

COUNCIL ASSESSMENT PANEL MEETING

12 May 2021

AGENDA – ITEM 8.5

Applicant: Andrew Granger	Landowner: A R Granger & K M Jones
Agent: Michael Lock	Originating Officer: Damon Huntley
Development Application:	20/1332/473 20/D061/473
Application Description: Land division - Boundary re-alignment (2 into 2) (non-complying)	
Subject Land: Allotment:2 Sec: P1166 FP:100364 CT:5097/888 Allotment:54 Sec: P1166 FP:130408 CT:5557/184	General Location: 200 & 204 Institute Road, Montacute Attachment – Locality Plan
Development Plan Consolidated : 08 August 2019 Map AdHi/9 & AdHi/47	Zone/Policy Area: Hills Face Zone Map AdHi/9
Form of Development: Non-complying	Site Area: 200 Institute Road: 4.001 hectares 204 Institute Road: 9,600m ²
Public Notice Category: Category 1	Representations Received: N/A Representations to be Heard: N/A

1. EXECUTIVE SUMMARY

The purpose of this application is to undertake a minor boundary realignment in order to correct an anomaly in relation to the position of buildings established over neighbouring boundaries.

An existing carport, access track and 20,000L water storage tank believed to be established within existing Allotment 2 (the southern Allotment) has been confirmed by survey to be located within existing Allotment 54. These structures are patently critical to the access and functionality of the dwelling located on existing Allotment 2, including a private bushfire bunker appurtenant to the dwelling on existing Allotment 2.

The subject land is located within the Hills Face Zone within which the proposal is prescribed as a non-complying form of development. The proposal, being a boundary re-alignment resulting in the same number of allotments as the existing, is a Category 1 form of development pursuant to Schedule 9 Part 1 (3)(c) of the Development Regulations 2008, and accordingly, the application has not been subject to public notification.

The proposal is fundamentally based upon the need to re-align the common boundary to address an anomaly in the historic location and construction of existing buildings, and in this respect represents a logical and desirable outcome which creates little to no impact in respect of the Adelaide Hills Council Development Plan Policy or upon the natural environment.

The main issues relating to the proposal are as follows:

- Preservation of the natural character of the Hills Face Zone
- Orderly pattern of allotments within the Hills Face Zone
- High Bushfire Risk bushfire protection
- Impact on native vegetation

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

Note that concurrence from SCAP is no longer required for consents to non-complying development effective 15 May 2020 as a result of the COVID-19 Emergency Response (Further Measures) Amendment Bill 2020, and subsequent amendment to Section 35 of the Development Act 1993 to delete the need for concurrence to be obtained.

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 and Land Division Consent, subject to conditions.

2. DESCRIPTION OF THE PROPOSAL

The proposed development seeks consent for the re-alignment of the common boundary between existing Allotment 2 and existing Allotment 54, retaining independent Torrens Titled land parcels, specifically to address an anomaly concerning the position of existing buildings established over boundaries, situated on adjacent property.

The proposed boundary re-alignment redistributes approximately 2660 metres² of land from the larger existing Allotment 54 (the northern Allotment) which is currently 4.001 Ha, to increase the size of existing Allotment 2 (the southern Allotment) to become 1.082 Ha, and to resolve the encroachment of the incorrectly sited historic structures.

The resulting Allotments have the following attributes:

Existing Allotments

Allotment	Area (ha)	Currently containing
Allotment 54	4.001 Ha	Dwelling, Driveway, Garage, Water Storage Tanks (x1), Swimming Pool. Incorrectly positioned structures servicing Allotment 2: Carport (x1), Water Storage Tank (x1), Bushfire Shelter & Driveway / vehicular access.
Allotment 2	0.816 Ha	Dwelling, Outbuilding, Water Tanks (x3).

Proposed Allotments

Allotment	Area (ha)	Containing
Allotment 2	3.739 Ha	Dwelling, Driveway, Garage, Water Storage Tank (x1), Swimming Pool.
Allotment 1	1.082 Ha	Dwelling, Outbuilding, Water Storage Tanks (x4), Bushfire shelter (<i>one tank of which would be formally transferred from existing Allotment 54</i>).

		Carport (x1), Bushfire Shelter, Driveway / vehicular access (formally transferred from existing Allotment 54).
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An existing vehicular access point is located at the southern end of existing Allotment 54, which provides a right-of-passage to the carport that is incorrectly positioned on the land. As part of the proposed boundary re-alignment, the vehicle access at the southern end of existing Allotment 54 is to be formally transferred to proposed Allotment 1.

The plan of division includes the relevant detail of the buildings currently encroaching from existing Allotment 2 into existing Allotment 54 and the proposed adjusted boundary to rectify the encroachments.

The Statement of Support prepared by Heynen Planning Consultants can be read in conjunction with the proposed plan of division to assist interpretation.

Whilst the southern portion of existing Allotment 54 and the northern portion of existing Allotment 2 are both filled with a dense spread of native trees, the proposed re-alignment of the boundary does not seek to incorporate the removal of any trees, thus maintaining the extent of native vegetation that is currently present.

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
23 July 1998	98/695/473	Domestic Shed (200 Institute Road)
20 December 2000	00/1261/473	Tree removal – 3 Cherry Plum Trees (200 Institute Road)
23 February 2004	03/626/473	Addition to detached dwelling (class 1a) (200 Institute Road)
14 May 2004	04/463/473	Carport attached to detached dwelling (200 Institute Road)
14 August 2013	11/1101/473	Demolition of existing domestic outbuilding and water storage tanks (x 2) and dwelling alterations and additions and construction of non-habitable domestic outbuilding (measuring 12m x 6m x 2.4m) and the construction of underground water storage tanks (204 Institute Road)
06 January 2016	14/222/473	Two storey dwelling alterations & additions & carport (6m x 5.3m x 3.1m post height (non-complying) (204 Institute Road)
Application Withdrawn	20/1019/473	Fence (200 Institute Road)

4. REFERRAL RESPONSES

The application was referred to the following referral agencies:

- **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 (refer to SCAP Land Division Condition 1).
- **SA Water Corporation**
SA Water has advised that they have no requirements as per the Section 33 of the Development Act.
- **Department of Environment and Water (Native Vegetation Branch)**
The Native Vegetation Branch have advised that they have no objection to the proposed boundary re-alignment. Should the land owner intend to fence the boundary, they are required to notify the NVC prior to establishment of a fence (refer to Development Plan Consent Note 1).

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

5. CONSULTATION

The application was determined to be a Category 1 form of development in accordance with Schedule 9 Part 1 (3)(c) of the Development Regulations 2008, which provides that:

3. Any development classified as non-complying under the relevant Development Plan which comprises—
- (a)
 - (b)
 - (c) the division of land where the number of allotments resulting from the division is equal to or less than the number of existing allotments.

As the proposal purports a boundary realignment resulting in the same number of Allotments to that which currently exist, the proposal is determined to be a Category 1 form of development and accordingly the application has not been subject to public notification processes.

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 currently 4.001 Ha and 0.816 Ha in area respectively, and will result in adjusted Allotments of 3.739 Ha and 1.082 Ha respectively, with a transfer of 2660 m² occurring within proposed Allotment 1.

Both Allotments are used for residential purposes, each containing a dwelling, and each with an associated outbuilding. Both Allotments are accessed via an independent access point directly from Institute Road. However, proposed Allotment 1 does not have a legal right-of-way to access the freestanding carport located in existing Allotment 2. The proposed re-alignment seeks to remedy this anomaly between opposing titles. Both Allotments have moderately undulating terrain, and both comprise vast areas of dense native trees.

ii. The Surrounding Area

The surrounding locality provides a range of allotment sizes varying from 6.72 Ha to 9,600m². Whilst Existing Allotment 2 may represent the smallest of the allotments within the locality, in all other respects the allotment exhibits comparable characteristics to the broader locality (for example: sloping topography and dense covering of native trees).

The realignment of boundaries also largely retains 'status quo', in terms of allotment size, increasing Allotment 2 by a small degree, towards the characteristic average allotment size within the locality.

iii.

Development Plan Policy considerations

a) *Policy Area/Zone Provisions*

The subject land lies within the Hills Face Zone. No policy area applies to this assessment. The Hills face zone provisions seek to preserve and enhance the natural characteristics of land in the area for its aesthetic and biodiversity value whilst accommodating sensitive forms of development and low intensity rural / agricultural land uses.

The zone also emphasises protection and enhancement of native vegetation and acknowledges the importance of development incorporating fire protection measures to minimize bushfire risk.

Objectives: 1, 2

PDCs: 1, 3(d) & (m) (i), 15, & 22

Accordance with Zone

The relevant zone provisions illustrate the intention for development to remain unobtrusive and to preserve the natural environment. The proposed boundary realignment preserves existing native vegetation, with intent to maintain all intact native vegetation. The position of the proposed boundary is capable of avoiding clearance. The applicant has confirmed that no fencing currently exists between the properties and there is no intention to install any future fence(s) subsequent to this application.

The proposal seeks to re-align a section of the side boundary between existing Allotments 54 and 2 by re-aligning this boundary to capture an additional area of 2,660sqm. This boundary change will incorporate part of the existing access path / driveway for the freestanding carport currently on existing Allotment 2 into proposed Allotment 1.

The establishment of the re-aligned boundary will not increase visibility of any of the buildings concerned with either allotment. As highlighted previously within this report, the re-alignment is fundamentally to address the anomaly of historically developed buildings incorrectly positioned on the land and encroaching over the adjacent boundary.

The proposal is not considered to be prejudicial to the natural landscape amenity of the locality. As such, the proposal is considered to be consistent with the pertinent objectives of the zone.

b) Council Wide provisions

The Council Wide provisions of relevance to this proposal seek to reinforce safety of life and property from natural hazards, in this instance, bushfire risk, and continue to preserve and enhance the natural environment. The fine balance of these matters is critical to the achievement of the Development Plan intent and development must be carefully considered.

The Council Wide land division provisions seek to ensure that the arrangement of land is orderly and does not result in improper arrangement of boundaries, or land parcels inappropriate for their intended use.

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

Hazards

Objectives: 1, 2, & 5

PDCs: 8 & 13

Objective 5 seeks for development to be located so that it minimises the threat and impact of bushfire on life and property while protecting natural and rural character. As mentioned earlier in the report, the main purpose behind the boundary re-alignment is to facilitate legal access to the carport, water tanks used dedicated for fire-fighting purposes, and an existing fire bunker.

Elements of access, and water supply are existing and established, only the arrangement of the dividing boundary and the tenure of the land and buildings are to be rectified and accordingly represents no further impact to the environment other than the establishment of the new boundary alignment.

The proposal is therefore considered to achieve the intent of Objective 5 in that it will help the owners maintain access to critical infrastructure in the event of a bushfire.

Land Division

Objectives: 1, 2, & 4

PDCs: 2, 5, 6(c), 7, & 11(d)

The proposal is for a minor boundary re-adjustment between two allotments which will not result in the creation of an additional 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 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. Whilst this PDC refers more to the provision of appropriate access to a public road, it can be applied more broadly to access for land generally, particularly in high bushfire

risk bushfire protection areas. Given that one of the main purposes of the boundary re-alignment is to allow for legal access to a carport, the proposal is considered to be consistent with the general intent of PDC 6(c). As mentioned earlier in the report, the re-alignment of the boundary will not result in clearance of any vegetation. The proposal is therefore considered to accord with PDCs 5 and 11(d).

Natural Resources

Objectives: 8, 10, 13, & 14

PDCs: 6 & 38

The proposal will not perpetuate any additional development within the area, nor will it be contrary to the aims and objections of the Hills Face Zone and Council Wide natural resources provisions that generally seek protection of the natural landscape and biodiversity value.

Whilst the boundary re-alignment does not propagate any new or increased development opportunity for the subject sites, it does give rise to some potential of alteration or clearance of native vegetation for the creation of boundaries / fencing (which may or may not occur and in any case would need to comply with Native Vegetation Act standards / limitations for clearance), and for maintenance of an appropriate asset protection zone for bushfire safety of the existing buildings. In respect of the existing buildings, it is noted that the asset protection areas will inherently remain with the position of the existing structures, irrespective of the position of the boundary between adjoining Allotments.

In regards to the boundary re-alignment, the proposal seeks to regularise the connection between the established access point/driveway, the additional water supply, and the existing bushfire shelter, with the dwelling within existing Allotment 2. These ancillary structures were intentionally developed solely for the residential use and function of this property. No further adverse impacts from vegetation clearance for building is proposed as a result of this application, and therefore avoids any further incremental impact upon the natural environment.

The potential impact of the proposed boundary re-alignment upon natural resources is considered minimal and, in such case, would be much the same as the impact that could occur in respect of the fencing of the existing boundary alignment. In light of this, the Native Vegetation Council have stated the following in their referral response:

“Should the proposed boundary realignment be approved and the boundary between proposed allotment 1 & 2 fenced, similar amounts of vegetation clearance could occur that are already possible along the current shared boundary between allotments 54 & 2.”

It is noted that the Native Vegetation Branch does not object to the proposal in its current form and suggests that if the landowners intend to fence the boundary they are made aware of the requirement to notify the Native Vegetation Council prior to establishment of a fence.

Re-connecting the existing garage, water tank, driveway and bushfire shelter ensures against further clearance of native vegetation if it were necessary to establish new equivalent access, water supply or bushfire shelter on the land.

7. SUMMARY & CONCLUSION

The proposal as assessed against the relevant provisions of the Adelaide Hills Council Development Plan is considered to demonstrate appropriate merit in order for it to be supported.

The fundamentally functional nature of the proposal does not purport any unreasonable impacts to the natural environment or the amenity of the area, but importantly re-establishes essential access, water supply and the bushfire shelter with the dwelling as it was historically intended to exist.

The proposal is therefore considered to be sufficiently consistent with the relevant provisions of the Development Plan, 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 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 to GRANT Development Plan Consent and Land Division Consent to Development Application 20/1332/473 (19/D061/473) by Andrew Granger for Land division - boundary re-alignment (2 into 2) (non complying) at 200 and 204 Institute Road, Montacute 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 Lock Surveys Licenced and Engineering Surveys, reference 20016, dated 26 February 2020, and;
- Statement of support prepared by Gregg Jenkins of Heynen Planning Consultants dated 18 February 2021 (stamped by Council dated 18 February 2021).

Planning Notes

(1) Department of Environment and Water (DEW) – Native Vegetation Council

This 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 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.

SCAP Land Division 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.

8. ATTACHMENTS

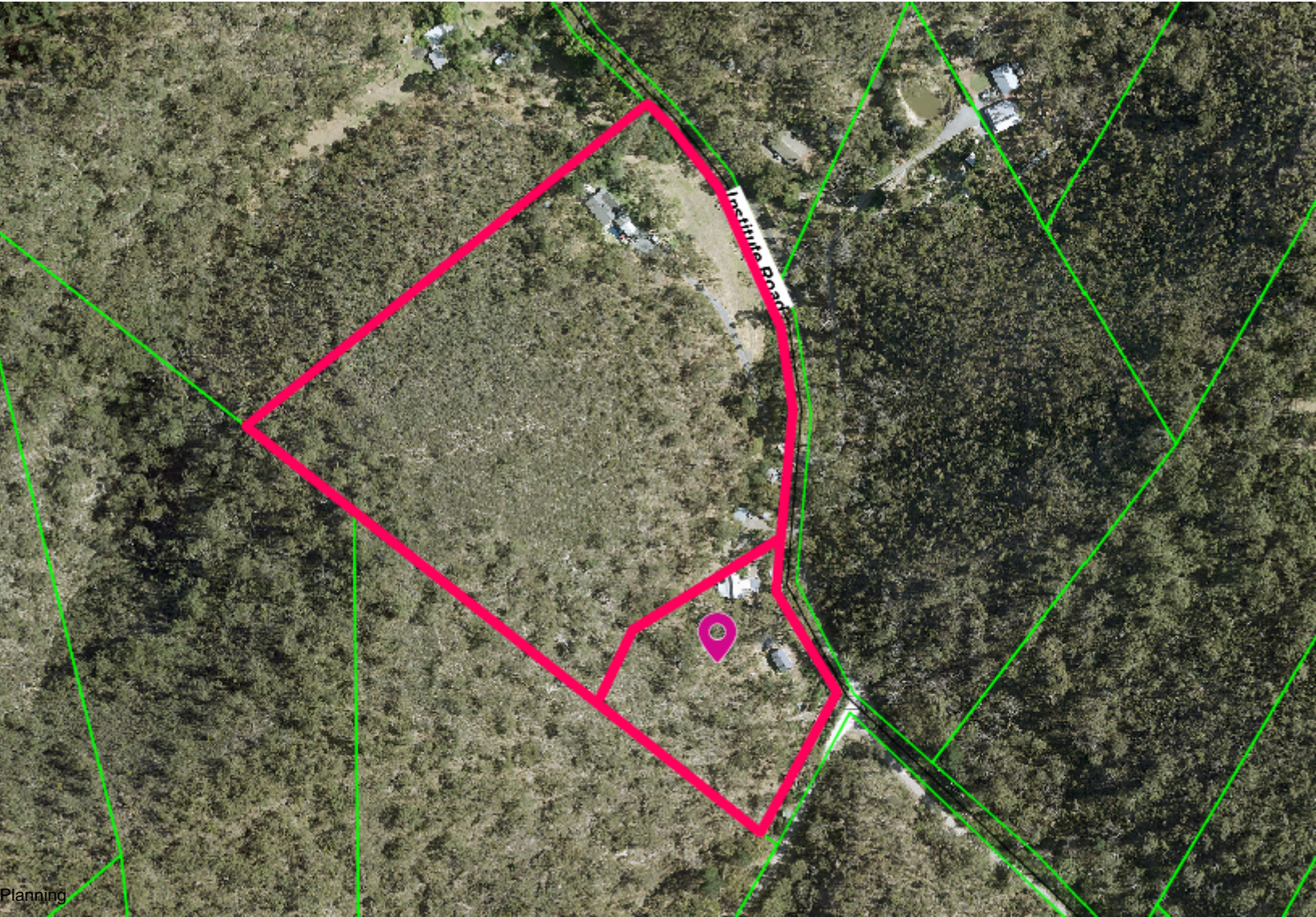
Locality Plan
Proposal Plans
Application Information
Referral Responses

Respectfully submitted



Concurrence

Damon Huntley
Statutory Planner



Deryn Atkinson
Assessment Manager



Annotations

-  Subject Land 1
-  Subject Land 2

AHC Core

-  Parcels
-  Roads

Zones_ Policy & Landuse

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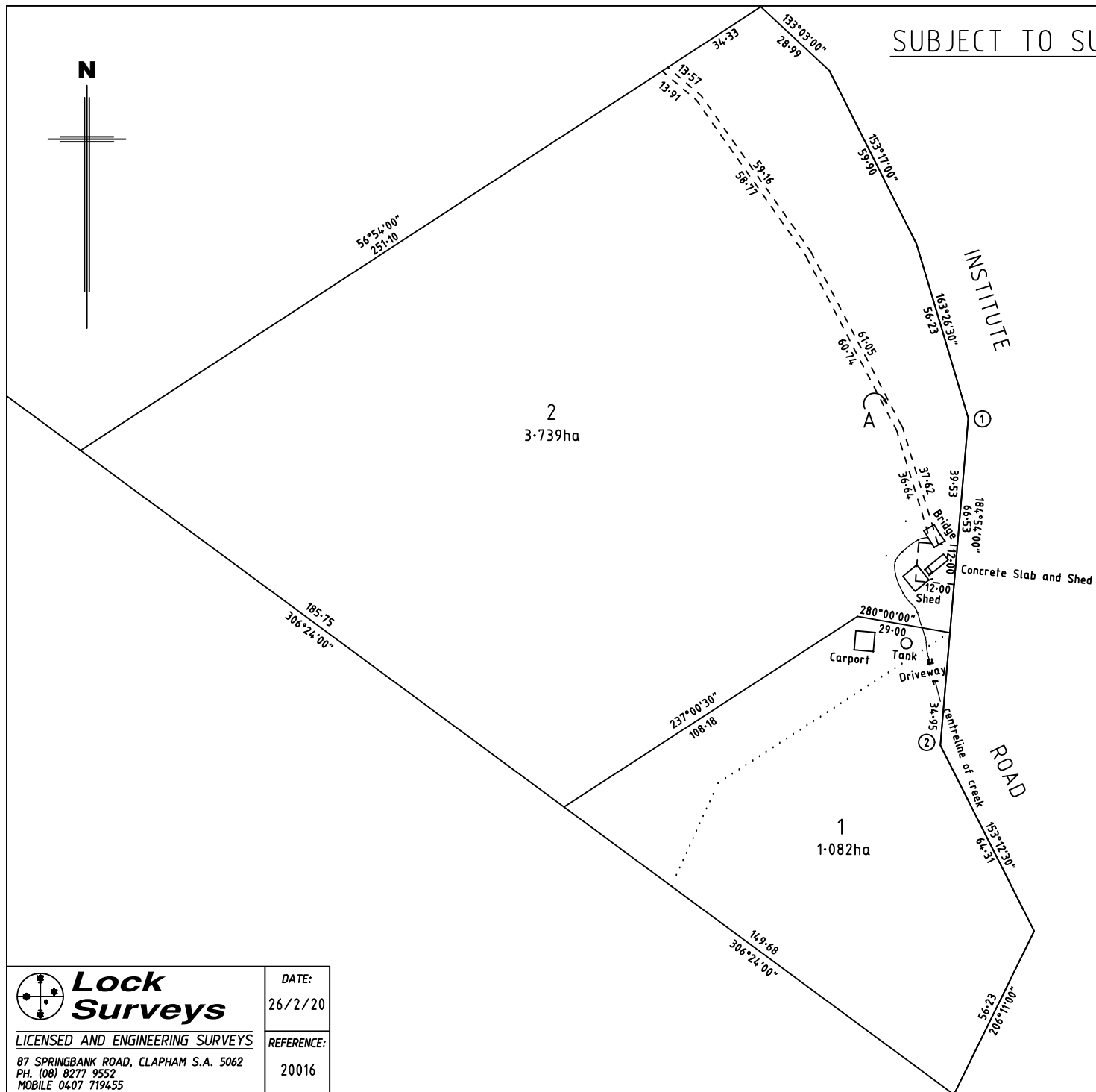
representations regarding the use, or results of use of the information contained herein as to its correctness, accuracy, currency or otherwise. In particular, it should be noted that the accuracy of property boundaries when displayed over aerial photography cannot be considered to be accurate, and that the only certain method of determining boundary locations is to use the services of a licensed Surveyor. The Adelaide Hills Council, its


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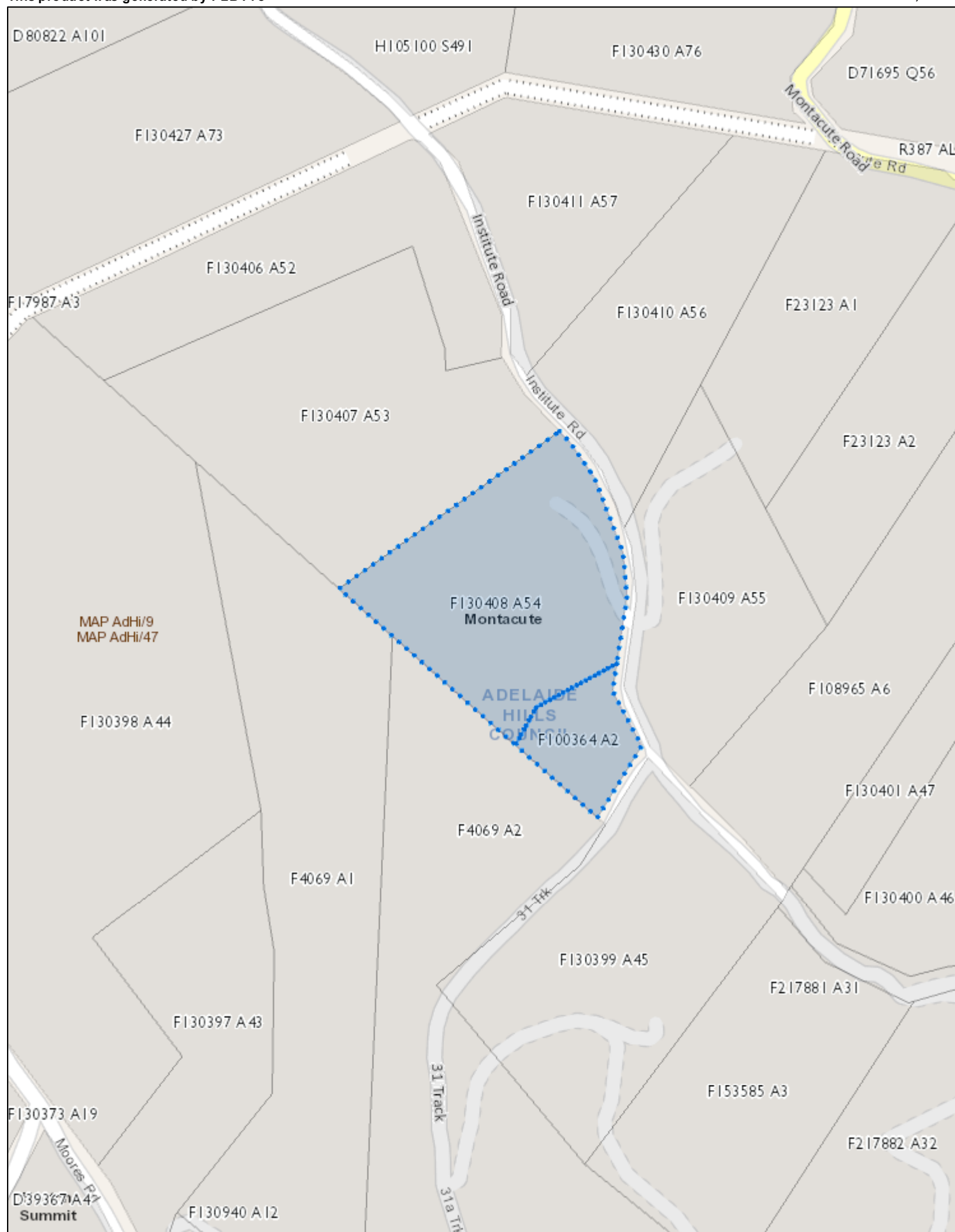
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PLAN NUMBER			
DEPOSITED		/ /20	
ACCEPTED FOR FILING		PRO REGISTRAR GENERAL	
MAP REF. 6628-43-C		DEV. NO.	
TITLE SYSTEM		REAL PROPERTY ACT	
TITLE REFERENCE		CT VOL 5557 FOLIO 184 CT VOL 5097 FOLIO 888	
O.B./LAST PLAN REF.		TOTAL AREA	
DOCKET No.			
FIELD BOOK No.			
CLOSURE CHECKED	PLAN EXAMINED	PLAN APPROVED CHECKED	PMS.APPROVED CHECKED
IRRIGATION AREA.....DIVISION.....			
HUNDRED. ADELAIDE.....			
AREA MONTACUTE.....			
COUNCIL ADELAIDE HILLS COUNCIL.....			
PLAN OF LAND DIVISION			
ALLOTMENTS 54 FP130408 AND 2 IN FP100364			
<div style="display: flex; justify-content: space-between;"> SCALE METRES </div> <div style="text-align: center;">  </div>			
STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS			
PORTION OF LOT 2 MARKED A IS SUBJECT TO AN EXISTING EASEMENT FOR WATER SUPPLY PURPOSES (T3787847&T3856796)			
REDUCED SCALE			
ALL DISTANCES ARE GROUND DISTANCES			
COMBINED SCALE FACTOR.....		ZONE..... MAG.....	
BEARING DATUM..... (1)-(2) 4°54'00"		DISTANCE.....	
DERIVED FROM..... CALCULATED MGA2020.....			
I.....			
licensed Surveyor of South Australia do hereby certify -			
(1) That my plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992/ Strata Titles Act 1988 (strike out as appropriate)			
(2) That the field work was completed on the day of 20..... excepting for the final placement of survey marks. (strike out if not applicable)			
Date		Licensed Surveyor	



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REAL PROPERTY ACT, 1886



South Australia

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Certificate of Title - Volume 5097 Folio 888

Parent Title(s)	CT 4009/763			
Creating Dealing(s)	CONVERTED TITLE			
Title Issued	24/11/1992	Edition	6	Edition Issued 17/11/2016

Estate Type

FEE SIMPLE

Registered Proprietor

ANDREW RICHARD GRANGER
KAREN MIDORI JONES
OF 204 INSTITUTE ROAD MONTACUTE SA 5134
AS JOINT TENANTS

Description of Land

ALLOTMENT 2 FILED PLAN 100364
IN THE AREA NAMED MONTACUTE
HUNDRED OF ADELAIDE

Easements

NIL

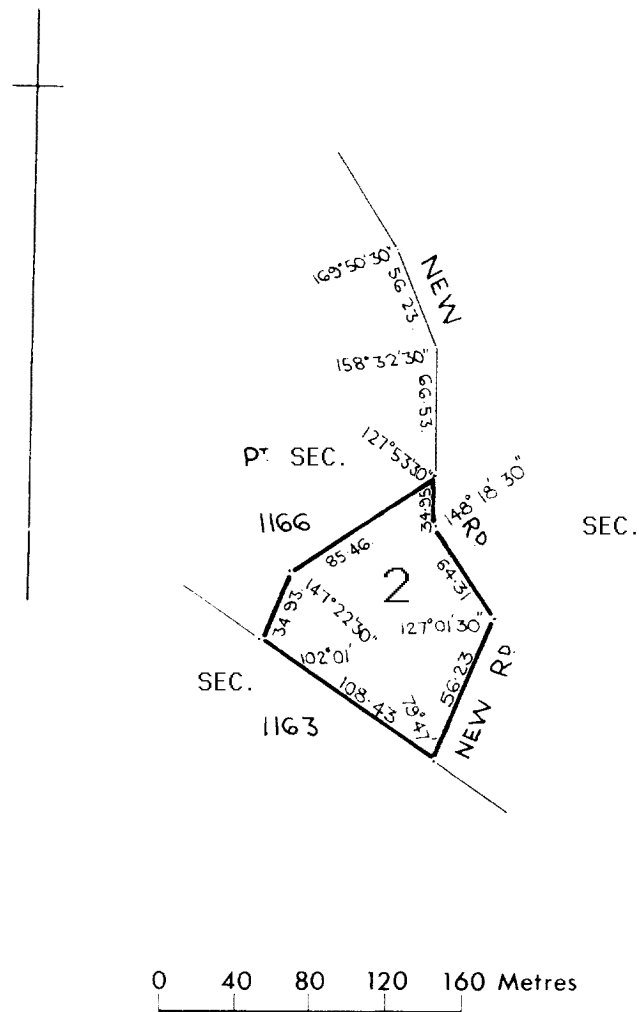
Schedule of Dealings

Dealing Number	Description
12622289	MORTGAGE TO AUSTRALIA & NEW ZEALAND BANKING GROUP LTD. (ACN: 005 357 522)

Notations

Dealings Affecting Title	NIL
Priority Notices	NIL
Notations on Plan	NIL
Registrar-General's Notes	NIL
Administrative Interests	NIL

This plan is scanned from Certificate of Title 4009/763



Note: Subject to all lawfully existing plans of division

REAL PROPERTY ACT, 1886



South Australia

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Certificate of Title - Volume 5557 Folio 184

Parent Title(s)	CT 4083/296			
Creating Dealing(s)	CONVERTED TITLE			
Title Issued	21/07/1998	Edition	5	Edition Issued 27/05/2020

Estate Type

FEE SIMPLE

Registered Proprietor

RAOUL KRISTJAN TUUL
LARISSA CAROLINE TUUL
OF 200 INSTITUTE ROAD MONTACUTE SA 5134
AS JOINT TENANTS

Description of Land

ALLOTMENT 54 FILED PLAN 130408
IN THE AREA NAMED MONTACUTE
HUNDRED OF ADELAIDE

Easements

SUBJECT TO EASEMENT(S) OVER THE LAND MARKED A (T 3787847 AND T 3856796)

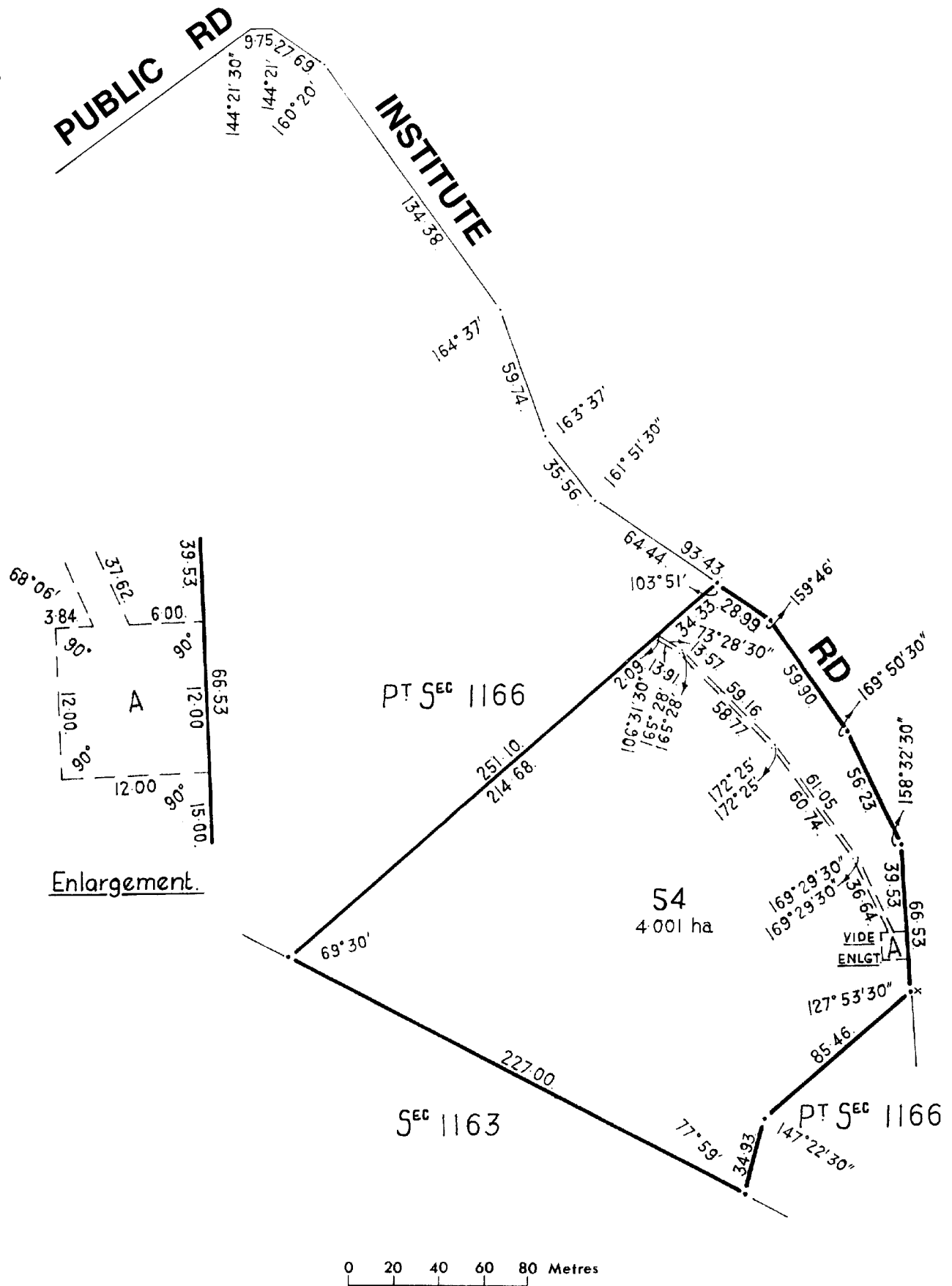
Schedule of Dealings

Dealing Number	Description
3787850	ENCUMBRANCE TO ALAN MICHAEL GREENWOOD AND BARBARA GAY GREENWOOD AS JOINT TENANTS
3856797	ENCUMBRANCE TO ROY ARCHIBALD HEWITT AND PATRICIA EDITH HEWITT AS JOINT TENANTS (SINGLE COPY ONLY)
13305144	MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA (ACN: 123 123 124)

Notations

Dealings Affecting Title	NIL
Priority Notices	NIL
Notations on Plan	NIL
Registrar-General's Notes	NIL
Administrative Interests	NIL

THIS PLAN IS SCANNED FOR CERTIFICATE OF TITLE 4083/296
SEE TITLE TEXT FOR EASEMENT DETAILS



NOTE: SUBJECT TO ALL LAWFULLY EXISTING PLANS OF DIVISION

Certificate of Title

Title Reference: CT 5557/184
Status: CURRENT
Parent Title(s): CT 4083/296
Dealing(s) Creating Title: CONVERTED TITLE
Title Issued: 21/07/1998
Edition: 5

Dealings

Lodgement Date	Completion Date	Dealing Number	Dealing Type	Dealing Status	Details
22/05/2020	27/05/2020	13305144	MORTGAGE	REGISTERED	COMMONWEALTH BANK OF AUSTRALIA (ACN: 123 123 124)
22/05/2020	27/05/2020	13305143	TRANSFER	REGISTERED	RAOUL KRISTJAN TUUL, LARISSA CAROLINE TUUL
22/05/2020	27/05/2020	13305142	DISCHARGE OF MORTGAGE	REGISTERED	11182655
22/05/2009	11/06/2009	11182655	MORTGAGE	REGISTERED	COMMONWEALTH BANK OF AUSTRALIA
22/05/2009	11/06/2009	11182654	TRANSFER	REGISTERED	ERICA GALVAO KAUP, JASON PETER KAUP
07/02/2001	16/02/2001	9040181	DISCHARGE OF MORTGAGE	REGISTERED	6800189 8524506
17/07/1998	25/08/1998	8524506	MORTGAGE	REGISTERED	ADELAIDE BANK LTD. (ACN: 061 461 550)
19/09/1989	31/10/1989	6800189	MORTGAGE	REGISTERED	
01/03/1977	01/03/1977	3856797	ENCUMBRANCE	REGISTERED	
29/08/1975	05/09/1975	3787850	ENCUMBRANCE	REGISTERED	



HEYNEN
PLANNING CONSULTANTS

T 08 8271 7944
Suite 15, 198 Greenhill Road
EASTWOOD SA 5063

ABN 54 159 265 022
ACN 159 265 022

18 February 2021

Adelaide Hills Council
ATT: Damon Huntley
PO Box 44
WOODSIDE SA 5244

Via Email

Dear Damon

**RE: DA 20/1332 – 204 INSTITUTE ROAD MONTACUTE – 2 INTO 2 LAND DIVISION –
BOUNDARY REALIGNMENT**

I confirm that Heynen Planning Consultants have been engaged by the applicant to review the proposed 2 into 2 boundary realignment at 204 Institute Road Montacute.

I also am aware of the “non-complying status” of the development as a result of the following Hills Face Zone provision:

PDC 26 The following kinds of development are **non-complying** in the Hills Face Zone:
Land Division

Accordingly, the development constitutes a non-complying form of development.

In accordance with Regulation 17(1) the following brief statement is provided in support of the application.

In assessing the development, I am cognisant of the matter of *City of Mitcham v Heathhill Nominees Pty Ltd* [2000] SASC 46, which stated in relation to non-complying development that:

“... The different procedures do not affect the question as to whether provisional Development Plan Consent should be granted or withheld in a particular case.”

The above decision was reinforced in the matter of *Klein Research Institute Ltd v District Council of Mount Barker & Ors* [2000] EDLR 482 which states:

12. Whilst the proposed development stands to be assessed procedurally as ‘non-complying’ development (but with restrictions imposed by s35(3) and (4)), the development in other respects stands to be assessed upon its merits as a matter of planning judgement.

It is conceivable therefore that a “non-complying” development has the potential to display substantial planning merit, which is the case in relation to this application having considered that the proposal simply seeks to formalise boundaries to “make good” the ownership of structures.

With regard to the correct categorisation of the development, Schedule 9 Part 1 of the *Development Regulations* prescribes the following of relevance: (my underlining)

Part 1—Category 1 development

- 3 Any development classified as *non-complying* under the relevant Development Plan which comprises—
(c) the division of land where the number of allotments resulting from the division is equal to or less than the number of existing allotments.

Accordingly, I am of the opinion that Schedule 9 Part 1(3) applies and the application should be assigned Category 1 status as the proposed development is respectfully, I submit, minor in nature.

I also note that Part 4 of the *Development Regulations* prescribes the following of relevance: (my underlining)

Part 4

Regulation 17 (6) A statement of effect is not required if the proposed development consists (wholly or substantially) of—
(c) the division of land where the number of allotments to result from the division is equal to or less than the number of existing allotments, and the relevant authority considers that the proposed development is of a minor nature

Respectfully it is my opinion that the subject development is minor in nature and accordingly no Statement of Effect is required.

During the process of listing and selling Lot 54, the discrepancy between the two lines was raised, with the matter now sought to be resolved via the subject boundary realignment. The adjoining land owners have agreed to the proposed boundary realignment “as lodged”.

In briefly considering the planning merit of the boundary realignment, the applicant has advised that there was a long-standing understanding between owners of the adjoining land that the boundary line located between Lot 54 (the northern allotment) and Lot 2 (the southern allotment) was located further north than where it actually is. Upon review of the boundary identification plan, this is clearly not the case.

By way of background, the applicant sought consent for a carport, while an access track and 20,000L water storage tank is confirmed by the identification plan to be located over the subject area of Lot 2. These structures are patently critical to the access and functionality of the dwelling located on Lot 2.

A private bushfire bunker is also located on Lot 54 however relates to the dwelling on Lot 2.

It is the applicants understanding that all structures were constructed as per the approved plans. Figure 1 (overleaf) details the current location of the carport, bunker, water tank and dwelling.

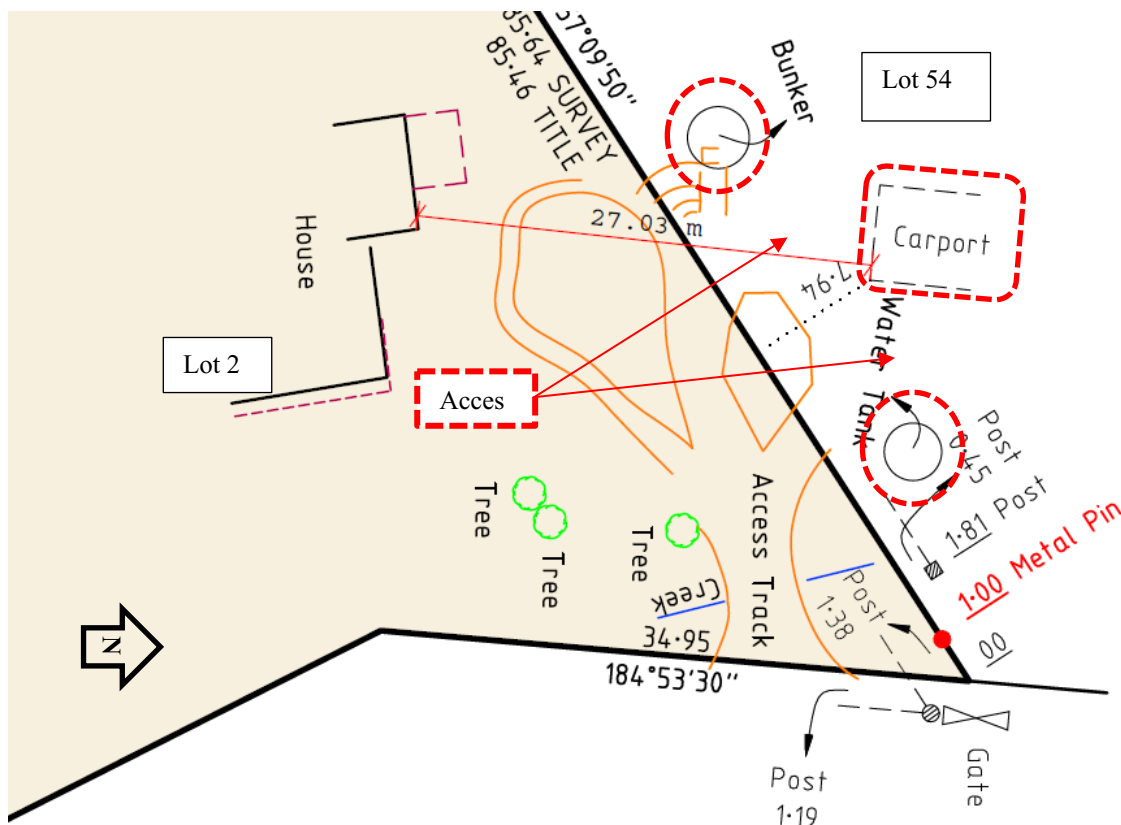


Figure 1: Subject Structures Highlighted by Red Dashed Lines

Source: State Surveys Boundary Identification Plan

Simply put, the boundary realignment seeks to formalise and legalise the access to off-street carparking (the carport), firefighting and water storage (the 20,000L water tank) associated with the dwelling on Lot 2.

Accordingly, the land division will facilitate the functional and legal use of the dwelling, and also negate the need for replacement or additional structures being sought to be located on the land.

I have also been advised by the applicant that there is currently no fencing to divide the allotments and accordingly no clearance of native vegetation (in association with fencing) has occurred as allowable under the *Native Vegetation Act* to provide fence access. The applicant has advised that no fencing is proposed to formalise the proposed boundary.

Noting the regularisation of the existing approved use, there are unsurprisingly numerous Development Plan Provision achieved, for example:

Hills Face Zone

PDC 9 Buildings should have a:

(a) year round water supply and a safe and efficient effluent disposal system which will not pollute watercourses or underground water resources or be a risk to health; and

PDC 12 The number of outbuildings should be limited, they should be grouped together, located in unobtrusive locations and comply with previously mentioned principles of development control relating to location and design of buildings

PDC 22 Development should only be undertaken if it can be located and designed to maximize the retention of existing native vegetation and, where possible, increase the extent of native vegetation.

Council Wide Provisions *Design and Appearance*

PDC 9 Development should take place in a manner which will minimize alteration to the existing land form.

Council Wide Provisions *Hazards*

PDC 14 Vehicle access and driveways to properties and public roads created by land division should be designed and constructed to:

- (a) facilitate safe and effective operational use for fire-fighting and other emergency vehicles and residents
- (b) provide for two-way vehicular access between areas of fire risk and the nearest public road.

Council Wide Provisions *Infrastructure*

Objective 3 The efficient and cost-effective use of existing infrastructure.

Council Wide Provisions *Land Division*

Objective 2 Land division that creates allotments appropriate for the intended use.

Objective 4 Land division that is integrated with site features, including landscape and environmental features, adjacent land uses, the existing transport network and the availability of infrastructure

PDC 5 Land divisions should be designed to ensure that areas of native vegetation and wetlands:

- (a) are not fragmented or reduced in size
- (b) do not need to be cleared as a consequence of subsequent development

PDC 7 Land division should result in allotments of a size suitable for their intended use.

Council Wide Provisions *Orderly and Sustainable Development*

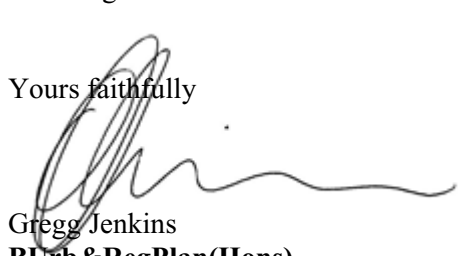
Objective 3 Development that does not jeopardise the continuance of adjoining authorised land uses

PDC 9 Development should take place on land which is suitable for the intended use of that land having regard to the location and condition of that land.

In my opinion the development displays substantial planning merit and warrants the granting of Development Plan consent.

Should you have any queries please contact me at your convenience, otherwise I look forward to receiving Council's favorable feedback.

Yours faithfully



Gregg Jenkins

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Native Vegetation Council



TO: Adelaide Hills Council

FROM: Peter Farmer, Native Vegetation Branch DEW

SUBJECT: Development Application DA 473/D061/20
200 Institute Road Montacute

DATE: 31/03/2021

81-95 Waymouth St
ADELAIDE SA 5000

GPO Box 1047
ADELAIDE SA 5001

Ph| 08 8303 9777

nvc@sa.gov.au

The Native Vegetation Branch (NVB) does not object to the current proposal.

Vegetation

A desktop assessment shows that the subject land in part supports native vegetation consisting of Messmate Stringybark, Cup Gum Woodlands, described as:

- *Eucalyptus obliqua*, *Eucalyptus cosmophylla* low woodland over *Hakea rostrata*, *Leptospermum myrsinoides* tall shrubs over *Lepidosperma semiteres*, *Xanthorrhoea semiplana* ssp. *semiplana*, *Epacris impressa*, +/- *Hibbertia australis* low shrubs over *Platylobium obtusangulum*, *Isopogon ceratophyllus*, +/- *Hibbertia riparia*, +/- *Gonocarpus tetragynus*, +/- *Acrotriche serrulata*.

This vegetation community is mapped as occurring on the south-eastern section of proposed allotment 2 and straddles the proposed boundary between Allotments 1 & 2.

The native vegetation present on the subject land is protected under the *Native Vegetation Act 1991*. Any proposals to clear native vegetation requires the approval of the Native Vegetation Council (NVC) unless it is covered by a specific exemption contained within the *Native Vegetation Regulations 2017*.

Allotment design

The NVC is not generally supportive of proposals that divide remnant patches of native vegetation. Once a new boundary is in place, the native vegetation is put at increased risk of clearance, as landowners are able to clear native vegetation up to 5m either side of a boundary fence if needed for the installation and maintenance of a fence line under *Native Vegetation Regulation 8(14) fence lines* without NVC approval being required. New fence lines require the NVC to be notified prior to establishment.

With regard to this, the NVB is concerned that the section of proposed boundary between allotments 1 & 2 exposes the native vegetation to potential clearance under the Native Vegetation Regulations for a new fence line. It is acknowledged that the proposed boundary realignment appears to aim to realign the shared boundary away from existing buildings and the existing boundary between current allotments 54 & 2 appears not to be fenced. Should the proposed boundary realignment be approved and the boundary between proposed allotment 1 & 2 fenced, similar amounts of vegetation clearance could occur that are already possible along the current shared boundary between allotments 54 & 2. Given that the proposed boundary realignment appears to correct historical aberrations and on balance is

likely to result in similar amounts of vegetation clearance that are already exempt, the NVB does not object to the proposal.

In summary, the NVB does not object to the proposal in its current form and suggests that if the landowners intend to fence the boundary they are made aware of the requirement to notify the NVC prior to establishment of a fence.

(See <https://www.environment.sa.gov.au/topics/native-vegetation/clearing/fences>)

Please contact me if further discussion is needed.

Peter Farmer
Native Vegetation Branch
Department for Environment and Water
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