



**KANGAROO
ISLAND
COUNCIL**

AGENDA

COUNCIL ASSESSMENT PANEL MEETING

**4 FEBRUARY 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, 4 February 2019** at 1:30pm.



Andrew Boardman
Chief Executive Officer



AGENDA

1.0 **APOLOGIES**

NIL

2.0 **CONFLICT OF INTEREST DECLARATION**

NIL

3.0 **REPRESENTATIONS**

DA 520/068/18 - Julie Lewis or Matthew King (URPS)
DA 520/068/18 - Ralph Giancola

4.0 **CAP MINUTES OF MEETING HELD 17 DECEMBER 2018 (YELLOW PAGES)**

That the Minutes of the Council Assessment Panel Meeting held on 17 December 2018 be confirmed.

5.0 **BUSINESS ARISING FROM MINUTES OF 17 DECEMBER 2018**

Nil

6.0 **DEVELOPMENT SERVICES DEPARTMENT REPORTS**

Chairperson and Panel Members, the following reports are submitted to the 4 February 2019 Council Assessment Panel Meeting.

RECOMMENDATION

That the Development Services Department Reports be received.

7.0 **DEVELOPMENT SERVICES DEPARTMENT APPLICATIONS DECEMBER 2018**

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

APPLICATION NO.	520/134/18
DEVELOPMENT DETAILS	Establishment of a Domestic Garage / Outbuilding (associated with existing residential dwelling and garaging) within the Coastal Conservation Zone.
Applicant	Mr. Paul Frank Berden 11 Mellville Track Cygnet River SA 5223
Owner	Mr. Andrew Nehme 2 Barnsbury Road Deepdene VIC 3103
Site Address	Section 243 HP110800, 137 Bates Road, Hundred of Menzies.
Property Details	Certificate of Title Volume 5919 Folio 816
Zone	Coastal Conservation Zones, Map KI/22
Public Notification	Merit Category 3 Full public notification undertaken, No representations received.
Application Date	5 September 2018
Relevant Development Plan	Consolidated 17 September 2015
Department	Development Services Monika Matej - Development Services Officer
Issues Summary	Merit, Category 3 Development – Delegated Authority to CAP. The proposal for a shed to be established in the Coastal Conservation zone that is in excess in the floor area and height of the prescribed limit for its zoning. The application has been referred to CAP for decision due to the development's locality and zoning in Coastal Conservation and the potential influence of the Panel to effect the character of the locality.

BACKGROUND

An application was lodged to Council by Mr Paul Berden on 5 September 2018 for a new domestic garage associated with an established dwelling on the site in the Coastal Conservation zone.

At the time of lodgement, Council requested that the applicant reduce the floor area and height of the proposed development from the proposed size of 162 square metres to be closer in line with prescribed maximum limits of 115 square metres given the use of the structure as a domestic shed.

The applicant maintained that a shed with the specified size of 18 metres in length x 9 metres in width (total floor area of 162 square metres) with a wall height of 3.6 metres and 4.5 metres to the top of the ridgeline of the gable roof structure was required for domestic garaging of farm equipment, boat, vehicles and mowers and other equipment.

The application has proceeded through all statutory elements of the assessment and is presented to the Panel, subject to this report for a final decision.

SUBJECT LAND AND LOCALITY

The subject land is identified as Section 243 HP110800, 137 Bates Road in the Hundred of Menzies, identified in CT 5919/816. The land is situated approximately 800 metres south-east from the coastline of Cape E'staing and west of the Emu Bay township.

The land is approximately 24.7 hectares in area, with access to the allotment located in the south-eastern corner via Bates Road. The subject allotment is bounded by a similarly zoned Coastal Conservation to the northern aspect of the site whilst all other aspects are bounded by differing zones. To the east of the subject site is the Rural Living zone, to the south and south-east is Deferred Urban and Primary Production adjoins the western allotment boundary.

The locality generally exhibits a coastal / rural character and the land slopes down toward the northern allotment boundary. Dense vegetation exists in the north-western corner of the allotment and an existing dwelling and shed are located in this vicinity adjacent to the east of this existing dense vegetation. Some scattered vegetation exists along the eastern allotment boundary on the site and also toward the south-western corner of the site.

The subject allotment contains an approved dwelling and garage 521/116/95, a recent application for a home office in the form of a concrete transportable building associated with the existing residential use 520/170/18 (Building Rules assessment is yet to be undertaken) is located approximately 15 metres north-west from the existing dwelling. The subject application for a shed is to be located approximately 30 metres south-west of the dwelling on the site.

The subject land is contained within the Coastal Conservation Zone as delineated in Map KI/22 of the Kangaroo Island Development Plan, and is identified on the following maps and images:



Zone Map, Kangaroo Island Development Plan, Consolidated 17 September 2015.



Aerial Image, Nature Maps <http://location.sa.gov.au/viewer/>, locality plan.



Aerial Image, Nature Maps <http://location.sa.gov.au/viewer/>, detailed enlargement.

PROPOSAL

The proposal seeks Development Approval for a shed with ancillary 2 x 20,000 Litre (5000 Gallons) rainwater tanks located along the northern façade. The proposed shed is 18 metres x 9 metres (162m²) with 3.6 metre wall height and 4.5 metres to the top of the ridgeline of the gable roof which is to have a 12 degree pitch. The floor is to be benched 900 millimetres into the natural ground level on the site to assist in concealing the building's bulk.

The siting of the shed is immediately east of an area which is occupied by existing dense vegetation. The long side of the shed is to be located adjacent the existing vegetation north-west of the site concealing potential skylining of the shed and concealing it from the neighbouring dwelling which is located approximately 300 metres south-west of the proposed shed.

The proposed shed is to be located approximately 100 metres from the western allotment boundary and 300 metres from the southern boundary.

The cladding of the shed is to be Colourbond in a 'Woodland Grey' finish which is low-reflective and blends in with the surrounding landscape.

The location of the proposed shed is to be substantially screened from view with the established vegetation north-west of the site with sliding door access located along the southern façade. The existing dwelling and outbuilding to the east of the proposed shed site provides substantial screening of the shed from public views obtained from distant points of public outlook from the eastern side of Emu Bay.

The application plans and details are contained in **Attachment A**.

DETERMINATION OF APPLICATION, PUBLIC NOTIFICATION & OTHER STATUTORY REQUIREMENTS

Development Classification:

The Kangaroo Island Development Plan, Consolidated 17 September 2015, Map KI/22 indicates that the allotment lies wholly within the Coastal Conservation Zone.

The proposed building is determined to constitute a domestic garage / outbuilding, where the proposed shed is intended to be used for of farm equipment, boat, vehicles and mowers and other equipment in association with the existing domestic / residential use of the land and buildings. Hence, the proposal is determined to be a 'merit' form of development.

Categorisation:

The proposed development was determined to constitute a Category 3 form of development, pursuant to the Section 38 (2) of the Development Act 1993, as the proposal fails to fall within Category 1 or Category 2 Development in Part 1 or Part 2 of Schedule 9 of the Development Regulations 2008.

Public Notification:

A Category 3 public notification process was undertaken between the dates of 6 December and 21 December 2018. There were no representations received in relation to the proposal.

REFERRALS AND AGENCY CONSULTATION

Pursuant to Schedule 8 of the Development Regulations 2008, the Development Application was referred to the Coast Protection Board as the allotment lies within a coastal area. The CPB response is included in **Attachment B**.

Coast Protection Board

The application was referred to the CPB on 22 November 2018 and a response was received on 3 December 2018.

The CPB had no objection to the proposed development with a recommendation that the shed be sited a sufficient distance from the nearby native vegetation in order to avoid CFS requirements which stipulate distances for fire safety clearance. Council has had regard to this recommendation from CPB, however believes that the siting of the shed should be close proximity to the existing vegetation in order to mitigate the scale and bulk of the development and obscure it from any potential public view.

DEVELOPMENT PLAN & POLICY

The proposal is presented to the Panel in accordance with Council Delegations – where it is considered that the nature of the development warrants the consideration of the CAP, particularly due to the scale and bulk of the proposed building.

The following Objectives and Principles of Development Control (PDC) of the Kangaroo Island Development Plan – **Consolidated 17 September 2015**, are considered relevant to the assessment of this application.

Coastal Conservation Zone
Objectives: 1, 3 & Desired Character Statement
PDC's: 1, 5, 6, 7, 8 & 10

Coastal Areas
Objectives 3 & 5
PDC's: 1, 2, 3 & 4

Residential Development – Garages, Carport & Outbuildings
PDC's: 11, 12, & 13

Design and Appearance
Objective: 1
PDC's: 2, 5, 7 & 14

Siting and Visibility
PDC's: 1 & 2

PLANNING ASSESSMENT

Coastal Conservation Zone

CstCon Objective 1: *To enhance and conserve the natural features of the coast including visual amenity, landforms, fauna and flora.*

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

Desired Character Statement:

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

Pelican Lagoon, Prospect Hill and Sapphire town Peninsula in particular, have been identified as having high conservation value and should be protected. In addition, the high scenic value of Chapman River and the surrounding area at Antechamber Bay should be protected for camping and recreational use.

However, 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.

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.

In order to reinforce the Island's scenic and landscape experiences, tourism development should maintain a strong visual impression of a sparsely developed or undeveloped coastline from public roads and land-based vantage points.

The design and siting of tourist accommodation should ensure emphasis is given to raising consciousness and appreciation of the natural, rural, coastal and cultural surroundings.

Upgrading of existing dwellings is encouraged in order to meet various criteria, including approved waste control and effluent disposal systems, the raising of living areas above the level of hazard risk for flooding and inundation or to reduce the level of hazard risk, and other environmental considerations.

It is envisaged that development is not undertaken on coastal dune systems, tidal wetlands, mangroves, sand dunes or other environmentally sensitive areas.

The desired character of the zone does not seek to encroach on the existing use rights of farmers.

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.*

CstCon PDC 5: *Development should not be undertaken unless it is consistent with the desired character for the zone.*

CstCon PDC 7: *Development should:*

*(a) not adversely impact on the ability to maintain the coastal frontage in a stable and natural condition
(b) minimise vehicle access points to the area that is the subject of the development
(c) be landscaped with locally indigenous plant species to enhance the amenity of the area and to screen buildings from public view
(d) utilise external low reflective materials and finishes that will minimise glare and blend in with the features of the landscape.*

As there is an existing residential use on the allotment with an established dwelling and shed, existing use rights are afforded to the site, which otherwise are not envisaged for undeveloped sites in the Coastal Conservation zone.

Accordingly, the Desired Character Statement and PDC 1 for the Coastal Conservation zone do not contemplate the proposed development in this application.

It is believed that the proposal is highly unlikely to be detrimental in any way to the coastal environment, including vulnerability to coastal process or impact to the natural coastal features, vegetation or wildlife habitats.

The siting of the proposed development near the existing vegetation to the north-west of the allotment and the floor to be benched 900 millimetres into the natural ground level suggests that consideration has been given to reasonably obscuring the structure from potential public view.

CstCon PDC 6: *Development should be designed and sited to be compatible with conservation and enhancement of the coastal environment and scenic beauty of the zone.*

CstCon PDC 8: *Buildings or structures should be unobtrusively located, limited to a height of 6.5 metres above natural ground level, and be of such size and design, including materials and colours, to harmonise and blend naturally with the landscape and natural features of the zone.*

CstCon PDC 10: *Sheds, garages, outbuildings and farm buildings, should be erected only as ancillary uses to an existing dwelling or for the continued management of any existing farm.*

The proposed shed is concealed extensively from the northern and western aspects of the site as it is positioned adjacent the existing vegetation in the north-west corner. The topography of the site in this corner slopes down from the western allotment boundary to the northern allotment boundary. Hence, the somewhat elevated backdrop of vegetation to the western aspect of the development located on this sloping topography and the natural dark coloured material proposed for the shed are considered to contribute significantly to obscuring the development from any potential view from the neighbouring allotments and the Emu Bay township.

Coastal Areas

Coastal Areas Objective 3: *Preservation of areas of high landscape and amenity value including stands of vegetation, shores, exposed cliffs, headlands, islands and hill tops, and areas which form an attractive background to urban and tourist areas.*

Coastal Areas Objective 5: *Development only undertaken on land which is not subject to or that can be protected from coastal hazards including inundation by storm tides or combined storm tides and stormwater, coastal erosion or sand drift, and probable sea level rise.*

Coastal Areas PDC 1: *Development should be compatible with the coastal environment in terms of built-form, appearance and landscaping including the use of walls and low pitched roofs of non-reflective texture and natural earth colours.*

Coastal Areas PDC 2: *The coast should be protected from development that would adversely affect the marine and onshore coastal environment, whether by pollution, erosion, damage or depletion of physical or biological resources, interference with natural coastal processes or any other means.*

Coastal Areas PDC 3: *Development should not be located in delicate or environmentally- sensitive coastal features such as sand dunes, cliff-tops, wetlands or substantially intact strata of native vegetation.*

Coastal Areas PDC 4: *Development should not be undertaken where it will create or aggravate coastal erosion, or where it will require coast protection works which cause or aggravate coastal erosion.*

The proposed development is located approximately 800 metres inland from the coastal boundary and is highly unlikely to be subject to any coastal inundation due to the distance of the land between the proposed building and the coast.

Existing vegetation on the site is to remain, and no interference to this vegetation is to occur. The colours and material of the proposed shed are non-reflective and blend with surrounding landscape obscuring the structure from any potential view.

Residential Development – Garages, Carports and Outbuildings

Residential Development PDC 11: *Garages, carports and outbuildings should have a roof form and pitch, building materials and detailing that complement the associated dwelling.*

Residential Development PDC 12: *Garages and carports facing the street should not dominate the streetscape.*

Residential Development PDC 13: *Outbuildings should satisfy all of the following requirements:*

- (a) *be in association with an existing dwelling*
- (b) *not be greater than 75 square metres in floor area except within the **Rural Living Zone** and **Primary Production Zone** where they should not exceed 115 square metres of floor area*
- (c) *not be greater than 3.1 metres in height from natural ground level to the top of the walls*
- (d) *not be greater than 3.6 metres in height from natural ground level to the top of the gable (if relevant)*
- (e) *be finished in external surfaces in a colour that matches or blends with any existing dwelling on the site, and is in keeping with the character of the locality.*

The Colorbond cladding in a 'Woodland Grey' colour of the proposed shed which is to be set in front of an existing area of dense vegetation on the site contributes to the sympathetic nature of the development with the surrounding landscape and locality. This siting of the proposal minimises the potential impact of the structure, and further impact is also minimised with the benching in to the site by 900 millimetres.

The proposed shed substantially exceeds the maximum prescribed size limitations for the height and floor area. The overall height of the structures is 4.5 metres to the top of the gable's ridgeline. The benching of 900 millimetres into the site brings the height of the proposed development closer in line with the 3.6 metre height limitation.

The floor area of 162 square metres (18 metres x 9 metres) purports a development which is in substantial excess of the 75 square metres prescribed in PDC 13 which sets this limitation for outbuildings in the Coastal Conservation zone (amongst other zones other than the Primary Production and Rural Living zones for which the allowance is 115m²). In this respect the scale of the shed may be seen to create a poor precedent, however being adjacent to primary production land, is at interface with at least one other existing large farm building.

Considering the mitigating factors such as the existing landscape screening, the benching-in and the topography of the site, as well as the sites remoteness from public roads in the area and limited visibility from coastal or neighbouring views, it is believed that the building will exist reasonably harmoniously within the surrounding built and natural environment and locality.

Design and Appearance

Design and Appearance Objective 1: *Development of a high architectural standard that responds to and reinforces positive aspects of the local environment and built form.*

Design and Appearance PDC 2: *Buildings should be designed and sited to avoid creating extensive areas of uninterrupted walling facing areas exposed to public view.*

Design and Appearance PDC 5: *Building form should not unreasonably restrict existing views available from neighbouring properties and public spaces.*

Design and Appearance PDC 7: *The external walls and roofs of buildings should not incorporate highly reflective materials which will result in glare.*

Design and Appearance PDC 14: Development should be designed and sited so that outdoor storage and service areas are screened from public view by an appropriate combination of built form, solid fencing or landscaping.

Siting and Visibility

Siting and Visibility PDC 1: Development should be sited and designed to minimise its visual impact on:

- (a) the natural, rural or heritage character of the area
- (b) areas of high visual or scenic value, particularly rural and coastal areas
- (c) views from the coast, near-shore waters, public reserves, tourist routes and walking trails
- (d) the amenity of public beaches.

Siting and Visibility PDC 2: Buildings should be sited in unobtrusive locations and, in particular, should:

- (a) be grouped together
- (b) where possible be located in such a way as to be screened by existing vegetation when viewed from public roads.

The proposal generally accords the above provisions of the Design and Appearance and the Siting and Visibility PDCs given the large allotment size and the extensive setbacks from the boundaries. The proposed colour of the external walls and roof of 'Woodland Grey' is non-reflective and blends in with the surrounding landscape.

Given the nature of the development, some uninterrupted walling can be expected, however the siting of the development against an existing vegetated area as well as the benching-in into the site minimises the view of the building from neighbouring properties and it is believed that views from any public outlook i.e. from east of Emu Bay, or from the beach itself, looking west upon views of the township are unlikely to be substantially effected, particularly with the inclusion of some further light landscaping around the eastern wall and northern end of the shed.

CONCLUSION

The proposal for the shed for the purposes of garaging domestic vehicles and other farm machinery within the Coastal Conservation zone exceeds the prescribed maximum height and area limitations, thus presenting a substantial exceedance of the overall scale and bulk of such a structure.

In balancing the provisions in the Development Plan against the natural site conditions and the location of the proposed shed, the remoteness and visibility of the structure from public view and the natural landscape screening as well as the colours and materials of the proposal were all considered.

The proposed development attempts to minimise the scale and bulk of the structure by way of benching the structure 900 millimetres into the natural ground level. The proposed structure is also sited in close proximity to the existing vegetation on the site. The existing vegetation in the north-western corner of the site conceals the proposed building from any potential view from the northern and western aspects.

The colour and material of the proposed shed blends with the surrounding landscape and is also grouped on the site with other existing structures.

In summary of all the discussed factors, including the limited visibility of the building and the appearance which blends with the natural surrounding landscape the proposal is considered upon fine balance to warrant the Panel's support subject to conditions.

RECOMMENDATION

The Council Assessment Panel (i) resolve that the Development Application is **not seriously at variance** with the Kangaroo Island Development Plan consolidated 17 September 2015, and (ii) the panel resolve to **approve** Development Application 520/134/18 for the establishment of a **shed** at Section 243 HP110800, 137 Bates Road in the Hundred of Menzies, identified in CT 5919/816. By the applicant Mr. Paul Frank Berden and owner Mr. Andrew Nehme, subject to (but not limited to) the following conditions of consent.

Kangaroo Island Council – Planning Conditions:

1. The Development herein approved must, except as varied by the condition of consent be carried out in accordance with the approved plans and details to the satisfaction of Council.
2. The building shall not be used for any purpose other than that described on this notification.
3. All excess stormwater from roofed buildings, sealed areas and tank overflows shall be discharged within the allotment boundaries so that no erosion, nuisance or inconvenience will occur off-site.
4. Where cut and/or fill in excess of 300mm is required as a result of the proposed development, retaining walls or other suitable soil retention devices shall be employed.
5. There shall be no human habitation of the shed herein approved. Human habitation includes overnight and weekend accommodation. Changing the use of a building or structure without approval is a contravention of the Development Act 1993, and can result in legal action under the Act, and may incur significant penalty.
6. The site must be kept in a neat and tidy manner at all times.
7. The development herein approved shall be screened with suitable endemic species of tree or shrub, particularly on the northern and eastern sides, with a light covering of vegetation, i.e. *allocasuarina verticillata* (drooping sheaok) to mitigate clear and direct view of the shed walls from northern and eastern perspectives.
8. Proposed rainwater tank(s) shall be benched as far as practicable below the shed's building pad to match the adjacent natural ground level and to minimise the visual impact of the tanks.

Note -

Note - Building Site Fire Safety Requirements

The applicant/owner shall ensure that there is adequate water supply and hoses or prescribed water spray fire fighting implement in accordance with

Regulation 41 of the Fire and Emergency Services Act 2005 available on site during the performance of building work in order to prevent the outbreak of fire at the premises, or the spread of fire from the premises Pursuant to Subdivision 6 of the Fire and Emergency Services Act 2005. Maximum Penalty \$10,000.00

Note -

Building work must not be commenced until Provisional Building Rules Consent and Development Approval is granted.

Note -

You have a right of appeal against the conditions which have been imposed on this provisional 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 -

Class 10 Notification - Regulation 74

A person undertaking building work (Class 10) must give Council one business day notice of commencement of the building work.

ITEM 8.2

APPLICATION NO.	520/068/18
DEVELOPMENT DETAILS	Commercial Fishing Vessel Storage Building (Store), within the Deferred Urban zone.
Applicant	Halcyon Storage c/- URPS 12/154 Fullarton Road Rose Park SA 5067
Owner	Halcyon Storage PO Box 540 Kingscote SA 5223
Site Address	Section 204 HP110800, Keith Road, Hundred of Menzies.
Property Details	Certificate of Title Volume 5421 Folio 643
Zone	Deferred Urban Zone, Map KI/4.
Public Notification	Non-Complying, Category 3 Full public notification undertaken – three (3) representation received, all representors have indicated a desire to be heard.
Application Date	23 May 2018
Relevant Development Plan	Consolidated 17 September 2015
Department	Development & Environmental Services Aaron Wilksch Manager, Development & Environmental Services
Issues Summary	<p>Proposed development is a Non-complying form of development identified by the Kangaroo Island Development Plan – Delegated Authority lies with the Kangaroo Island Council Assessment Panel.</p> <p>Category 3 Development subject to 3x representations – procedurally the representation received on the application also triggers the referral for decision to the Council Assessment panel in accord with the Council Assessment Panel Terms of Reference and Delegations Policy.</p> <p>The proposal demonstrates variance with the Kangaroo Island Development Plan in respect of land use and its interface with existing envisaged land uses, and scale and bulk of the proposed building presents a concern for amenity of the locality.</p>

BACKGROUND

The proposal was initially lodged in May 2018, following preliminary advice being sought by the applicant on the prospect of developing boat storage. Initially the Halcyon Storage proposal presented a series of three storage sheds dimensioned in the order of 30m x 10m at a maximum height of 4.5 metres, and the large storage building subject to this application, originally dimensioned 25m x 25m with a height of 6.95metres.

The buildings were proposed to be serviced by a series of internal roads to allow vehicular access, the intent purporting commercial storage within the three smaller buildings and storage of the applicant's large commercial rock lobster fishing vessel in the larger building.

The initial proposal was provided with a statement of support at lodgement pursuant to Regulation 17 (1) and had received a determination under delegated authority pursuant to Regulation 17 (3)(b) of the Development Regulations 2008 to proceed with a full assessment, on the basis that:

-) The proposal was worthy of consideration on the basis that it contextually supports other land uses in the residential area of Emu Bay (and perhaps greater KI) – note the context of supporting residential land uses refers to the anecdotal evidence of land owners' desire to establish larger garages on allotments of only 1000m² presenting a site coverage and site servicing impact where sites cannot accommodate larger outbuildings, restricted by on-site effluent disposal areas,
- and
-) The Deferred Urban zone in this locality presents the most appropriate zone in which to explore this proposal.

The application was prepared for statutory processing including public notification, however was subsequently placed *on hold* pending revision of the proposal subject to a number of concerns raised.

The application has been revised by the applicant / consultants, URPS and has been provided with a Statement of Effect pursuant to Regulation 17 (4) & (5), and has undergone the required public notification process. The proposal is presented to the Panel herewith with this detailed report and recommendation, for its determination.

SUBJECT LAND AND LOCALITY

The subject land is identified as Section 204 HP110800, Keith Road, Hundred of Menzies, identified in Certificate of Title Volume 5421 Folio 643.

The land is situated within the surrounding fringe of small acreage properties nearby the southern boundary of Emu Bay township, on the northern side of Keith Road, and east of Lonie Lane.

The land is approximately 3.54 Ha in area and is comprised partially of open land and partially of acacia paradoxa scrub with larger eucalypts prevalent to the eastern half of the land.

The land is vacant aside from an existing shack type structure, water tanks and other domestic type chattels. The land is somewhat remote from common public road thoroughfares and is not considered to currently contribute a great deal to the semi rural and bushland characteristics generally observable around the locality, however in its own immediate locality the land contributes to a landscape with a quasi-rural living character, exhibiting dwellings and outbuildings on small acreages, with different distributions of dryland scrub, mallee and some open rural type land.

The subject land is contained wholly within the Deferred Urban zone as delineated in Map KI/4 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/, locality plan.



Zone Overlay – KIDP 17 September 2015 – Location SA Viewer
www.location.sa.gov.au/viewer/



Bushfire Risk Overlay – KIDP 17 September 2015 – Location SA Viewer
www.location.sa.gov.au/viewer/



Detailed Enlargement – KIDP 17 September 2015 – Location SA Viewer
www.location.sa.gov.au/viewer/

PROPOSAL

The proposal seeks Development Plan Consent to establish a storage building (*store*), dimensioned 24.4 metres length x 18.3 metres width x 6.5 metres roof ridge height. The building plans illustrate major openings for access of the vessel / vehicles on the western and northern sides and includes substantial windows / high level openings in north, south and eastern sided of the building.

The proposed is to be finished in colourbond wall and roof cladding in woodland grey (dark slate grey hue), including rainwater tank, trims etc.

The proposed building is to be located 31.0 metres from the Keith Road frontage, and approximately 125 metres from the Lonie Lane frontage, 50.0 metres from the eastern side property boundary and 127 metres from the northern side property boundary.

The building is to be situated over, and would appear to purport the substantial demolition of the existing shack type building, apparently with utilities and amenities retained for the convenience of the storage building.

The surrounding site is intended to be landscaped about its periphery with native species including Tasmanian Bluegum, Bottlebrush and Grevillea species to beautify and screen the development from clear and direct view.

The application plans and details, Statement of Support and Statement of Effect are contained in **Attachment A**.

DETERMINATION OF APPLICATION, PUBLIC NOTIFICATION & OTHER STATUTORY REQUIREMENTS

Development Classification:

The Kangaroo Island Development Plan, Consolidated 17 September 2015, Map KI/4 indicates that the allotment lies wholly within the Deferred Urban Zone.

The application is determined to constitute a 'store', as defined by Schedule 1 of the Development Regulations, being:

***Store** means a building or enclosed land used for the storage of goods, and within or upon which no trade (whether wholesale or retail) or industry is carried on, but does not include a junk yard, timber yard or public service depot;*

The Deferred Urban zone provisions detail *store* as a Non-complying form of development. The application is determined to be a non-complying proposal and is processed accordingly.

Categorisation:

The proposed development constitutes a default Category 3 form of development, pursuant to Section 38 of the *Development Act 1993*, as the proposal fails to fall within the ambit of Category 1 or Category 2 Development in Part 1 or Part 2 of Schedule 9 of the Development Regulations 2008.

Public Notification:

The full Category 3 public notification processes was undertaken between the dates of 15 November and 30 November 2018, there were three (3) representations received in relation to the proposal. All three representors have indicated a desire to appear, or appoint a representative to appear on their behalf to address the Panel on their representation.

The representations are consistent, identifying inconsistency with the intent of the Development Plan to maintain land in the zone for future residential / urban uses which are non-prejudicial to future rezoning to urban type zoning policy and maintaining farming activities until such time that re-zoning occurs.

Concerns also lie in with the matters of building height, bulk and prominence in the locality. The representation identified the scale and bulk provisions for domestic carports and garages (*PDC 13, Residential Development* section of the KI Development Plan) as a guide to acceptable bulk and scale.

The representation correctly identifies that the *8metre height rule* referred to by the applicant as a guide to building heights, applicable to Primary Production zoned areas for farm implement sheds is not applicable to this site in the Deferred Urban zone.

Applicant response to matters raised:

The response prepared by URPS addresses matters regarding visual appearance / impact with respect to building height and colour / finish, which in terms of building height appear to be at the minimum feasible level (for clearance of the vessel intended to be stored), however remains flexible on colour / finish. The siting is strongly preferred by the applicant, having access to existing utilities and conveniences to be maintained.

In terms of precedent set by establishment of the building, the representor correctly identifies that this assessment cannot hypothesise about future application for use of the land (confirmed by South Australia Supreme Court determination SASFC 172 of 2015 – *Zweck v Town of Gawler*) in which it is determined to be invalid to deprive the opportunity to lawfully make application, by way of Land Management Agreement or Condition.

In any case, an LMA may be *offered* by the applicant but cannot be *conditioned* by the planning authority. In this regard the application must succeed or fail upon its own merits, not subject to relying on another administrative tool to '*make it acceptable*'.

The applicant has also correctly identified that property valuation matters do not conventionally enter into the development planning considerations, and are not prompted by any part of the Act, Regulations or the Development Plan.

Copies of the Category 3 representations and applicant's response is contained in **Attachment B.**

REFERRALS AND AGENCY CONSULTATION

There were no mandatory referrals required pursuant to the Eighth Schedule of the *Development Regulations 2008*.

No informal referrals were undertaken for this proposal.

DEVELOPMENT PLAN & POLICY

The proposal is presented to the Panel in accordance with the Council Assessment Panel Terms of Reference and Delegations Policy – for a decision on which a representation has been received during Category 3 Public Notice (notwithstanding that the applicant has not indicated whether or not they desire to be heard).

The following Objectives and Principles of Development Control (PDC) of the Kangaroo Island Development Plan – **Consolidated 17 September 2015**, are considered relevant to the assessment of this application.

Deferred Urban Zone
Objectives: 1, 2, 3 & 4
Desired Character Statement
Principles of Development Control (PDC's): 1, 2, 3 & 4

Interface Between Land Uses
Objectives: 1, 2 & 3
PDC's: 1 & 2

Siting and Visibility
Objective: 1
PDC's: 1, 4, 5 & 8

Landscaping, Fences and Walls
Objective: 1
PDC's: 1 & 3

PLANNING ASSESSMENT

Deferred Urban Objective 1: A zone accommodating a restricted range of rural uses that are not prejudicial to development of the land for urban purposes and maintain the rural appearance of the zone.

Deferred Urban Objective 2: A zone comprising land to be used primarily for broad-acre cropping and grazing purposes until required for future urban expansion.

Deferred Urban Objective 3: Prevention of development likely to be incompatible with long-term urban development, or likely to be detrimental to the orderly and efficient servicing and conversion of the land for urban use.

Interface Between Land Uses Objective 1: Development located and designed to prevent adverse impact and conflict between land uses.

Interface Between Land Uses Objective 2: Protect community health and amenity from adverse impacts of development.

Interface Between Land Uses Objective 3: Protect desired land uses from the encroachment of incompatible development.

The proposed development is not envisaged by the Deferred Urban zone, citing that the zone seeks to keep land in a holding pattern until it is intended to be re-zoned to support urban forms of development.

In this respect, the objectives of the zone present that land should be primarily used for broad acre farming activities, but we note that land is already fragmented into smaller allotments and could not (in this instance) function in a broad-acre capacity. Land is also substantially vegetated and rocky in parts which would not support general farming practices.

The non-complying list also adds dimension to the level of restriction for development in the zone, including many forms of commercial land use and dwellings, except where a single dwelling can be established per allotment to allow for its intermediate use until such time that re-zoning occurs. Such restriction upon development is clearly to ensure that development is not established, which would prejudice the

proper re-zoning and re-development of land within the zone. Deferred Urban zone Objective 3 further clarifies this.

In the initial stages of assessment, it was considered that the proposal warranted proper consideration by way of a full assessment. The proposal presented (originally) a facility which catered for storage of many vessels for instance, in the form of a leased storage facility comprising three large sheds, as well as catering for the commercial rock lobster vessel storage being contemplated now.

The more communal value of a facility providing a place which catered for peoples boat storage needs, taking pressure off individuals to establish large garages on their land within the Residential zone (for instance) was considered to be worthy of consideration.

The proposed communal storage scenario, differed from domestic storage in that it raised interface issues, such as hours of day / night which adjoining land owners or occupiers could be subjected to noise and traffic impacts resulting from movement of vehicles and boats to and from the facility.

The current proposal plans have deleted the three additional storage facility buildings, therefore the operation of such a facility and the impacts associated specifically with that concept have been somewhat overcome, however the element of the single large storage building's bulk and scale and its aesthetic impact upon the amenity of the surrounding locality remains.

There is an apparent passiveness of the proposed storage, with its intended use being seasonal in respect of placing the vessel into storage at the end of the (northern zone) rock lobster season and returning the vessel to the water at the commencement of the season (Season closes at end May and re-commences in November) annually.

With the exception of unforeseen breakdown or maintenance, the impact of two vehicle / vessel movements would appear to be somewhat insubstantial, and of lesser impact than what might be expected to occur on nearby adjacent primary production land for the movement of livestock or cereal crop.

Deferred Urban Objective 4: *Development that contributes to the desired character of the zone.*

Desired Character Statement:

The zone exists in several areas, namely around the towns of American River, Emu Bay, Kingscote, Parndana, and Penneshaw.

Development within the zone is expected to maintain the 'status quo' and not intensify the use of land, including the division of land, which has been identified as potentially being required for the expansion of existing developed areas. In the meantime, the zone will be characterised by farming development conducted in an orderly manner.

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

*farming
recreation area*

Deferred Urban 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.*

Deferred Urban PDC 3: *Development should not be undertaken if it will be prejudicial to the orderly and economic development of future urban land uses within the zone.*

Deferred Urban PDC 4: *Development should not be undertaken unless it is consistent with the desired character for the zone.*

The desired land uses in the zone represented in PDC 1 (as envisaged forms of development), being, *farming and recreation area*, may not be adversely affected by the presence of a large storage building within the landscape, however, the impact upon the existing dwellings, and to land owners or occupiers, whom have reasonable expectation to be able to enjoy a largely undeveloped surrounding environment within the zone (as presented by the zone Objectives) would be prejudiced by the proposed development.

This locality supports principally low intensity uses including rural living in the form of single private residences, and hobby animal keeping activities and in this respect the proposal is a significant variation from the intent of the zone.

It is considered that the establishment of a storage facility, particularly the establishment of a large storage building within a zone which has an express future intent to re-zone and re-develop for urban uses may actually prejudice the orderly and economic development of land within the zone,

In this respect, once established, the development could enjoy existing use rights *indefinitely* into the future if so desired, with no compulsion to relocate, this would represent a substantial impact to the proper development of urban land uses around the building and site, and may adversely influence the locality into the future.

Landscaping, Fences and Walls Objective 1: *The amenity of land and development enhanced with appropriate planting and other landscaping works, using locally indigenous plant species where possible.*

Landscaping, Fences and Walls PDC 1: *Development should incorporate open space and landscaping in order to:*

(a) *complement built form and reduce the visual impact of larger buildings (eg taller and broader*

plantings against taller and bulkier building components)

(b) *enhance the appearance of road frontages*

(c) *screen service yards, loading areas and outdoor storage areas*

(d) *minimise maintenance and watering requirements*

(e) *enhance and define outdoor spaces, including car parking areas*

(f) *provide shade and shelter*

(g) *assist in climate control within buildings*

(h) *maintain privacy*

(i) *maximise stormwater re-use*

(j) *complement existing native vegetation*

(k) *contribute to the viability of ecosystems and species*

(l) *promote water and biodiversity conservation.*

Landscaping, Fences and Walls PDC 3: *Landscaping should not:*

(a) *unreasonably restrict solar access to adjoining development*

(b) *cause damage to buildings, paths and other landscaping from root invasion, soil disturbance or*

plant overcrowding

(c) *introduce pest plants*

(d) *increase the risk of bushfire*

- (e) remove opportunities for passive surveillance*
- (f) increase autumnal leaf fall in waterways*
- (g) increase the risk of weed invasion.*

The proposal detail has indicated a desire to incorporate landscaped / screened margins to the southwestern corner and southern side of the land, including species such as Tasmanian Bluegum (*eucalyptus globulus*), Bottlebrush (*callistemon sp.*) and Grevillea species. The establishment of Tasmanian Bluegum would present a fast growing, tall screen, which would likely establish height in the order of 6metres plus within 24 months in favourable conditions. Grevillea and Bottlebrush species are capable of in-filling beneath the canopy cover of established Tasmanian Bluegum generally maturing at up to 2 metres height.

The proposed screening would provide an attractive landscaped buffer between the proposed development and the surrounding / nearby residences, and could be considered a vast improvement upon the existing bounding vegetation of the subject site. Tall screening species such as the Tasmanian Bluegum, in addition to screening the height of the proposed building, may either adversely affect, or indeed improve conditions particularly the adjacent southern property by way of casting substantial shadow.

The proposed landscape screening could marginally increase the risk of bushfire.

It should be specifically noted that the establishment of landscape screening as has been described, is not development in its own right, and is proposed as part of the application, which (if approved) would need to be secured by way of condition of consent expressing the necessary extent of landscape screening.

Interface Between Land Uses PDC 1: interference through any of the following:

- (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants*
- (b) noise*
- (c) vibration*
- (d) electrical interference*
- (e) light spill*
- (f) glare*
- (g) hours of operation*
- (h) traffic impacts.*

Interface Between Land Uses PDC 2: Development should be sited and designed to minimise negative impacts on existing and potential future land uses desired in the locality.

Siting & Visibility Objective 1: Protection of scenically attractive areas, particularly natural, rural and coastal landscapes.

Siting & Visibility PDC 1: Development should be sited and designed to minimise its visual impact on:

- (a) the natural, rural or heritage character of the area*
- (b) areas of high visual or scenic value, particularly rural and coastal areas*
- (c) views from the coast, near-shore waters, public reserves, tourist routes and walking trails*
- (d) the amenity of public beaches.*

Siting & Visibility PDC 4: Buildings and structures should be designed to minimise their visual impact in the landscape, in particular:

- (a) the profile of buildings should be low and the rooflines should complement the natural form of the land*

(b) the mass of buildings should be minimised by variations in wall and roof lines and by floor plans which complement the contours of the land
(c) large eaves, verandas and pergolas should be incorporated into designs so as to create shadowed areas that reduce the bulky appearance of buildings.

Siting & Visibility PDC 5: *The nature of external surface materials of buildings should not detract from the visual character and amenity of the landscape.*

Siting & Visibility PDC 8: *Development should be screened through the establishment of landscaping using locally indigenous plant species:*
(a) around buildings and earthworks to provide a visual screen as well as shade in summer, and protection from prevailing winds
(b) along allotment boundaries to provide permanent screening of buildings and structures when viewed from adjoining properties and public roads
(c) along the verges of new roads and access tracks to provide screening and minimise erosion.

Minimal potential exists for off-site impacts from the actual storage of the vessel as proposed, however, some prospect of odour could amount from any drying or decomposing fouling (weed / crustacea) on the hull of a vessel, or upon fishing equipment, however this is considered vastly unlikely.

Chemical cleaning and other substantial maintenance would not be permitted within this approval, which would fall within the ambit of *industry*, as defined by the Regulations. Such maintenance would be most probably directed to facilities intended for the purpose i.e. Port Adelaide or for lesser works, perhaps Kingscote slipway.

Hours of operation have been contemplated previously in this report, and are considered to present *very* infrequent, seasonal impact only.

No external or flood lighting is proposed – it is reasonable to expect that low level lighting may be installed outside the building, however would be unlikely to impact other land via light spill.

The incorporation of landscape screening with native flowering species would appear to propagate a more visually attractive streetscape in the area, the landscaping itself is unlikely to interfere with any important or prominent views from adjoining land.

The development, incorporating dark, non-reflective external materials, would be quite substantially subdued by both physical separation between the proposed building and adjacent sensitive receptors, and via the landscape screening of the building.

CONCLUSION

The proposal presents as fundamentally being at odds with the Kangaroo Island Development Plan, and particularly the intent of the Deferred Urban zone and its future vision for re-zoning and re-developing the land.

The proposal also presents a number of mitigating factors, including the passive nature of the intended storage at this time, and the inclusion of substantial landscape screening which would appear to substantially shield the bulky development from clear view and improve the landscape in the immediate locality.

Notwithstanding the very compelling mitigating factors, on balance the proposal does not overcome the principle concern that a commercial development of this scale, and within this zone, would unreasonably jeopardise the orderly and economic future development of the zone, and in this regard, the proposal is not considered appropriate to support.

RECOMMENDATION

That Council's Assessment Panel resolve that the Development Application is substantially at odds with the Kangaroo Island Development Plan consolidated 17 September 2015, and therefore, the panel resolve to **Refuse** Development Application 520/068/18 for establishment of a **Store (Storage Building)**, for the purpose of storing a commercial rock lobster fishing vessel (and associated equipment) at Section 204 HP110800, Keith Road, Hundred of Menzies, by Halcyon Storage c/- URPS, for the following reasons:

1. The proposed development is prejudicial to the intent of the zone; to preserve land and prevent development which is likely to be incompatible with long-term urban development, or likely to be detrimental to the orderly and efficient servicing and conversion of the land for urban use;

and

2. The proposed development is at substantial odds with the provisions of the Deferred Urban zone, such that it would prejudice the desired character sought by the Kangaroo Island Development Plan, and the reasonable expectation of owners and occupiers of land in the locality in respect of the intended characteristics, use and enjoyment of the land in the locality.

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

Nil

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**