

**KANGAROO  
ISLAND  
COUNCIL**

## **AGENDA**

### **COUNCIL ASSESSMENT PANEL MEETING**

**1 JULY 2019  
at 13:30pm**

**KANGAROO ISLAND COUNCIL**

**NOTICE** is hereby given that a Development Assessment Panel Meeting is to be held at the **Kangaroo Island Council Chambers, Dauncey Street, Kingscote** on **Monday, 1 July 2019** at 1:30pm.



Greg Georgopoulos  
Acting **Chief Executive Officer**



## **AGENDA**

### 1.0 **APOLOGIES**

Nil

### 2.0 **CONFLICT OF INTEREST DECLARATION**

NIL

### 3.0 **REPRESENTATIONS**

NIL

### 4.0 **CAP MINUTES OF MEETING HELD 1 APRIL 2019 (YELLOW PAGES)**

That the Minutes of the Council Assessment Panel Meeting held on 1 April 2019 be confirmed.

### 5.0 **BUSINESS ARISING FROM MINUTES OF 1 APRIL 2019**

Nil

### 6.0 **DEVELOPMENT SERVICES DEPARTMENT REPORTS**

Chairperson and Panel Members, the following reports are submitted to the 1 July 2019 Council Assessment Panel Meeting.

#### **RECOMMENDATION**

That the Development Services Department Reports be received.

### 7.0 **DEVELOPMENT SERVICES DEPARTMENT APPLICATIONS MARCH - MAY 2019**

Register of Planning and Building applications report tabled for Development Assessment Panel information.

#### **RECOMMENDATION**

That the report detailing applications approved and / or being processed under delegated authority by the Development Services Department be received and noted.

### 8.0 **APPLICATIONS REQUIRING COMMITTEE DECISION**

Individual reports are attached hereabouts for committee decision.

## **ITEM 8.1**

<b>APPLICATION NO.</b>	<b>520/D003/19</b>
<b>DEVELOPMENT DETAILS</b>	<b>Non-Complying Boundary Realignment, 3 Allotment into 3 Allotments, within the Primary Production and Coastal Conservation Zones.</b>
Applicant	Mr. A.L. Willson c/- Weber Frankiw & Associates P/L. 178 Main Road McLaren Vale SA 5171
Owner	Messrs. A.L, K.P. & Ms. G.M. Willson c/- Weber Frankiw & Associates P/L. 178 Main Road McLaren Vale SA 5171
Site Address	Allotments 117 FP180959 Section B HP110800, Allotment 120 FP180962 Hog Bay Road, Hundred of Dudley.
Property Details	Certificate of Title Volume 6128 Folio 742 (Lot 117) Certificate of Title Volume 5807 Folio 768 (Sec B) Certificate of Title Volume 5801 Folio 37 (Lot 120)
Zone	Primary Production Zone & Coastal Conservation Zone, Map KI/15.
Public Notification	Non-Complying, Category 1 No public notification required Pursuant to (Schedule 9 (3)(c)).
Application Date	1 April 2019
Relevant Development Plan	<b>Consolidated 17 September 2015</b>
Department	Development & Environmental Services Aaron Wilksch Manager, Development & Environmental Services
Issues Summary	Non-Complying Development – Delegated Authority to CAP.  Re-alignment will result in two allotments (existing) remaining below the prescribed minimum allotment size.  Coastal Conservation zoned allotment boundaries being manipulated to allow for safe and convenient access, avoiding a coastal gully on the north-eastern corner.

The smaller Primary Production zoned allotment is to be marginally increased in size to incorporate existing buildings & chattels.

The large resulting 203.4 Hectares parcel continues to contain existing farm buildings and the like and continues to represent an appropriate single farm holding.

Note: The realignment of Lot 117 and 120 was formerly considered & approved by Council's DAP at its meeting of 3 November 2014, but was not proceeded with to the stage of issue of Titles. *The former Report is available on KI Council's website.*

## **BACKGROUND**

The application was lodged on 1 April 2014 following preliminary discussions and site inspection with the applicant to discuss the boundary realignments.

The State Planning Commission lodged the development incorrectly as a 'Merit' form of development however has been adjusted to 'Non-Complying' development due to the necessary application of both Primary Production and Coastal Conservation provisions in assessment (Hagger Vs DAC 2006).

The required Statement of Support was provided on 24/5/2019, in accordance with Regulation 17 (1) of the Development Regulations 2008 and under delegated authority, Council's Manager, Development & Environmental Services resolved, to proceed with assessment of the Non-Complying development application under Regulation 17 (3)(b) of the Development Regulations 2008, having had regard to the statement of support and plans submitted.

This application is neither subject to a Statement of Effect or Public Notification as detailed later in this report, and accordingly the application has been processed and prepared for presentation to the Panel.

## **SUBJECT LAND AND LOCALITY**

The subject land in this proposal is identified as Allotment 117 FP180959, Allotment 120 FP180962 and Section B HP110800 Hundred of Dudley, identified in Certificate of Title Volume 6128 Folio 742 (Lot 117) Certificate of Title Volume 5801 Folio 37 (Lot 120) and Certificate of Title Volume 5807 Folio 768 respectively.

The land is situated on the western side of Hog Bay Road, to which both allotments have frontage. Allotment 117 has a secondary frontage along its northern boundary to Buick Road, and Section 8 is served by a Gazetted, but unformed portion of Buick Road, which the constructed road terminates some 1000 metres from the nearest boundary.

The subject land is generally characterised as rural farmland, including the coastal Section B, which appears to also be utilised for livestock grazing. Allotments 117 and 120 contain existing dwellings and farm / domestic buildings.

The land is open and generally cleared of any substantial vegetation excepting some small and isolated patches of native vegetation retained around buildings and boundaries.

The subject land is contained within the Primary Production and Coastal Conservation Zones as delineated in Map KI/15 of the Kangaroo Island Development Plan, and is identified on the following maps & Images:



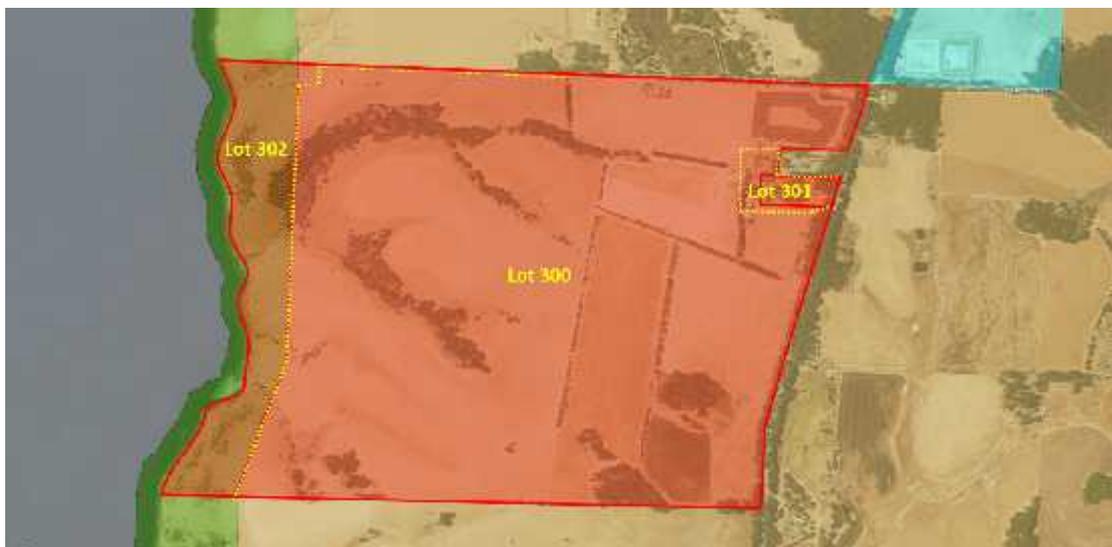
Locality Plan, Location SA Viewer [www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/), locality plan.



Zone Overlay – KIDP 17 September 2015 – Location SA Viewer  
[www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)



Bushfire Risk Overlay – KIDP 17 September 2015 – Location SA Viewer  
[www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)



Detail Plan, Location SA Viewer [www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)

## **PROPOSAL**

The proposed development seeks Development Plan Consent and Land Division Consent for the realignment of the boundaries between existing Section B and Lot 117, on the coastward aspect, to allow more safe and convenient access to the land, by avoiding the steep coastal gully in the north-eastern corner of Section 8, and the boundary shared by Lot 117 and Lot 120, otherwise generally maintaining status quo in respect of land uses with marginal alteration of land areas.

The proposed boundary realignment will establish proposed allotment 301, increased from 1.33 Ha to 3.057 Ha, practically maintaining its frontage to Hog Bay Road.

Proposed allotment 302 will include a realigned portion of land dimensioned 70m x 70m for the purpose of improving safe and convenient vehicular access, increasing from 17.756

The balance of the land, to be held in proposed allotment 300 is to contain an existing (recently constructed) dwelling, accessed from Buick Road, farm sheds associated with the farm land and will retain the remaining 203.4 Ha of arable farm land having been only reduced by 2.028 Ha as a result of the realignments.

A plan of the proposed boundary realignment and the accompanying statement of support are included in **Attachment A**.

## **DETERMINATION OF APPLICATION, PUBLIC NOTIFICATION & OTHER STATUTORY REQUIREMENTS**

### **Development Classification:**

The Kangaroo Island Development Plan, Consolidated 17 February 2015, Map KI/15 indicates that the land subject to this application lies within both the Primary Production and Coastal Conservation zones.

Where land parcels situated across two or more planning policy zones are being divided, both sets of zone policies becomes relevant, if either of the zone provisions cause the application to be 'Non-Complying', then the application must be processed as Non-Complying Development, as was determined in the case of Hagger vs The Development Assessment Commission, SAERDC 56 (2006).

The Primary Production Zone Non-Complying list details that land division is a Non-Complying form of development except where either of the following apply:

- (a) each allotments is at least 100 Ha in area and has a frontage to a public road of greater than 200 metres.

Proposed Lot 201 fails to achieve the minimum site area and the minimum frontage, which is not inconsistent with its current existing arrangement. Proposed Lot 203 also fails to achieve the minimum site area, but does exceed the minimum prescribed frontage, albeit to an un-made portion of the Gazetted Road.

The Coastal Conservation Zone Non-Complying list details that land division is a Non-Complying form of development except where either of the following apply:

- (a) no additional allotments are created wholly or partly within the zone
- (b) it results in allotments of greater than 2 hectares
- (c) there is no increase in the number of allotments with frontage or direct access to the coast.

The proposed allotments avoids all of the Coastal Conservation zone non-complying triggers, notwithstanding the application is determined to constitute 'Non-Complying' development upon its failure to accord points (a) of the Primary Production zone due to proposed allotments 301 and 302 failing to meet the minimum allotment area or public road frontage requirements.

On 24 May 2019 it was determined that the proposal demonstrated adequate merit to proceed, on the basis that:

- ) There are apparent practical purposes for the realignment – i.e. accessibility to proposed Lot 302, and
- ) Minimal effect of the realignment of boundaries associated with increasing the size of proposed Lot 301.

The proposal is for the realignment of boundaries does not cause any further fragmentation of primary production land.

Accordingly it was resolved to proceed with a full assessment of the application pursuant to Regulation 17 (3)(b).

**Statement of Effect:**

Pursuant to Regulation 17 (6) (c) a Statement of Effect (SoE) is not required for this application as where the development consists (wholly or substantially) of:

*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.*

**Categorisation:**

The proposed development constitutes a Category 1 form of development, pursuant to Schedule 9 (3)(c) of the *Development Regulations 2008*, which captures this proposal as:

*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, no public notification was undertaken.

**REFERRALS AND AGENCY CONSULTATION**

There was no mandatory referral to the Department of Planning, Transport and Infrastructure (Transport) undertaken pursuant to Schedule 8 of the *Development Regulations 2008* as development does not alter the nature or volume of traffic to Lot 201 from the Secondary Arterial Hog Bay road access.

Informal referral was forwarded to the SA Water Corporation, via the EDALA land division lodgement system.

**SA Water Corporation:**

The SA Water Corporation provided a no services / no requirements response on 24 May 2019.

**State Planning Commission:**

The State Planning Commission provided its consultation report on 17 June 2019, requiring by condition pursuant to sec 33(1):

- 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 Development Assessment Commission for Land Division Certificate purposes.

State Agency responses received via EDALA are contained in **Attachment B.**

**DEVELOPMENT PLAN & POLICY**

The proposal is presented to the Panel in accordance with Council Delegations – for a decision on a Non-Complying form of Development.

The following Objectives and Principles of Development Control (PDC) of the Kangaroo Island Development Plan – Consolidated 20 February 2014, are considered relevant to the assessment of this application.

Primary Production Zone

Objectives: 2, 4, 6 & Desired Character Statement

PDC's: 2, 20 & 21

Coastal Conservation Zone

Objectives: 2, 3 & Desired Character Statement

PDC: 2 & 13

Land Division

Objective: 2 and 4

PDC's: 18 & 19

Orderly and Sustainable Development

Objective: 3

PDC's: 1 & 2

## **PLANNING ASSESSMENT**

***PriPro Objective 2:** Economically productive, efficient and environmentally sustainable primary production*

***PriPro Objective 4:** Protection of primary production from encroachment by incompatible land uses and protection of scenic qualities of rural landscapes.*

***Orderly & Sustainable Dev. Objective 3:** Development that does not jeopardise the continuance of adjoining authorised land uses.*

***Orderly & Sustainable Dev. PDC 1:** Development should not prejudice the development of a zone for its intended purpose.*

***Orderly & Sustainable Dev. PDC 2:** Land outside of townships and settlements should primarily be used for primary production and conservation purposes.*

This proposal purports the adjustment of allotment boundaries within the Primary Production zone between Lots 117 and 120 and across the Primary production and Coastal Conservation zone boundary shared by Section B and Lot 117.

Generally the proposal maintains allotments of a size and composition which retains 'status quo'. The larger of the allotments is retained at a size and scale that purports ongoing primary production capabilities. The adjusted boundaries associated with the smaller Primary Production allotment has marginally enlarged the land parcel from 1.33 Ha to 3.057 Ha, largely based around the established curtilage of the land and associated chattels to be included with the existing dwelling on that land.

The Coastal allotment is adjusted slightly to afford the land more safe and convenient access by avoiding the steep coastal gully in the north-eastern corner of the land. Proposed Lot 302 is also subject to a new access easement over proposed lot 300 to provide a functional link from the allotment to the terminal end of Buick Rd, as the allotment is not directly accessible by the existing un-made road reserve.

Each resulting allotment is capable of carrying on their existing land uses. The portion of existing allotment 117 that is being re-aligned with Lot 120 has not substantially contributed to the operation of the farm land in the current arrangement.

Existing buildings associated with the farming activities are to be retained within proposed allotment 300. The smaller allotment is intended to continue its existing function, which is purported to contain mechanical repairs type works, which had spilled over into Lot 117 and is now to be consolidated in one allotment in this proposal.

The proposal is considered to be orderly and is unlikely to jeopardise the other's existence, nor become incompatible with each other, again citing the existing uses that will prevail in the same manner as they do currently.

***PriPro Objective 6:*** Development that contributes to the desired character of the zone.

***Pri Pro Desired Character Statement:***

***Para 1:*** The farming and rural character of Kangaroo Island is a feature which is a strong economic and tourism asset. It is envisaged that development within the zone will reinforce these roles. Inappropriate development, unsightly structures, indiscriminate land fragmentation for purposes other than primary production and poor land management will quickly erode its economic potential and special character. As such, careful control over the nature, integrity and siting of development needs to occur.

***Para 6:*** The Island's land ownership pattern generally reflects relatively large holdings; pressure to create smaller titles in response to genuine value added economic opportunities directly associated with primary production is likely. It is envisaged that the creation of small allotments will be linked to outcomes which reinforce economic viability and environmental improvement with regard to primary production and which is sensitively designed and sited in keeping with the areas natural and rural character. Land fragmentation for the purposes of rural living is not contemplated within the zone.

***CstCon Objective 3:*** Development that contributes to the desired character of the zone.

***CstCon Desired Character Statement:***

***Para 1:*** The zone defines the coastal areas of high landscape or conservation value and incorporates policy to ensure the preservation of the coastal landscape resource.

***Para 2:*** the coastal environment plays an important role in Kangaroo Island's economy and the tourist attraction provided by the coastal environment, coastal scenery and abundant wildlife is expected to see growth in visitor numbers that will need to be appropriately managed and catered for. The provision of facilities, including tourist accommodation and recreational facilities, may be established in the zone provided they are sited and designed in a manner that is subservient to the natural and coastal environment and adverse impact on natural features, landscapes, habitats and cultural assets is minimised.

***Para 3:*** The preference is that tourism development, including any associated access driveways and ancillary structures, be located on cleared areas or areas where environmental improvements can be achieved. Development should be located away from fragile coastal environments and significant habitat or breeding grounds.

The proposed development is not discussed explicitly in the Desired Character Statement, it can be ascertained that the minor nature of the realignment, excising a total of 2.28 Ha of land from the larger farming allotment, in areas of the land which do not contribute in any substance the primary production use of the land. The proposal is considered to be of negligible consequence to the ongoing use of land in

both zones. The realignment of the coastal allotment, Lot 302, creating safe & convenient access, also seeks to support further use of that land in accordance with the desired character & envisaged uses for the Coastal Conservation zone.

The boundary realignment does not initiate any further development of land, nor any other adverse effect to the land or the landscape.

**PriPro PDC 2:** *Development listed as non-complying is generally inappropriate and not acceptable unless it can be demonstrated that it does not undermine the objectives and principles of the Development Plan.*

**CstCon PDC 2:** *Development listed as non-complying is generally inappropriate and not acceptable unless it can be demonstrated that it does not undermine the objectives and principles of the Development Plan.*

**PriPro PDC 20:** *Land division, including boundary realignments, should only occur where the allotments created have a minimum area of 100 hectares.*

**PriPro PDC 21:** *Land divisions, including boundary realignments, which proposes the creation of allotments of an area less than 100 hectares, should only be undertaken where:*

- (a) it can be demonstrated that a significant and genuine commitment to the land uses on the allotments to be created has occurred or will occur*
- (b) the land uses proposed for each allotment will result in genuine value added economic opportunities directly associated with primary production*
- (c) it supports outcomes which reinforce economic productivity and environmental improvement with regard to primary production*
- (d) a sustainable water supply of sufficient quantity and quality is available to supply the land uses*
- (e) the proposed allotment areas are capable of supporting the land uses with reasonable investment and management inputs*
- (f) the land uses will be compatible with adjacent land uses*
- (g) the arrangement of the allotments has taken into account an assessment of the land with respect to land capability, soil types, erosion control, rockiness, topography, watercourses, runoff, wind conditions, vegetation and rural land use classification*
- (h) the arrangement of the allotments and land uses will not result in adverse environmental impacts, including to water resources and vegetation.*

**CstCon PDC 13:** *Land should not be divided except where:*

- (a) no additional allotments are created wholly or partly within the zone*
- (b) there is no increase in the number of allotments with direct access to the coast or a reserve including by creation of land under rights of way or community titles.*

The proposal is non-complying by virtue that proposed allotments 302 and 301 remain below the prescribed minimum 100 Ha allotment size specified by the Primary Production zone of the Kangaroo Island Development Plan.

Proposed allotment 302 is almost exclusively within Coastal Conservation zoning, the realignment extending into the Primary production zone requires consideration of that zone's land division principles, which causes it to become non-complying through its pragmatic pursuit of safe and convenient access to the land. The proposal meets or exceeds all of the non-complying triggers in the Coastal Conservation zone & is not considered to be prejudicial to either set of provisions.

The land subject to the realignment between proposed lots 300 and 301 alters, only marginally, the area retained in proposed lot 300 and therefore no appreciable reduction in the capacity of proposed of proposed allotment 300 for supporting

ongoing primary production activities and in this respect, the proposal accords the Development Plan.

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

**Land Division (Rural Areas) PDC 18:** *Rural land should not be divided if the resulting allotments would be of a size and configuration likely to impede the efficient use of rural land for any of the following:*

- (a) primary production*
- (b) value adding industries related to primary production.*
- (c) protection of natural resources.*

**Land Division (Rural Areas) PDC 19:** *Rural land should not be divided where new allotments would result in any of the following:*

- (a) fragmentation of productive primary production land.*
- (d) prejudice against the proper and orderly development of townships.*

The proposed development neither fragments nor compromises either allotments intended or ongoing uses of land, but supports ongoing land uses as well as enabling access & new uses or development of the Coastal Conservation zoned land.

As foreshadowed throughout this report, the proposal is, not considered disorderly, given its relevance to existing composition of allotments and its negligible impact to the remaining farming land.

The resulting arrangement of titles contributes to intended land use opportunities and character, and is therefore considered to represent a relatively minor form of boundary realignment.

## **CONCLUSION**

The proposed realignment of boundaries of Lot 117 FP180959, Section B HP110800 and Lot 120 FP180962 in the Hundred of Dudley is not considered to prejudice or undermine the objectives of the Primary Production zone of the Coastal Conservation zone, or compromise the intent of the Development Plan, it is therefore considered to be in reasonable accord with the intent of the Kangaroo Island Development Plan.

## **RECOMMENDATION**

The Development Assessment Panel resolve (i) that the development application is **not at serious variance** with the Kangaroo Island Development Plan consolidated 17 September 2015, and (ii) the panel resolve to **approve** Land Division Application 520/D003/19 for realignment of 3 allotments into 3 allotments at Lot 117 FP180959 Section B HP110800 and Lot 120 FP180962 in the Hundred of Dudley by Mr. A.L. Willson c/- Weber Frankiw & Associates P/L. and to proceed to seek concurrence of the Development Assessment Commission (DAC) subject to (but not limited) to the following conditions of consent:

Kangaroo Island Council Planning & Land Division Conditions:

1. The Development herein approved must, except as varied by the conditions of consent, be carried out in accordance with the approved plans prepared by

Weber Frankiw & Associates, marked 'CAD Ref:366202div' 'Amended Plan', and dated 22-05-19, and details to the satisfaction of Council.

Note -

You have a right of appeal against the conditions which have been imposed on this Development Plan consent or Development Approval.

Such an appeal must be lodged at the Environment, Resources and Development Court within two months of the day on which you receive this notice or such longer time as the Court may allow.

Please contact the Court if you wish to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, Ph.: 8204 0300.

Note -

You are further advised that Council has no objections to the Development Assessment Commission issuing the Certificate of Approval.

State Planning Commission – Land Division Conditions:

2. 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 Development Assessment Commission for Land Division Certificate purposes.

## **ITEM 8.2**

<b>APPLICATION NO.</b>	<b>520/D008/18</b>
<b>DEVELOPMENT DETAILS</b>	<b>Non-Complying Land Division, 1 Allotment (comprising two Pieces) into 2 Allotments, within the Primary Production and Coastal Conservation Zones.</b>
Applicant	Ms. L. Crago c/- Weber Frankiw & Associates P/L. 178 Main Road McLaren Vale SA 5171
Owner	Ms. L. Crago c/- Weber Frankiw & Associates P/L. 178 Main Road McLaren Vale SA 5171
Site Address	Section 306 HP110200, Hog Bay Road, Hundred of Dudley.
Property Details	Certificate of Title Volume 5831 Folio 955
Zone	Primary Production Zone & Coastal Conservation Zone, Map KI/14.
Public Notification	Non-Complying, Category 3 Category 3 full Public Notification undertaken – Four (4) ‘in support’ Representations received.
Application Date	6 June 2018
Relevant Development Plan	<b>Consolidated 17 September 2015</b>
Department	Development & Environmental Services Aaron Wilksch Manager, Development & Environmental Services
Issues Summary	Non-Complying Development – Delegated Authority to CAP.  Division will result in two allotments which remain below the prescribed minimum allotment size under the Primary Production zone provisions.  Separated allotment to be retained within the Coastal Conservation zone may facilitate pursuit of envisaged land uses or activities on that land once separated from the Primary Production zoned land.

## **BACKGROUND**

The application was lodged on 6 June 2018 following preliminary discussions with the applicant to discuss the prospect of division and relevance to zones and the

historical realignment of the Hog Bay Road thoroughfare which created the physical division of the two pieces of Section 306.

The State Planning Commission lodged the development incorrectly as a 'Merit' form of development however has been adjusted to 'Non-Complying' development due to the necessary application of both Primary Production and Coastal Conservation provisions in assessment (Hagger Vs DAC 2006).

The required Statement of Support was provided on 17/8/2018, in accordance with Regulation 17 (1) of the Development Regulations 2008 and under delegated authority, Council's Manager, Development & Environmental Services resolved, to proceed with assessment of the Non-Complying development application under Regulation 17 (3)(b) of the Development Regulations 2008, having had regard to the statement of support and plans submitted.

The applicant has submitted the required Statement of Effect, pursuant to Regulation 17 (4) and the application has subsequently proceeded through Public Notification stage as detailed later in this report, and accordingly the application has been prepared for presentation to the Panel for decision.

### **SUBJECT LAND AND LOCALITY**

The subject land in this proposal is identified as Section 306 HP110200 Hundred of Dudley, identified in Certificate of Title Volume 5831 Folio 955.

The land is situated on both eastern and western sides of Hog Bay Road, which by way of the original gazetted alignment of the highway and the actual constructed alignment of the highway, has caused the parcel to be split into two pieces.

The eastern (larger piece) of the land is developed with a private dwelling / accommodation and domestic sheds, and is also occupied with hobby scale farming activities. The western (smaller piece) of the land is vacant, exhibiting old fencing, likely associated with historic grazing of the land, which has been predominantly cleared.

The subject land can be observed as having two distinct characteristics, being a strongly rural / bushland character on the eastern side of Hog Bay Road, which does not attain the coastal land characteristics of the western piece of land, which it shares with much of the immediate border of Pelican lagoon.

Much of the land is open and cleared of any substantial vegetation, with mallee scrub land proliferating throughout the middle of the eastern piece of land.

The subject land is contained within the Primary Production and Coastal Conservation Zones as delineated in Map KI/14 of the Kangaroo Island Development Plan, and is identified on the following maps & Images:



Locality Plan, Location SA Viewer [www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/), locality plan.



Zone Overlay – KIDP 17 September 2015 – Location SA Viewer  
[www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)



Bushfire Risk Overlay – KIDP 17 September 2015 – Location SA Viewer  
[www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)



Detail Plan, Location SA Viewer [www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)



Detail Plan, Location SA Viewer [www.location.sa.gov.au/viewer/](http://www.location.sa.gov.au/viewer/)

## **PROPOSAL**

The proposed development seeks Development Plan Consent and Land Division Consent, simply for the separation of the eastern piece of land from the western piece of the land, as existing, currently separated by Hog Bay Road.

The division would maintain status quo in respect of existing land uses, and is inconsequential in terms of land areas due to the existing physical separation of the two pieces.

The resulting western (coastal) allotment could accommodate activities which are in accordance with the Coastal Conservation zones pursuits (note dimensions shown above) and avoid potential for activities such as hobby farming as occurs on the eastern piece of allotment, from impacting upon the more fragile coastal environment on the western piece side of Hog Bay Road.

A discrepancy exists between the Cadastre of the existing allotment (shown above as a red boundary line) and the surveyed boundary in the application plans (yellow dashed boundary), so for the purpose of this assessment, the smaller Lot dimensions have been considered.

A plan of the proposed boundary realignment and the accompanying statement of support are included in **Attachment A**.

## **DETERMINATION OF APPLICATION, PUBLIC NOTIFICATION & OTHER STATUTORY REQUIREMENTS**

### **Development Classification:**

The Kangaroo Island Development Plan, Consolidated 17 February 2015, Map KI/14 indicates that the land subject to this application lies within both the Primary Production and Coastal Conservation zones.

Where land parcels situated across two or more planning policy zones are being divided, both sets of zone policies become relevant, if either of the zone provisions cause the application to be 'Non-Complying', then the application must be processed as Non-Complying Development, as was determined in the case of Hagger vs The Development Assessment Commission, SAERDC 56 (2006).

The Primary Production Zone Non-Complying list details that land division is a Non-Complying form of development except where either of the following apply:

- (a) each allotments is at least 100 Ha in area and has a frontage to a public road of greater than 200 metres.

Both of the proposed allotments fail to achieve the minimum site area, which, even though not inconsistent with its current arrangement causes the application to be 'Non-Complying'.

The Coastal Conservation Zone Non-Complying list details that land division is a Non-Complying form of development except where either of the following apply:

- (a) no additional allotments are created wholly or partly within the zone
- (b) it results in allotments of greater than 2 hectares
- (c) there is no increase in the number of allotments with frontage or direct access to the coast.

The proposed division avoids all of the Coastal Conservation zone non-complying triggers.

The application is accordingly determined to constitute 'Non-Complying' development upon its failure to accord points (a) of the Primary Production zone.

On 21 August 2019 it was determined that the proposal demonstrated adequate merit to proceed, on the basis that:

- ) the proposed land division crosses two (2) zone boundaries and accordingly, is subject to separate and differing planning policy – The proposal warrants full consideration on the basis that freeing the pieces of land from one another and securing them in their own respective zones or arrangements may produce positive planning outcomes.

The proposal is for the realignment of boundaries does not cause any further fragmentation of primary production zoned land and does not initiate any alteration to the existing use of Coastal Conservation zoned land.

Accordingly it was resolved to proceed with a full assessment of the application pursuant to Regulation 17 (3)(b).

**Statement of Effect:**

Pursuant to Regulation 17 (4) and (5) a Statement of Effect (SoE) has been provided for the application.

The SoE sets out to address some 70 provisions of the Kangaroo Island Development Plan relative to the land division as well as the potential future uses of the land and its surrounding environment, as well as addressing the Social, Economic and Environmental effect of the proposal.

Key matters addressed in the SoE demonstrate that the division of the land will leave the existing use of the Primary Production zoned land (Proposed Lot 51) in a situation which generally accords the intent of the zone, whilst separating the Coastal Conservation zone from association with the hobby farming activities, potentially to pursue other activities or land uses which pursue outcomes according that zone.

Ostensibly having proposed Lot 50 remain attached to the balance of the land is likely to result in incremental deterioration through lower levels of land management than what would otherwise occur if held separately and were utilised in a way envisaged by the Kangaroo Island Development Plan.

The land is readily accessible by way of existing roads, however any future use of Hog Bay Road as an access point is to be avoided, as represented by the Reserve Lot 52 to formally restrict access.

The land is practically devoid of any substantial vegetation and in this respect could be conducive to development without the challenges of vegetation clearance and bushfire risk which is often encountered in coastal areas.

Social, Economic & Environmental Effect are agreeable with the Development Plan and may contribute to economic and environmental benefit to the Island and the locality.

Resultant Lot 50 could receive environmental improvements which would support the somewhat degraded existing state of the land and could support development of tourist accommodation in the locality which would interface with the exceptional natural environment of Pelican Lagoon including birdlife and wildlife, or the nearby Kangaroo Island Links development.

Although the land is significantly small in its depth, and therefore its separation from Hog Bay road, is at a premium, the land could support high quality / low impact tourism development as highlighted in the Coastal Conservation Desired Character Statement and discussed in the Kangaroo Island Development Plan, such as *hiker's huts* or *cabins* which are readily accessible by being proximate to the main transport route linking the Dudley Peninsula to the rest of Kangaroo Island.

**Categorisation:**

The proposed development constitutes a 'default' Category 3 form of development, pursuant to Section 38 of the Act as it does not fall within the parameters of Schedule 9 Part 1 or Part 2 of the *Development Regulations 2008*.

Accordingly, full public notification was undertaken between the dates of 11 April and 1 May 2019 in accordance with the Act.

Four (4) representations were received, all were 'in support' of the proposal.

Representations received through the Public Notification process are included in **Attachment B**.

**REFERRALS AND AGENCY CONSULTATION**

Mandatory referral to the Department of Planning, Transport and Infrastructure (Transport) was undertaken pursuant to Schedule 8 of the Development Regulations 2008 as allotments front the State administered Hog Bay Road.

Informal referral was forwarded to the SA Water Corporation, via the EDALA land division lodgement system.

**DPTI Transport:**

Provided its referral response on 17 July 2018, indicating its support for the 'buffer reserve to be established on Lot 50 to restrict access, and has provided a 'No Objection ' response subject to conditions:

- All Access shall be gained via the abutting local road network only. No direct access onto Hog Bay Road shall be permitted.
  
- Stormwater run-off shall be collected on-site and discharged without jeopardising the safety and integrity of Hog Bay Road. Any alterations to the Hog Bay Road drainage infrastructure required to facilitate this shall be at the applicant's expense.

**SA Water Corporation:**

The SA Water Corporation provided a no services / no requirements response on 26 June 2018.

**Development Assessment Commission:**

The Development Assessment Commission provided its consultation report on 19 July 2018 (amended to reflect Non-complying status on 20 July 2019), requiring by condition pursuant to sec 33(1):

- 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 Development Assessment Commission for Land Division Certificate purposes.

State Agency responses received via EDALA are contained in **Attachment C**.

**DEVELOPMENT PLAN & POLICY**

The proposal is presented to the Panel in accordance with Council Delegations – for a decision on a Non-Complying form of Development.

The following Objectives and Principles of Development Control (PDC) of the Kangaroo Island Development Plan – Consolidated 20 February 2014, are considered relevant to the assessment of this application.

Primary Production Zone

Objectives: 2, 4, 6 & Desired Character Statement

PDC's: 2, 20 & 21

Coastal Conservation Zone

Objectives: 2, 3 & Desired Character Statement

PDC: 1, 2 & 13

Land Division

Objective: 2 and 4

PDC's: 18 & 19

Orderly and Sustainable Development

Objective: 3

PDC's: 1 & 2

## **PLANNING ASSESSMENT**

***PriPro Objective 2:** Economically productive, efficient and environmentally sustainable primary production*

***PriPro Objective 4:** Protection of primary production from encroachment by incompatible land uses and protection of scenic qualities of rural landscapes.*

***Orderly & Sustainable Dev. Objective 3:** Development that does not jeopardise the continuance of adjoining authorised land uses.*

***Orderly & Sustainable Dev. PDC 1:** Development should not prejudice the development of a zone for its intended purpose.*

***Orderly & Sustainable Dev. PDC 2:** Land outside of townships and settlements should primarily be used for primary production and conservation purposes.*

This proposal purports the separation of the Primary production and Coastal Conservation zoned pieces of land to become administratively independent of each other being divided to correspond with the existing physical separation created by the Hog Bay road alignment.

The proposal maintains allotments on each side of the road which realistically maintains 'status quo'. The larger eastern allotment is to be retained for its existing & ongoing primary production / hobby farming type capabilities – for which it has ostensibly reached its maximum sustainable use in the current pursuits with dairy / meat goats and fowl. This land corresponds with the desired character of the zone and due to the position and composition of the land, is rather innocuous – the land also blends well into the native bushland surroundings.

The proposed division neither jeopardises the continuance of land uses or establishment of new land uses intended for each respective zone. The proposal is

considered to be orderly in an administrative and in a practical sense to ensure existing and future uses of each resulting land parcel can accord their own respective zone's intent into the future.

**PriPro Objective 6:** *Development that contributes to the desired character of the zone.*

**Pri Pro Desired Character Statement:**

**Para 1:** *The farming and rural character of Kangaroo Island is a feature which is a strong economic and tourism asset. It is envisaged that development within the zone will reinforce these roles. Inappropriate development, unsightly structures, indiscriminate land fragmentation for purposes other than primary production and poor land management will quickly erode its economic potential and special character. As such, careful control over the nature, integrity and siting of development needs to occur.*

**Para 6:** *The Island's land ownership pattern generally reflects relatively large holdings; pressure to create smaller titles in response to genuine value added economic opportunities directly associated with primary production is likely. It is envisaged that the creation of small allotments will be linked to outcomes which reinforce economic viability and environmental improvement with regard to primary production and which is sensitively designed and sited in keeping with the areas natural and rural character. Land fragmentation for the purposes of rural living is not contemplated within the zone.*

**CstCon Objective 3:** *Development that contributes to the desired character of the zone.*

**CstCon Desired Character Statement:**

**Para 1:** *The zone defines the coastal areas of high landscape or conservation value and incorporates policy to ensure the preservation of the coastal landscape resource.*

**Para 2:** *the coastal environment plays an important role in Kangaroo Island's economy and the tourist attraction provided by the coastal environment, coastal scenery and abundant wildlife is expected to see growth in visitor numbers that will need to be appropriately managed and catered for. The provision of facilities, including tourist accommodation and recreational facilities, may be established in the zone provided they are sited and designed in a manner that is subservient to the natural and coastal environment and adverse impact on natural features, landscapes, habitats and cultural assets is minimised.*

**Para 3:** *The preference is that tourism development, including any associated access driveways and ancillary structures, be located on cleared areas or areas where environmental improvements can be achieved. Development should be located away from fragile coastal environments and significant habitat or breeding grounds.*

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

- ) *coastal protection works*
- ) *conservation works*
- ) *interpretive signage and facilities*
- ) *tourism/visitor facilities*
- ) *tourist accommodation*

Land division is not discussed explicitly in the Desired Character Statements, it can be ascertained that the use of the larger eastern allotment strongly accords the desired character of the zone, both in terms of its land uses and by way of its innocuous visual nature, insofar that it is not obvious from public outlook and therefore continues to exhibit a reasonably natural surrounding environment when observed from areas of public outlook.

The boundary realignment does not initiate any further development of land, nor any other adverse effect to the land or the landscape. And in this respect the proposal is not at any odds with the desired character statement for the Coastal Conservation zone – the land will exist in a state that continues to support uninterrupted outlook over coastal areas, specifically the furthest inshore reaches of the Pelican Lagoon marine reserve and its surrounding environment.

The proposed development is also capable of activating unique development opportunities within the Coastal Conservation zoned land such as tourist accommodation, which also strongly accord the desired character and envisaged forms of development for the zone. These potentials would not likely be explored if the land remained connected to the Primary Production zone.

Conversely, the coastal parcel remaining attached to the Primary production land and being utilised for grazing purposes would be prejudicial to the coastal environment, therefore it is apparent that far better land management outcomes can be achieved through dividing the land.

**PriPro PDC 2:** *Development listed as non-complying is generally inappropriate and not acceptable unless it can be demonstrated that it does not undermine the objectives and principles of the Development Plan.*

**CstCon PDC 2:** *Development listed as non-complying is generally inappropriate and not acceptable unless it can be demonstrated that it does not undermine the objectives and principles of the Development Plan.*

**PriPro PDC 20:** *Land division, including boundary realignments, should only occur where the allotments created have a minimum area of 100 hectares.*

**PriPro PDC 21:** *Land divisions, including boundary realignments, which proposes the creation of allotments of an area less than 100 hectares, should only be undertaken where:*

- (a) it can be demonstrated that a significant and genuine commitment to the land uses on the allotments to be created has occurred or will occur*
- (b) the land uses proposed for each allotment will result in genuine value added economic opportunities directly associated with primary production*
- (c) it supports outcomes which reinforce economic productivity and environmental improvement with regard to primary production*
- (d) a sustainable water supply of sufficient quantity and quality is available to supply the land uses*
- (e) the proposed allotment areas are capable of supporting the land uses with reasonable investment and management inputs*
- (f) the land uses will be compatible with adjacent land uses*
- (g) the arrangement of the allotments has taken into account an assessment of the land with respect to land capability, soil types, erosion control, rockiness, topography, watercourses, runoff, wind conditions, vegetation and rural land use classification*
- (h) the arrangement of the allotments and land uses will not result in adverse environmental impacts, including to water resources and vegetation.*

**CstCon PDC 13:** *Land should not be divided except where:*

- (a) no additional allotments are created wholly or partly within the zone*
- (b) there is no increase in the number of allotments with direct access to the coast or a reserve including by creation of land under rights of way or community titles.*

The proposed development is captured as 'non-complying', only by virtue that proposed allotments remain below the prescribed minimum 100 Ha allotment size specified by the Primary Production zone of the Kangaroo Island Development Plan. The division, in separating the western, coastal piece of land can be viewed as

having no appreciable impact upon the Primary Production zoned piece of land, and as such becomes somewhat irrelevant to the assessment of the proposal.

Proposed allotment 50 will be retained exclusively within Coastal Conservation zoning. The proposal meets or exceeds all of the non-complying triggers in the Coastal Conservation zone, and if not for its connection to Primary Production zoned land, could lie independently, 'as existing' without being prejudicial to the Coastal Conservation provisions.

The proposal does not create any additional allotments within the Coastal Conservation zone. The current section of land lies partly within the Coastal Conservation zone, and comparably, the result of the land division would see one allotment exist wholly within that zone. No further fragmentation or proliferation of allotments occurs as a result.

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

***Land Division (Rural Areas) PDC 18:*** Rural land should not be divided if the resulting allotments would be of a size and configuration likely to impede the efficient use of rural land for any of the following:

- (a) primary production*
- (b) value adding industries related to primary production.*
- (c) protection of natural resources.*

***Land Division (Rural Areas) PDC 19:*** Rural land should not be divided where new allotments would result in any of the following:

- (a) fragmentation of productive primary production land.*
- (d) prejudice against the proper and orderly development of townships.*

As foreshadowed throughout this report, the proposal is, not considered disorderly, given the existing composition of allotments being physically separated by the original gazetted alignment of the Hog Bay road, and its actual constructed alignment of the road.

Also foreshadowed is the prospect of the excised coastal land being utilised for desirable and envisaged uses such as tourist accommodation. The commonly held belief is that development of tourism orientated land uses results in higher levels of land management or improvement in order to preserve higher level amenity and appearance for guest experiences.

The separation of the two parcels proposed and the prospect of future development of the land for tourism purposes capitalising on the surrounding environment or other surrounding tourism interests represents positive economic and environmental outcomes.

## **CONCLUSION**

The proposed land division at Section 306 HP110200 in the Hundred of Dudley is not considered to prejudice or undermine the objectives of the Primary Production zone or the Coastal Conservation zone, or compromise the intent of the Development Plan, it is therefore considered to be in reasonable accord with the intent of the Kangaroo Island Development Plan.

## **RECOMMENDATION**

The Development Assessment Panel resolve (i) that the development application is **not at serious variance** with the Kangaroo Island Development Plan consolidated 17 September 2015, and (ii) the panel resolve to **approve** Land Division Application 520/D008/18 for the division of 1 allotment comprising two pieces into 2 allotments at Section 306 HP110200 Hog Bay road in the Hundred of Dudley by Ms. L. Crago c/- Weber Frankiw & Associates P/L. and to proceed to seek concurrence of the Development Assessment Commission (DAC) subject to (but not limited) to the following conditions of consent:

Kangaroo Island Council Planning & Land Division Conditions:

1. The Development herein approved must, except as varied by the conditions of consent, be carried out in accordance with the approved plans prepared by Weber Frankiw & Associates, marked 'CAD Ref:187213div' and details to the satisfaction of Council.
2. The connection of driveways to the existing carriageway to be undertaken to the satisfaction of Council's Technical Services Department Manager, with the cost of all work being borne by the applicant.
3. The discrepancy between the proposal survey plan and the existing LTO cadastre for CT5831/955 relevant to the boundaries of the western piece of land shall be confirmed accurate prior to Council issuing CoA clearance of the Final Plan.

Note -

You have a right of appeal against the conditions which have been imposed on this Development Plan consent or Development Approval.

Such an appeal must be lodged at the Environment, Resources and Development Court within two months of the day on which you receive this notice or such longer time as the Court may allow.

Please contact the Court if you wish to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, Ph.: 8204 0300.

Note -

You are further advised that Council has no objections to the Development Assessment Commission issuing the Certificate of Approval.

Department of Planning Transport & Infrastructure (DPTI Transport) Conditions:

4. All Access shall be gained via the abutting local road network only. No direct access onto Hog Bay Road shall be permitted.
5. Stormwater run-off shall be collected on-site and discharged without jeopardising the safety and integrity of Hog Bay Road. Any alterations to the Hog Bay Road drainage infrastructure required to facilitate this shall be at the applicant's expense.

State Planning Commission – Land Division Conditions:

6. 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 Development Assessment Commission for Land Division Certificate purposes.

9.0 **LAND DIVISION APPLICATIONS – APPROVED UNDER DELEGATED  
AUTHORITY (GREEN PAGES)**

**MARCH – MAY 2019**

10.0 **GENERAL BUSINESS**

11.1 **CONFIDENTIAL REPORTS**

**NOTE** – Pursuant to Section 56A (12) of the Development Act 1993 the Panel reserve the right to move proceedings ‘in camera’ for deliberations of Development Applications to be considered under Section 11.0 of this Agenda.

12.0 **CLOSURE**