPA)

Since the introduction of the Environment Food Production Area (EFPA) it is prohibited to create additional allotments for residential purposes in the EFPA pursuant to Section 7(5) (e) of the *PDI Act 2016*. It is noted that SCAP intend to add an advisory note to the decision (should concurrence be granted) that the additional allotments cannot be used for residential purposes. As only one additional allotment is being created, this would indicate only one allotment could be used for rural residential purposes, retaining the potential rights of the original single allotment. SCAP have not a decision on which allotment is restricted from being used for rural residential purposes.

Conservation

The proposal will facilitate a change of the land use in an area that features significant native vegetation. The land is divided in a way that increases the number of allotments in an area of native vegetation. Aside from clearance for a fence line and for driveway widening, a future proposal for a dwelling on either proposed allotments 205 or 206 is not likely to result in significant clearance of native vegetation noting that there are cleared areas on these allotments. Any future development of these proposed allotments could achieve compliance with PDCs 31 and 32 as this provision refers to adverse impact on native vegetation.

Rural Development

The proposal does not maintain the subject land for primary production purposes and other compatible uses, but the southern site has not been used for such purposes for a significant amount of time and due to the dense vegetation coverage it is not particularly suitable for such. As mentioned, the proposal to create an additional allotment is not likely to prejudice primary production, but generally residential development is still not considered to be compatible with more intensive primary production uses envisaged in the Zone. The proposal is not consistent with PDC 42, but accords with PDC 44.

It should be noted that the applicant has now lodged a separate development application (20/773/473) for a change of use to horticulture for portion of the existing Allotment 1 Onkaparinga Road that would be wholly within proposed allotment 205.

b) Council Wide provisions

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

- *Land in appropriate localities divided into allotments in an orderly and economic manner*
- *Development to be undertaken on land that is suitable for the intended purpose, whilst also having regard for the zoning of the land*

- *Protection of productive primary production land from conversion to non-productive or incompatible uses*
- *Retention of rural area for the maintenance of the natural character and rural beauty of these areas*

Form of Development

Objectives: 1, 4, 5 & 6

PDCs: 1, 2, 3, 9, 18 & 19

The proposal seeks to divide land that is outside of township boundaries. As the proposal seeks to create one additional allotment, the proposal does not prevent the continued encroachment of urban development into rural areas. The proposal is not orderly in that it involves the creation of an additional allotment in rural land outside of the township boundaries, which is not in accordance with the Adelaide Hills Structure Plan, and it creates another allotment that is solely reliant on rights of way for access. It could be argued that this does not change the current situation as existing lot 45 would also be reliant on the use of a right of way. It would not substantially increase pressure for urban infrastructure in this area. As previously discussed, allotment 45 is also 'land locked' and the proposal removes this historical allotment. The proposal is therefore not considered to be orderly development and is inconsistent with Council-wide (CW) Objectives 1, 4 and 5 and PDCs 1 and 2.

A preliminary site contamination assessment has been undertaken to prove that allotment 205 is suitable for residential development. In the opinion of Mott McDonald Site Contamination Consultants the likelihood of gross or widespread soil contamination existing in shallow soils and groundwater at the location of the proposed building envelopes (at concentrations likely to preclude the proposed land use) is low. Whilst no soil samples have been undertaken, this is a professional expert opinion and therefore this opinion is sufficient to no warrant further assessment. The proposal is consistent with CW PDC 3.

The proposal would not interfere with the effective use of other land in the locality. The proposal accords with CW PDC 9.

Proposed allotments 205 and 206 do not have slope greater than 1 in 4, in particular the indicative sites of the dwellings and effluent disposal areas are an appropriate slope. The proposed allotments 205 and 206 have a sufficient area to allow for effluent disposal and any such system should not lead to pollution of surface or underground water. The proposal is considered consistent with CW PDCs 18 and 19.

The proposal will increase traffic generation within a right of way but the number of movements is unlikely to detrimentally affect the amenity of adjacent land, but may cause annoyance and conflict between property owners if the passing bays are not installed. The proposal is therefore partly consistent with CW PDC 13.

Land division

Objective: 10

PDCs: 28, 29, 30, 31 & 32

Given the subject land is located outside of designated township area, the subject land proposed to be divided to create an additional allotment is not considered to be within an appropriate locality, and is inconsistent with Objective 10.

The proposed allotments 205 and 206 would be suitable for on-site waste disposal and there are suitable dwelling sites with a slope not greater than 1 in 4. The proposal is sufficiently consistent with CW PDC 28.

The proposal may improve safe and convenient access to the subject and adjacent sites that share access to Onkaparinga Road by the provision of passing bays. However, the proposed allotments will be solely dependent on the unrestricted rights of way over adjacent land. It is acknowledged this right of way over allotment 6 exists and the proposal is partly consistent with CW PDC 29 but at odds with part (e) of this provision.

As mentioned, the proposed dividing boundary of allotments 205 and 206 is through an area of native vegetation. The re-adjusted boundary between allotments 1 and 101 is located approximately 10m from the watercourse and therefore any fence line and farming activity such as grazing shall be outside of the watercourse area. The proposal is considered to be partly inconsistent with PDC 30 and consistent with PDC 31. As mentioned, it has been demonstrated by the site history report that proposed allotment 205 is suitable for residential development. The proposal therefore accords with CW PDC 32.

CW PDC 38 highlights that non-complying land divisions should only be considered for allotments containing two existing dwellings if at least one of the dwellings is identified as a local or state heritage place. The proposal does not meet this criterion.

Public Utilities

Objective: 22

PDCs: 67, 68 & 69

The existing and proposed allotments are large enough to accommodate on-site waste control systems. Onkaparinga Road is all-weather, but the road is not sealed. The proposal is not contrary to Objective 22 and PDCs 67, 68 and 69.

Rural Development

Objectives: 61 & 62

PDCs: 174

The land division seeks to create an additional allotment within a rural area. The proposal is unlikely to help preserve land primarily for primary production purposes, but it is acknowledged that the subject land where the additional allotment is proposed is not currently used for such and is also constrained due to the extent of vegetation that exists on this allotment. The proposal should not impact on the primary production uses or activities continuing to occur on land used for primary

production. Given Allotment 1 Onkaparinga Road is not used for primary production, the proposal is not at odds with CW Objective 62, but the proposal is still considered to be inconsistent with PDC 174. However, SCAP are proposing a note to advise the applicant that the additional allotment cannot be used for residential purposes.

In consideration of the latest application for a change of use to horticulture, it seems that the intent of the applicant is to use proposed allotment 205 for rural development.

Conservation

Objectives: 68, 69, 70, 71, 72, 76, 77, 78 & 79

PDCs: 202, 203, 205, 212, 213, 214, 216 & 217

The boundary realignment part of the proposal does not impact on native vegetation. The proposal demonstrates that there are mostly clear areas on the subject land for building envelopes and effluent disposal areas. It is noted that there is some re-seeded understorey native vegetation within the site of the old quarry and there is native vegetation in close proximity to the existing track through the north-eastern portion of proposed allotment 205. Given 'significant vegetation' clearance is required by the CFS for the access driveway, some clearance of native vegetation will be required. As mentioned, the dividing boundary between proposed allotments 205 and 206 is also through an area of native vegetation. Even though the proposal could result in vegetation clearance on either side of the proposed fence line between proposed allotments 205 and 206, it is considered that a dwelling could be established on proposed allotments 205 and 206 with minimal clearance of native vegetation. Therefore, clearance of native vegetation is at least minimised by utilising largely cleared areas and an existing track/driveway. As the boundary realignment involves removing allotment 45, there should be no increase in development potential and therefore there should not be an additional waste control system on the overall site and the proposal will therefore should not pose a greater risk of pollution to water resources. The proposal does not accord with Objective 79 in relation to retaining native vegetation on a single allotment, but sufficiently accords with Objectives 68, 69, 70, 71, 72, 76 and 78, and PDCs 202, 203, 212, 213, 214, 216 and 217.

Any future dwelling is unlikely to be highly visible in the locality and from public roadways. Allotments 205 and 206 are well below the freeway and are densely vegetated. The proposal is considered to be sufficiently consistent with Objective 77 and PDC 205.

Appearance of Land and Buildings

Objectives: 87, 88, 89 & 90

PDCs: 228, 231, 240, 243, 244 & 245

As mentioned above, the proposal may result in an increase to built-form within close proximity to the South Eastern Freeway but due to the topography of the land, built form on these allotments is unlikely to be visible from the freeway. Given there is a track/driveway that leads to the old quarry and an existing right of way driveway, the extent of driveway on the subject land would be reduced. The proposal

sufficiently accords with Objectives 87, 88, 89 and 90, and PDCs 228, 231, 240, 243, 244 and 245.

Bushfire Protection

Objectives: 106 & 107

PDCs: 300, 301, 304, 305, 306 & 307

Both the boundary realignment site and the site of the land division to create an additional allotment are within a high bushfire hazard area. Whilst the application is for two distinct proposals, the intention of the combined proposal is to justify the creation of an additional allotment by the consolidation of an existing allotment with a boundary realignment proposal. It is considered that the proposal moves the development potential on the land to a more a hazardous location as the abandoned quarry site is surrounded by native vegetation. However the CFS have highlighted that their requirements can be achieved on this site with significant widening of the driveway and vegetation clearance. The proposal is contrary to CW Objectives 106 and 107 as the proposal is likely to result in intensification of non-rural land uses (residential) on the southern site, which is considered to be a site of higher risk.

Any future dwelling on proposed allotment 205 or allotment 206 could achieve compliance with CW PDC 301. Each allotment contains a suitable building envelope located away from vegetation that would likely pose an unacceptable risk and the vehicle access requirements of the CFS could be achieved. The proposal is contrary to CW PDC 304, but is sufficiently consistent with CW PDC 305, and can achieve compliance with CW PDCs 306 and 307.

5. SUMMARY & CONCLUSION

The boundary realignment component of the proposal would remove a historical small holding that is not consistent with size of allotments within the locality and consolidate it with the adjoining allotment which is both orderly and logical.

Accepting that existing Lot 45 supports an existing development right, the development of other land in its place will have a neutral impact on potential water pollution and the proposal does not offend the intent of the Watershed Zone to protect the watershed from risk of pollution. It is noted that the EPA is not objecting to the proposal.

The application also does not prejudice the intended use of the zone for primary production. CAP previously accepted the proposal was at variance with a number of the provisions of the Development Plan but did not consider the proposal was seriously at variance or, that the variances were significant to the degree that the proposal could not be supported.

SCAP advises the Applicant has clarified that the division is not for residential purposes. A further development application for horticultural development (raspberry growing) on Lot 1 Onkaparinga Road has been lodged with the Council which is wholly within the proposed lot 205. SCAP are intending to apply an advisory note that the additional allotment cannot be used for residential purposes. It is unclear if this is intended to apply to allotment 205 or allotment 206 and it appears the Applicant can make the choice.

Any future change of land use will need to be assessed on its merits, noting that the created allotments cannot be used for residential purposes, as the land is in the EFPA where additional allotments are prohibited for residential use under Section 7(5)(e) of the *PDI Act 2016*.

On balance, it is recommended that concurrence and support for the proposal be provided to SCAP as the proposal is not prejudicing primary production and it is considered there is an overall neutral impact on water quality in the Watershed.

The proposal is considered to be sufficiently consistent with the relevant provisions of the Development Plan, despite its non-complying nature, 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 the CAP advise the State Commission Assessment Panel (SCAP) that concurrence is given to GRANT Development Plan Consent and Land Division Consent, subject to the conditions proposed by SCAP.

6. 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 that Council Assessment Panel advises the State Commission Assessment Panel (SCAP) that:

- 1. It CONCURS with the decision to GRANT Development Plan Consent and Land Division Consent to Development Application 15/1014/473 by Reginald Fiora for Land division: 1 into 2 allotments and Boundary Realignment: 3 into 2 allotments (non-complying) at Lot 45 Gallasch Road, 83 & 143 Beaumont Road, 34 Ambulance Road, 19 & 39 Grivell Road, and Lot 1 Onkaparinga Road, Verdun subject to the proposed conditions; and**
- 2. Requests the wording of the advisory note on the Decision is amended to provide certainty for all parties regarding which of the proposed allotments 205 and 206 is restricted from being used for residential purposes in the future.**

7. ATTACHMENTS

Locality Plan
SCAP Concurrence Request
SCAP Agenda Item
SCAP Minutes
SCAP Planning Officer e-mail – 5 August 2020
CAP Minutes – 14 November 2018
Staff CAP report – 14 November 2018
CAP Attachments – 14 November 2018

Respectfully submitted

Concurrence

Sam Clements
Team Leader Planning

Deryn Atkinson
Manager Development Services

COUNCIL ASSESSMENT PANEL MEETING

12 August 2020

AGENDA – 9.2

Applicant: Robert Butler	Landowner: R J Butler & A C Butler
Agent: Geoff van Senden	Originating Officer: Doug Samardzija
Development Application:	20/100/473 20/D005/473
Application Description: Land Division - Boundary realignment (3 into 3)	
Subject Land: Lot:3 Sec: P130 FP:9293 CT:5490/809 Lot:4 Sec: P130 FP:9293 CT:5493/580 Lot:1 Sec: P130 FP:4140 CT:5142/149	General Location: 30 Ranns Road North, Lot 4 Ranns Road North & 166 Basket Range Road Basket Range SA 5138 Attachment – Locality Plan
Development Plan Consolidated : 08 August 2019 Maps AdHi/1, 3 & 64	Zone/Policy Area: Watershed (Primary Production) Zone - Water Protection (Marble Hill) Policy Area
Form of Development: Merit	Site Area: 20.34 hectares (total combined size of 3 allotments)
Public Notice Category: Category 1 Merit - Land Division	Representations Received: N/A Representations to be Heard: N/A

1. EXECUTIVE SUMMARY

The purpose of this application is to realign the boundaries of three allotments.

The subject land is located within the Watershed (Primary Production) Zone - Water Protection (Marble Hill) Policy Area.

The proposal is a merit, Category 1 form of development.

As per the CAP delegations, the CAP is the relevant authority because the allotments are in the Watershed (Primary Production) Zone, and the realignment involves three allotments with one of the proposed resulting allotments to have an area less than 2 hectares, and the other two remaining allotments to have respective areas of 7.2 hectares and 12.1 hectares in area.

The purpose of the proposal is to realign the allotment boundaries to consolidate the native vegetation land onto proposed allotment 200, all the arable land onto proposed allotment 202 and a smaller allotment around the existing dwelling and associated structures on proposed allotment 201.

The main issues relating to the proposal are impacts on the primary production land, creation of a rural living allotment and impacts on native vegetation.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The proposal is for boundary realignment involving three allotments.

Existing Allotments

Allotment	Area (ha)	Currently containing
1	2.104ha	Single storey dwelling, associated domestic outbuildings and a small dam
3	0.87ha	Single storey dwelling and associated domestic outbuildings
4	17.37ha	Vacant allotment with approximately half of the allotment used for grazing purposes and containing a dam and water course whilst the other half contains dense native vegetation

Proposed Allotments

Allotment	Area (ha)	Containing
200	12.1ha	Single storey dwelling, associated domestic outbuildings and dense native vegetation
201	1.1ha	Single storey dwelling and associated domestic outbuildings
202	7.2ha	Vacant primary production land, associated dam and water course

The plan of division includes:

- The outline of existing structures on the subject properties as well as other site features such as a dams and native vegetation. A further aerial image has a more detailed layout of proposed allotment boundaries in relation to existing structures and natural land features.
- The location of rights of way marked A have also been included in the proposal. The proposed right of way in the south/eastern corner of allotment 202 is required to give access to the southern portion of allotment 200 off Nicols Rd. Similarly with the proposed right of way adjacent to portion of the western side boundary of allotment 200 with this right of way covering an existing track which also provides access to the southern portion of allotment 200. Ranns Rd North, adjacent to the eastern boundary of allotment 200, is an unmade public road and not trafficable.

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and

3. BACKGROUND AND HISTORY

Whilst Council does not have any records of previous approvals on the subject land, examinations of aerial photos reveals that the structures were built between 1949 and 1986 whilst the native vegetation appears largely unchanged since 1949.

4. REFERRAL RESPONSES

- **CFS**
The CFS have no objection to the proposal and have only commented on proposed lot 202 which is the only vacant allotment with potential for future residential use. No comments were made in relation to existing dwellings.
- **SA WATER**
SA Water did not have any comments to provide. There is no mains water or sewer infrastructure.
- **NVC**
Providing any future development is undertaken in existing cleared areas, the NVC does not object to the proposal. Any new boundary fence (where there is no fence existing) should be placed at least 5m from remnant vegetation so as to protect that vegetation from clearance for a new fence line. Any proposal to clear native vegetation, unless subject to an exemption under the Native Vegetation Regulations, requires NVC approval (Refer to Council Land Division Statement of Requirements condition 1).
- **SCAP**
Standard response was provided by SCAP requiring a final survey plan (refer SCAP condition 1).
- **RATES**
No changes to the current numbering.
- **AHC ENGINEERING DEPARTMENT**
Council's Engineering Department reviewed the proposed right of way access along the southern boundary of proposed lot 202 and advised that they have no concerns provided CFS has no objections. In addition it was stated that consideration of stormwater will be required when the access is formalised, as a piped crossover will likely be required to collect and transfer stormwater from the road. (Refer to Council Land Division Statement of Requirements condition 2)

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

5. CONSULTATION

The application was categorised as a Category 1 form of development not requiring formal public notification.

The applicant or his representative – Geoff van Senden, may be in attendance.

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 comprised of three allotments with a combined area of 20.34 hectares. Existing lot 1 is a rectangular shaped allotment of approximately 2.104 hectares. This allotment has a frontage of 130m and direct access to Basket Range Road. This allotment contains a single storey dwelling, associated domestic structures and a dam. The front area of the allotment where the dwelling is located is flat but then remainder of the allotment slopes down from a high point in the north to a low point in the south.

Existing lot 3 is irregular in shape with an area of 0.87 hectares and similar to allotment 1 it contains a single storey dwelling and associated domestic structures. This allotment has a direct frontage and access to Ranns Road North. The allotment is located on the higher side of the road with the allotment sloping west to east.

Existing lot 4 is an irregular undulating allotment with a dual road frontage to Ranns Road North and Nicols Road. This allotment is vacant with the western side of the allotment along Nicols Rd used for grazing purposes whilst the north eastern side of the allotment contains dense native vegetation.

ii. The Surrounding Area

The locality is characterised by a mixture of allotment sizes and uses. Allotments in the immediate locality vary in size from 35 hectares to 4200m². Larger allotments are predominantly used for primary production purposes and the smaller allotments are used for rural living purposes.

Properties immediately to the west of the subject land are used primarily for primary production purposes with the majority of these properties containing permanent environmental covers associated with primary production use. Allotments immediately to the east of the subject land whilst being large holdings are predominantly used for rural living whilst also containing dense native vegetation.

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

- *Restricted residential development on existing allotments only , provided water resources are protected*
- *No intensification of urban development*

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

Objectives: 3 & 4

PDCs: 7

Objective 3 seeks that residential development is restricted to existing allotments and objective 4 seeks that there is no intensification of urban development. Whilst the proposed boundary realignment does not involve any form of building work, the objectives seek to ensure that any form of land division does not jeopardise the rural setting. The proposed boundary realignment is considered to comply with the intent of the objectives 3 and 4. Whilst the proposal does include a creation of a rural living allotment less than 2 hectares in size, the proposal is not creating an additional rural living allotment because it is simply swapping one rural living allotment for another. As such it is not considered that this realignment is contributing to intensification of urban development. Considering that the proposal does not involve creation of an additional allotment it is also considered to be consistent with objective 3 in that the land division is maintaining the status quo of the current situation and will not increase development potential.

PDC 7 of the Policy Area seeks that development should not prejudice primary production within the locality. Whilst the realignment of the boundary will result in a large rural allotment of 17.37 hectares being separated into an allotment of 12.1 and 7.2 hectares, the realignment will not prejudice the primary production capability of the land. The western side of the allotment proposed as lot 202 will remain as grazing land whilst the north eastern side of the allotment containing dense native vegetation will be incorporated within the existing rural living allotment.

Watershed (Primary Production) Zone

- *The enhancement of the Mount Lofty Ranges Watershed as a source of high quality waters*
- *The long-term sustainability of rural production in the south Mount Lofty Ranges*
- *The preservation and restoration of remnant native vegetation in the south Mount Lofty Ranges*

The following are considered to be the relevant Zone provisions:

Objectives: 2, 3 & 4

PDCs: 16, 17, 18, 19, 20, 21, 22, 31, 33, 34, 42, 44 & 70

Form of Development

PDCs 16 and 17 as well as Objective 3 seek to ensure that primary production is not prejudiced, and that land that is particularly suitable for primary production remains available for this purpose. As mentioned earlier in the report, it is considered the proposed realignment of the boundaries is not going to have any impacts on the use of available primary production land for such purposes. As such it is considered that the proposal is consistent with the PDCs 16 and 17 as well as Objective 3.

Land Division

PDC 70 is procedural relating to the non-complying development triggers in the zone. Land division in Watershed (Primary Production) Zone is considered to be non-complying application unless it is able to meet the following exemptions:

- Land Division where no additional allotments are created, either partly or wholly, within the Watershed (Primary Production) Zone, and where the development of the proposed allotments does not result in a greater risk of pollution of surface or underground waters than would the development of the existing allotments, and provided a suitable site for a detached dwelling is available such that the site and the dwelling would comply with the criteria in Table AdHi/5.

As mentioned earlier in the report, proposed boundary realignment is considered to be a merit form of development because it does not result in the creation of an additional allotment. In addition the proposed realignment of boundaries will not result in a greater risk of pollution of surface or underground water. It is also considered that proposed lot 202, the only vacant allotment, is a suitable size which would be able to meet Table AdHi/5 requirements for any future dwelling. The second exemption relating to land division in Watershed (Primary Production) Zone is not relevant in this instance as it does not relate to Caravan and Tourist Park Policy Area.

Upon establishing the procedural matters of the application, PDCs 18, 19, 20, 21 & 22 relate directly to the circumstances under which land divisions in the zone would be considered.

PDC 18 provides that land division should only occur where a site for a detached dwelling which complies with the criteria detailed in Table AdHi/5 is available. Table AdHi/5 is a non-complying development trigger in the Zone. The aim of PDC 18 is therefore to ensure that resulting allotments are able to be developed with detached dwellings that are not non-complying in nature. At the same time PDCs 19 and 21 are similar in that they both seek that land division proposals do not result in an increased pollution risk to water resources or cause the loss of productive primary production land.

The Table Adhi/5 criteria sets out that detached dwellings must be:

- Sited at least 25m away from watercourses; and
- Connected to an approved wastewater system that is at least 50m from the watercourse, on the slope gradient of no more than 1 in 5 and no less than 1.2m depth to bedrock

Proposed lots 200 and 201 currently contain residential dwellings and each dwelling is connected to the existing on site waste system as shown on the aerial locality plan included with attachments. The waste systems as shown on the drawing will be contained within the proposed allotment boundaries. Proposed lot 202 is the only vacant allotment and whilst there was no request for the applicant to demonstrate compliance with the above Table Adhi/5, considering the size of the allotment and the separation distances from the water course and dams it is considered that there is ample space available for a suitable site for future dwelling which could comply with the requirements.

The proposal is therefore considered to be consistent with PDC 18, 19 and 21.

PDC 20 provides guidance as to the circumstances where land division proposals are appropriate in the zone. This PDC states that land division may be undertaken provided no additional allotments are created and the purpose of the plan of division is to provide a re-adjustment of boundaries to correct anomalies in the placement of those boundaries with respect to location of existing buildings. Alternatively the minor readjustment could be undertaken if it is facilitating improved management of the land for primary production purposes and/or conservation of natural features.

The proposal is not considered to be a minor re-adjustment of allotment boundaries nor is its purpose to correct any anomalies in the form of boundary encroachments. The proposal is therefore not considered to be consistent with PDC 20 (a).

By consolidating part of the existing lot 4 which is covered entirely by native vegetation with the existing homestead on current lot 3, and realigning the section of land currently used for grazing purposes with the dam on the rear of existing lot 1, it can be argued that the configuration of these boundaries will allow for better management and conservation of natural features. The realignment also retains the primary production land, allowing for its future continuation and use. Therefore it can be argued that the realignment is consistent with the intent of PDC 20 (b). The consolidation of native vegetation into one single proposed lot 200 is also consistent with Objective 4 of the zone which seeks preservation and restoration of remnant native vegetation.

PDC 22 states that re-arrangement of allotment boundaries should produce allotments of a size consistent with that of the locality. As mentioned earlier in the report, allotments in the locality range from as large as 35 hectares to allotments as small as 4200m². Whilst the proposal will still retain one rural living allotment under 2 hectares, it is in fact an improvement on the current situation with the existing rural living allotment of 0.87 hectares being replaced by a new rural living allotment of 1.1 hectares which would make it the largest rural living allotment in the immediate locality. The proposal is therefore considered to be consistent with PDC 22.

Conservation

PDC 31 seeks that land use does not change in or near native vegetation, whilst PDC 33 seeks that realignment of boundaries does not result in an increased number of allotments adjoining an allotment with native vegetation. At the same time PDC 34 seeks that boundary realignment does not occur where it will increase the number of allotments over areas covered by native vegetation. The proposed boundary realignment will consolidate the majority of native vegetation within the single proposed allotment 200. The realignment will not result in more allotments adjoining native vegetation and as such it is consistent with PDC 33. By consolidating native vegetation within one allotment, the proposed development is also consistent with PDC 34. Whilst the realignment is not proposing any change of land use, PDC 31 is still considered to be relevant to the proposed development. By separating part of the existing allotment currently used for grazing purposes from the area of the allotment containing native vegetation the proposal will ensure that any future use of proposed lot 202 will not result in impacts on native vegetation.

Rural Development

PDC 42 states that rural areas should be retained for primary production purposes and other uses compatible with maintaining rural productivity. PDC 44 states that development which would remove productive land from primary production or diminish its overall productivity for primary production should not be undertaken unless the land is required for essential public purposes. As mentioned earlier in the report, the proposed realignment of boundaries is considered to maintain primary production and is not considered to diminish the overall productivity of the land for primary production. The proposal is therefore considered to be consistent with PDCs 42 and 44.

b) Council Wide provisions

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

- *The retention of rural land in primary production especially land suitable for high rates of fruit and vegetable production*
- *Development located to minimise the treat and impact of bushfires on life and property while protecting natural and rural character*
- *Land division restricted in rural areas to ensure that efficient use of rural land for primary production*
- *Retention, protection and restoration of the natural resources and environment*
- *Orderly and economic development that creates a safe, convenient and pleasant environment in which to live in*

Animal Keeping & Rural Development

Objectives: 1 & 2

PDCs: 1

Objectives 1 and 2 as well as PDC 1 seek that rural land should be retained for either primary production and/or native vegetation conservation and retention purposes. The proposed realignment is considered to achieve both of these requirements. Proposed lot 201 whilst being of small size is not considered to be prejudicing primary production land, nor is it contributing to the loss of native vegetation. The existing dwelling and associated outbuildings will remain and any future development on this site would be able to occur without any additional loss of vegetation. Proposed lot 202 is of sufficient size to be retained for primary production use, whilst lot 200 which would predominantly consist of dense native vegetation apart from existing dwelling along the road, is considered to contribute to conservation and retention of native vegetation. The Native Vegetation Council have not raised any concerns with the proposed realignment and have advised that any new boundary fence (where there is no fence existing) should be placed at least 5m from remnant vegetation to protect that vegetation from clearance for a new fence line (refer to Council Land Division Statement of Requirements condition 1). The applicant has also advised that the existing fencing that is to form part of the new boundary between proposed lot 200 and lot 201 was erected under the supervision of the 6th Creek Catchment Group to keep stock out of the native vegetation. The fence is predominantly complies with the 5 metre setback requirement and the boundary will be adjusted if necessary to maintain this distance when the final survey is completed

should approval be granted to the land division. (Refer to Council Land Division Statement of Requirements condition 1)

Hazards

Objectives: 5

PDCs: 1, 6, 7 & 13

Objective 5 seeks that developments be located to minimise the threat and impact of bushfire on life and property and this is reinforced by PDC 1. PDCs 6, 7 and 13 on the other hand refer specifically to the Ministers Code: Undertaking Development in Bushfire Protection Areas and seek that the measure in the Code can be met to ensure any future habitable building is adequately protected in the event of the bushfire. Whilst the proposed development does not include construction of habitable buildings, the Development Plan still seeks that proposed division is able to satisfy the necessary bushfire requirements for any potential future developments. The CFS has undertaken the necessary assessment of the proposed division as mentioned earlier in the report. The focus of the CFS assessment was solely on proposed lot 202 as it is the only vacant allotment. CFS has advised that they have no objections with the proposed application and have not identified any concerns with the allotment being able to satisfy any of the Ministers Code requirements. As such it is considered that the proposed development is consistent with Objective 5 and PDCs 1, 6, 7 and 13.

Land Division

Objectives: 2 & 5

PDCs: 1, 2, 5, 6, 7, 11, 21 & 22

The proposed division does not restrict existing rural living properties from continued use as such, nor does it prevent the allotment from being redeveloped for such purposes in the future. Each of the allotments has a direct access to a public road; each of the existing dwellings is connected to an existing on site waste system whilst proposed vacant allotment 202 has ample space to accommodate a future waste system should the future land use be for other purposes other than primary production. As such it is considered the proposal adequately satisfies Objective 2 and PDCs 1, 2 and 6(c), 7.

PDCs 5 and 11 seek that land division be designed and configured so that it does not impact on the native vegetation. As mentioned earlier in the report the proposed realignment will not impact on any native vegetation. As such proposal is considered consistent with PDCs 5 and 11.

Objective 5 seeks retention of efficient use of rural land for primary production purposes and this is further enforced by PDCs 21 and 22 which seek that allotments be retained for primary production purposes and that the natural resources are protected. The proposed realignment of boundaries is not considered to impact on the primary production use of the land. Existing allotment 4 has one section of land which is capable of being used for primary production purposes whilst the rest of the allotment contains native vegetation. The realignment of the allotment boundaries will not alter this. Proposed lot 202 will still have the capability to be used for primary

production purposes whilst being separated from the area of land which contains native vegetation. As such it is considered to satisfy the intent of Objective 5 and PDCs 21 and 22.

Natural Resources

Objectives: 1

PDCs: 1, 37, 38 & 39

Objective 1 and PDC 1 seek retention, protection and restoration of natural resources and environment including water quality, land, soil and biodiversity. The proposed realignment of boundaries achieves the requirements set out in Objective 1 and PDC 1. It will not result in an increase in development potential given that existing lot 4 is vacant land with the option of future use other than primary production which might require an on-site waste system. The proposed realignment of the boundaries does not alter this aspect.

Similar to some of other PDCs discussed earlier in the report, PDCs 37, 38 and 39 put an emphasis on protecting native vegetation and locally indigenous plant species. As mentioned earlier in the report the proposed realignment will not impact upon or result in the loss of native vegetation and is therefore considered to meet the requirements set out in PDCs 37, 38 and 39.

Orderly and Sustainable Development

Objectives: 1, 4, 8, 9 & 10

PDCs: 1 & 2

Objective 1 seeks orderly and economic development whilst Objective 4 seeks development which does not prejudice the achievements of the provision of the Development Plan. The proposed development is seeking to realign the boundaries of three existing contiguous allotments and will not result in the creation of a new allotment in the Watershed (Primary production) Zone and is considered to be sufficiently consistent with the provisions set out in the Development Plan.

Objectives 8, 9 and 10 as well as PDCs 1 and 2 seek the protection of rural areas, surrounding watersheds and prevention of urban development from further encroachment into rural areas. As mentioned earlier in the report, the proposed realignment of boundaries does not prejudice primary production land and is not resulting in creation of a new allotment within the watershed zone, nor is it increasing development potential within the zone. The proposal is therefore considered to be consistent with Objectives 8, 9 and 10 as well as PDCs 1 and 2.

7. SUMMARY & CONCLUSION

The proposal seeks consent to realign the boundaries of three allotments in the Watershed (Primary Production) Zone and Water Protection (Marble Hill) Policy Area.

The purpose of the proposal is to realign the allotment boundaries to place predominantly all the native vegetation land onto proposed allotment 200, all the arable land onto proposed allotment 202 and retain a smaller allotment around the existing dwelling and associated structures on proposed allotment 201.

It is considered that the proposed realignment is not going to prejudice any primary production land with proposed lot 200 retaining its potential to be used for primary production purposes. Furthermore the proposal improves the management of the land for primary production by acquiring an arable section of existing allotment 1 and incorporating both of the dams into a single allotment.

Native vegetation is retained and protected by being predominantly incorporated into a singular allotment. Native Vegetation Council have not raised any concerns and have sought that any new boundary fence (where there is no fence existing) should be placed at least 5m from remnant vegetation so as to protect that vegetation from clearance for a new fence line.

The development of the proposed allotments does not result in a greater risk to water quality in the watershed area. The two existing dwellings will be retained on their individual allotments and the realignment will not further increase development potential in the watershed zone.

The proposal is therefore considered to be sufficiently consistent with the relevant provisions of the Development Plan, and 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 Development Plan Consent be **GRANTED**, 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 GRANTS Development Plan Consent and Land Division Consent to Development Application 20/100/473 (20/D005/473) by Robert Butler for Land Division - Boundary realignment (3 into 3) at 30 Ranns Road North, Lot 4 Ranns Road North and 166 Basket Range Road, Basket Range subject to the following conditions:

Planning 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:

- **Plan of division prepared by Olden & van Senden, reference number 4103da V2 dated 29/10/2018**

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

Notes

(1) Development Plan Consent

This Development Plan Consent (DPC) 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 it is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the DPC, or a fresh development application will be

required. The twelve (12) month time period may be further extended by Council agreement following written request and payment of the relevant fee.

- (2) **Department of Environment and Water (DEW) - Native Vegetation Council**
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. 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.

Council Land Division Statement of Requirements

- (1) **Prior To Section 51 Clearance- Survey Plan Showing Boundary Location**
Prior to Section 51 clearance a final survey plan shall be provided to Council to demonstrate that new boundaries are placed at least 5m from remnant vegetation.

REASON: Protect native vegetation from clearance for a new fence line.

- (2) **Prior To Section 51 Clearance- Rural Verge Piped Access Points - SD24**
Prior to Section 51 clearance a vehicle access point(s) and cross over from Nicols Road shall be constructed in accordance with Adelaide Hills Council standard engineering detail SD24 – piped entrance.

REASON: For safe and convenient movement of vehicles and for efficient drainage of stormwater within the road verge.

SCAP 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
Referral Responses

Respectfully submitted

Concurrence

Doug Samardzija
Statutory Planner

Deryn Atkinson
Manager Development Services