

ALEXANDRINA COUNCIL

NOTICE OF MEETING

Notice is hereby given to the Members that a meeting of the Development Assessment Panel will be held in the Community Chambers "Wal Yuntu Warrin", Cadell Street, Goolwa on 21 November 2005 commencing at 12:30 pm

Your attendance is requested.

12:30 p.m. Development Assessment Panel commencement

3:30 p.m. Conclusion of meeting.

JOHN COOMBE
CHIEF EXECUTIVE

ALEXANDRINA COUNCIL

AGENDA FOR THE DEVELOPMENT ASSESSMENT PANEL MEETING
TO BE HELD ON 21 NOVEMBER 2005 AT 12:30 PM
IN COMMUNITY CHAMBERS "WAL YUNTU WARRIN",
CADELL STREET, GOOLWA

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**Development Assessment Panel
Report and Agenda
on 21 NOVEMBER 2005 commencing at 12:30 pm
in the Community Chambers "Wal Yuntu Warrin",
Cadell Street, Goolwa**

PRESENT

APOLOGIES

IN ATTENDANCE

ITEM 1. CONFIRMATION OF MINUTES

Minutes of the Alexandrina Council Development Assessment Panel held on 24th October 2005.

RECOMMENDATION

That the minutes of the Alexandrina Council Development Assessment Panel held on 24th October 2005 as circulated to members be received as a true and accurate record.

ITEM 2. DEVELOPMENT APPLICATIONS

ITEM 3. DEVELOPMENT APPLICATIONS - NON COMPLYING

3.1 455/911/05 - Peter Russell Weeks

SUMMARY TABLE

Date of Application	5 th August 2005
Subject Land	Lot 3 Randell Road Hindmarsh Island
Assessment No.	A 6340
Relevant Authority	Alexandrina Council
Planning Zone	Rural Waterfront (Hindmarsh Island)
Nature of Development	Excavation of boating facility
Type of Development	Non-complying
Public Notice	19 th October 2005
Referrals	Nil
Representations Received	Nil
Representations to be heard	Nil
Date last inspected	19 th October 2005
Recommendation	To proceed
Originating Officer	Joanne Nightingale

ESD IMPACT/BENEFIT

- Environmental Potential impact on watercourse and bird life, or may lead to improvement of waterfront area that is currently degraded and grassed.
- Social Potential reduction in waterfront amenity from the water.
- Economic Increased value for land owner.

BACKGROUND

The statement of support that accompanies this application outlines that the applicant had done background research for the application with environmental scientist Dr Travis How, conferred with the Department of Environment and Heritage's Russell Seaman (regarding RAMSAR issues) and Maurice Green of Water, Land and Biodiversity Conservation (regarding River Murray Act issues).

.../cont.

3.1 455/911/05 – Peter Russell Weeks (Continued)

THE PROPOSAL

Nature of Development

The application is for the excavation of a boat mooring facility with associated boardwalks, decking and beach. The Rural Waterfront (Hindmarsh Island) Zone in the Alexandrina Council Development Plan lists *Excavation of the waterway and land adjacent the foreshore requiring the removal of native vegetation for the purpose of irrigating or the mooring of a boat or boats* as non-complying. As this report is to make a decision of whether to proceed no referrals or categories of notice have been completed as yet.

Detailed Description

The applicant wishes to further excavate one of two existing channels which are of long standing on the property and are largely over grown and unusable. The application is to widen the channel's entrance to the river, and enlarge the inlet to accommodate boat mooring. The existing channel opening is 15 metres wide at the river narrowing to 10 metres within 5 metres of the river opening. The channel continues to narrow to a 6 metre wide boat ramp.

The proposal is to widen the channel entrance to 18 metres for a distance of 7 metres and then widening the inlet to 40 metres for a distance of 30 metres. A further 37 metres of channel will continue inland forming boat ramp access, this portion is proposed to be 8 metres wide at its widest point and 5 metres wide at its narrowest.

Elements of the proposal include:

- Existing reeds to be retained or replanted along the edge of the opening.
- A beach access to be developed on the western side of the inlet, requiring sand to be imported.
- A boardwalk 2 metres wide and 19 metres long on the eastern side of the inlet.
- A boardwalk 10 metres long and 2 metres wide along the north western portion of the boat channel.
- A deck 15 metres by 6 metres on the southern side of the inlet.
- A revegetation area of 40 metres by 30 metres including the second channel is proposed.

REFER ATTACHMENT 3.1 (page 1)

.../cont.

3.1 455/911/05 – Peter Russell Weeks (Continued)

SITE & LOCALITY

The subject land is Lot 3 Randell Road, Hindmarsh Island, volume 5279 folio 513 in the Hundred of Nangkita. The allotment extends from the riverfront in the Rural Waterfront (Hindmarsh Island) zone, through to Randell Road in the General Farming (Hindmarsh Island) zone. The property is 8.9 hectares, the bulk of which is covered in Aleppo Pines and is severely degraded due to previous quarrying toward the Randell Road end of the property. The riverfront section of the property is cleared and grassed. It contains two dwellings on a slight mound overlooking the river. It appears that some filling to the riverfront area has occurred and all of the frontage has been grassed. Two existing channels have been excavated in this frontage but have become overgrown with reeds and grass.

The locality is quite similar in nature with five properties of similar size, configuration and use. Three of these lots exist to the west and one to the east. To both the east and the west residential size allotments exist along the northern shore of the island, with farm land to the south of these lots.

ALEXANDRINA COUNCIL DEVELOPMENT PLAN

The following Principles of Development Control are seen as especially relevant to this application:

COUNCIL WIDE OBJECTIVES

Conservation

Objective 21: The conservation, preservation, or enhancement, of scenically attractive areas including land adjoining water and scenic routes. Landholders should be encouraged to conserve the character of all attractive areas in the region. Consideration should also be given to any disturbance which the siting of sporting activities may cause adjoining properties, particularly from noise, traffic generation, or the effect on the natural beauty of the locality. Wider-ranging activities such as dune buggy and trail bike riding can have serious consequences with regard to vegetation damage and soil erosion.

COUNCIL WIDE PRINCIPLES

Appearance of Land and Buildings

58 The appearance of land, buildings and objects should not impair the amenity or character of the locality in which they are situated.

.../cont.

3.1 455/911/05 – Peter Russell Weeks (Continued)

- 85 Development should not be undertaken if the construction, operation and/or management of such development is likely to result in:
- (a) the pollution of surface or groundwater;
 - (b) degradation of watercourses or wetlands;
 - (c) unnecessary loss or damage to native vegetation;

Conservation

- 104 Development should be undertaken with the minimum effect on natural features, land adjoining water, scenic routes or scenically attractive areas.
- 107 The natural character of rivers and creeks should be preserved.
- 134 Development should take place in a manner which will minimise alteration to the existing land form.
- 135 Excavation and earthworks should take place in a manner that is not extensively visible from surrounding localities.

PORT ELLIOT AND GOOLWA DISTRICT PRINCIPLES

- 19 No development should be undertaken which would present any risk of pollution or contamination to Lake Alexandrina, the River Murray, or adjoining bodies of water.
- 42 Development which is proposed to be located outside of urban and tourist zones should be sited and designed to not adversely affect:
- a) the natural, rural or heritage character of the area;
 - b) areas of high visual or scenic value;
 - c) views from the coast, near shore waters, public reserves, tourist routes and walking trails; or
 - d) the amenity of public beaches by intruding into undeveloped areas.

RURAL WATERFRONT (HINDMARSH ISLAND)

- Objective 2:** The conservation of the natural character and the environment of the shoreline, wetlands and bird habitat areas.

PRINCIPLES

- 1 Development should primarily relate to the commercial farming of the land in the Zone, with buildings and structures located and designed in such a way that they will not detract from the rural views obtained from the mainland, the waterways or designated tourist routes/lookouts.

.../cont.

3.1 455/911/05 – Peter Russell Weeks (Continued)

- 4 Buildings or structures should not be erected on land which is less than 0.3 metres above the 1956 flood level unless they are required for public works, passive public recreation, navigational aids or a non-commercial boat mooring for an individual landowner.
- 12 Development should not cause pollution or contamination of the River Murray.
- 14 Buildings and structures should be:
 - a) located and designed in such a way as to minimise their visual impact when viewed from public roads and be at least 50 metres from a public road or tourist lookout;
 - b) sited behind the coastal ridgeline so as not be prominent when viewed from the waterway;
 - c) screened by native vegetation in order to enhance the rural character of the Zone; and
 - d) located below the natural skyline when viewed from the waterways, public roads and tourist lookouts.

COMMENTS

The application has the potential to breach many of the objectives and principles from Council Wide, through to Port Elliot Goolwa District and down to Rural Waterfront Zone. However, without further information being supplied and referrals being completed the negatives cannot be correctly weighed against the positives.

There is an extensive excavation proposed, but this may be excavating previously filled land. The proposal to revegetate a large area has some really positive benefits particularly for bird-life. The greatest concern I would currently have regarding the proposal is the beach. Not only will this allow activity in an area that will not provide any cover for wildlife, it also involves the depositing of foreign matter in the watercourse.

RECOMMENDATION

That the Development Assessment Panel agree to proceed to assess Development Application 455/911/05.

ITEM 4. DEVELOPMENT APPLICATIONS - CATEGORY 3

4.1 455/820/05 - Allen DJ & LD

SUMMARY TABLE

Date of Application	20 th July 2005
Subject Land	7 Waye Street, Mount Compass
Assessment No.	A 19518
Relevant Authority	Alexandrina Council
Planning Zone	Residential (Mount Compass)
Nature of Development	Retaining wall to maximum height of 2.4 metres
Type of Development	Consent on merit.
Public Notice	Category 3
Referrals	N/A
Representations Received	Nil
Representations to be heard	Nil
Date last inspected	13 th September 2005
Recommendation	Refusal
Originating Officer	Cherry Getsom

ESD IMPACT/BENEFIT

- Environmental Impacts associated with single storey detached dwelling. Visual impact of a large retaining wall on a corner allotment.
- Social Localised impact of new dwelling and therefore new residents (neighbours) on a currently vacant allotment.
- Economic Benefit to land owner through increase in land value, increase in rateable value of the property for Council.

BACKGROUND

This application for a retaining wall was received concurrently with a dwelling application for the same site (DA 455/839/05). The proposed dwelling was to provide accommodation for two generations of the same family.

.../cont.

4.1 455/820/05 – Allen DJ & LD (Continued)

The original dwelling design proposed by the applicant did not adequately suit the requirements of a dependant dwelling or granny flat. It was joined to the main dwelling by a carport and it did not contain a laundry but was sufficiently large with (2) bedrooms, kitchen, living and meals area, that serious concerns were raised regarding possible future use as two separate dwellings. The applicant has amended the design of the proposed dwelling, and whilst still relatively large and of an unconventional design, it meets the definition of a detached dwelling.

THE PROPOSAL

Nature of Development

The siting of the proposed dwelling combined with the slope of the land has required the applicant to include a retaining wall of up to 2.4 metres in height as part of this proposal. The application currently before the Panel is for the retaining wall only. However as the dwelling is dependent upon the retaining wall it cannot be approved unless the retaining wall first receives approval.

Detailed Description

The applicant is proposing a single storey detached dwelling at No. 34 Lot 7 Waye Court, Mount Compass. This land is part of a recent subdivision approved in December 2003 (DA 455/D628/03).

The subject land is a corner allotment of 1001m² with a frontage of 22.09 metres to Waye Street and a 37 metres to Waye Court. It has a significant downward slope in a north easterly direction; there is a total fall of approximately three metres diagonally across the allotment. A 3.5 metre drainage easement is located along the northern (rear) boundary of this allotment.

The proposed dwelling (455/839/05) is to be single storey brick veneer with a colorbond roof. The design of the dwelling is such that it forms a reverse L shape on the allotment. The lower section of the reverse L is located along the Waye Street boundary, this being the narrower of the two boundaries, and is being utilised by the applicant as the front property boundary. The proposed dwelling is to be sited 7 metres from this boundary. The longer section of the L runs parallel to the side boundary, in this case along Waye Court and is setback 3 metres from this boundary.

The slope of this allotment combined with the siting of the dwelling has led to the proposal requiring a retaining wall made of sleepers along the western boundary. This retaining wall is to commence 1 metre from the front property boundary; where it will be at its maximum height of 2.4 metres. This retaining wall extends a distance of approximately 19 metres reducing in height further to the rear of the allotment. It will be approximately 1.45 metres at its lowest point.

.../cont.

4.1 455/820/05 – Allen DJ & LD (Continued)

The proposal also involves a smaller retaining wall of 1.4 metres located at a distance of 3 metres from the rear or northern boundary. The siting of this wall 500mm inside of the easement has been agreed by Council Engineering staff. A wall of 1.4 metres in height also requires approval and forms part of the dwelling application, however was not subject to public notification. A third retaining wall extends from this along the eastern boundary but at 700mm in height does not require development approval

The height of the first retaining wall at 2.4 metres can not be considered 'minor' and could be subject to reasonable objection. As such Category 3 Public Notification was required.

REFER ATTACHMENT 4.1 (page 17)

SITE & LOCALITY

The subject land is located within the Residential (Mount Compass) Zone of the Alexandrina Development Plan. It forms part of a recently approved subdivision off Arthur Rd which created residential allotments from the last two remaining substantially large, vacant allotments within the township. This land is undulating in nature with height variations of some six metres throughout this section of the land division and variations of 16 metres across the site as a whole. The immediate locality is that of a number of newly created vacant allotments with recently made roads. Work has commenced on some already approved dwellings.

PUBLIC NOTIFICATION

The application was put on Category 3 Public Notification pursuant to Section 38(5) of the Development Act 1993 between the 29th September and 8th November 2005, inclusive of one public holiday.

No representations were received during this notification period.

REFERRALS

No referrals were required for this proposal.

CONSULTATION

A Waste Control System has been approved for this proposal.

.../cont.

4.1 455/820/05 – Allen DJ & LD (Continued)

Consultation has been undertaken with Council's Engineering and Infrastructure Department (Matt James) who advised a retaining wall of this height would not be the preferred option but is of a scale that could be safely engineered.

ALEXANDRINA COUNCIL DEVELOPMENT PLAN

The following Principles of Development Control are seen as especially relevant to this application:

Residential (Mount Compass) Zone

- PDC 1 The Residential (Mount Compass) Zone should primarily accommodate detached dwellings at low densities on individual allotments.
- PDC 4 Buildings should not exceed 8.0 metres in height and should not cover more than 50 percent of the area of the allotment.
- PDC 5 Residential development should be provided with private and communal open space together with a screened area for storage of refuse containers and clothes drying facilities.
- PDC 13 Development should be of a standard of design appropriate to the locality with regard to external appearance, building materials, colours, siting, bulk, loss of privacy, overshadowing, landscaping and provision for future maintenance.
- PDC 14 Development should be compatible with the character and amenity of the locality.

Port Elliot and Goolwa

- PDC 78 No building should be erected, added to, or altered on any land so that any portion of such building is erected, added to or altered to the existing boundary of a road than the distance prescribed for each road or portion thereof in [Table Alex/2](#).

A lesser distance than that prescribed may be appropriate where:

- (a) the set-back of the proposed building is consistent with existing buildings on adjoining or nearby land particularly where buildings within the locality are of heritage significance;

.../cont.

4.1 455/820/05 – Allen DJ & LD (Continued)

Council Wide

Objective 29: The amenity of localities not impaired by the appearance of land, buildings, and objects.

PDC 58 The appearance of land, buildings and objects should not impair the amenity or character of the locality in which they are situated.

PDC 84 The excavation and/or filling of land should:

- a) be limited to no greater than 1.5 metres so as to preserve the natural form of the land and the native vegetation;
- b) only be undertaken in order to reduce the visual impact of buildings, including structures, or in order to construct water storage facilities for use on the allotment;
- c) only be undertaken if the resultant slope can be stabilised to prevent erosion; and
- d) result in stable scree slopes which are covered with top soil and landscaped so as to preserve and enhance the natural character or assist in the re-establishment of the natural character of the Mount Lofty Ranges Region.

PDC 135 Excavation and earthworks should take place in a manner that is not extensively visible from surrounding localities.

COMMENTS

The subject proposal purports development of a residential nature in newly created residential subdivision within a well established township. The assessment of this application therefore relates to more specific issues, in particular the size, scale, appropriateness and impact of the proposed retaining walls. The proposed dwelling meets the requirements of the Residential (Mount Compass) Zone but as the dwelling is contingent upon the retaining walls the dwelling cannot be approved without them.

Discussions were held with the applicant regarding the retaining walls, in particular the large one along the western boundary and suggestions were made for alternative options. The applicants felt the design of the house was essential to their requirements and as such it necessitated a retaining wall of this height. The applicants were also advised of a proposed retaining wall on an adjoining property and the suggestion was made that both property owners work together for a combined solution.

.../cont.

4.1 455/820/05 – Allen DJ & LD (Continued)

The proposed retaining wall is of considerable length, being approximately 19 metres along the western boundary. Its impact is heightened by the requirement that it commence one metre from the front property boundary, where it will be at its highest point. The dwelling is to be setback 7 metres from the front property boundary, leaving some six metres clearly visible on the streetscape.

The development also requires a retaining wall located 3 metres along the northern boundary. This is to be a maximum of 1.4 metres high and commence on the eastern boundary, travelling in a westerly direction for approximately 13 metres. A smaller retaining wall at 700mm high is to connect with this at right angles along the eastern boundary. This retaining wall will be approximately 5 metres long. The larger retaining wall will be retaining cut whilst the smaller two will be retaining fill. The combination of the three retaining walls and the proposed dwelling will create a boxed in effect when viewed from the Waye Street frontage and stepped effect from the Waye Court frontage. The proposal is expected to have a significant visual impact upon the amenity of the area and the dwelling itself.

The proposed dwelling is to be located one metre from the western boundary and therefore one metre from the larger retaining wall, further adding to the boxed in effect.

It is acknowledged that the slope of the land is likely to make some form of retaining wall necessary for many dwellings within the sub division. The height of the proposed retaining wall on the subject land at 2.4 metres maximum is considered excessive and will have a considerable visual impact upon the locality and the dwelling on site. The six metre distance between the commencement of the retaining wall and the bulk of the dwelling further adds to its impact. The necessity to provide an additional retaining wall at 1.4 metres high provides further evidence that a dwelling design that requires such significant earthworks and retention is not appropriate for this particular allotment. On sloping sites such as this, particular care is needed in terms of design and siting. Were the footprint of the dwelling different and removed from the western boundary, the slope could be battered or retained by a wall less than 1500 metres. This would be acceptable. It is a combination of slope and size and shape of the footprint which presents a problem here. Alternatives which have less impact need to be considered.

RECOMMENDATION

That the Development Assessment Panel refuse Development Application 455/820/05 for a 'Retaining wall to a maximum height of 2.4 metres at 7 Waye Street, Mount Compass, on the grounds that it will have a significant visual impact and detracts from the character and amenity of the locality. In particular it is at variance with:

.../cont.

4.1 455/820/05 – Allen DJ & LD (Continued)

Residential (Mount Compass) Zone

PDC 14 Development should be compatible with the character and amenity of the locality.

Council Wide

Objective 29: The amenity of localities not impaired by the appearance of land, buildings, and objects.

PDC 58 The appearance of land, buildings and objects should not impair the amenity or character of the locality in which they are situated.

PDC 84 The excavation and/or filling of land should:

(a) be limited to no greater than 1.5 metres so as to preserve the natural form of the land and the native vegetation;

PDC 135 Excavation and earthworks should take place in a manner that is not extensively visible from surrounding localities.

4.2 455/976/05 - Fairmont Homes Pty Ltd

SUMMARY TABLE

Date of Application	23 rd August 2005
Subject Land	3 Waye Court Mount Compass
Assessment No.	A 19521
Relevant Authority	Alexandrina Council
Planning Zone	Residential (Mount Compass)
Nature of Development	Detached dwelling – single storey + retaining wall to maximum height of 1.85 metres.
Type of Development	Consent on merit
Public Notice	Category 3
Referrals	N/A
Representations Received	Nil
Representations to be heard	Nil
Date last inspected	13 th September 2005
Recommendation	Approval with conditions
Originating Officer	Cherry Getsom

ESD IMPACT/BENEFIT

- Environmental Minor impacts associated with single storey detached dwelling. Visual impact of a large retaining wall.
- Social Localised impact of new dwelling and therefore new residents (neighbours) on a currently vacant allotment.
- Economic Benefit to land owner through increase in land value, increase in rateable value of the property for Council.

THE PROPOSAL

Nature of Development

The proposal is for a single storey detached dwelling on a residential allotment at No. 3 Lot 10 Waye Court, Mount Compass. The siting of the dwelling combined with the slope of the land has required the applicant to include a retaining wall of up to 1.85 metres in height which forms part of this application.

.../cont.

4.2 455/976/05 – Fairmont Homes Pty Ltd (Continued)

Detailed Description

The subject land is part of a recent subdivision approved in December 2003 (DA 455/D628/03). The dwelling is to be single storey brick veneer with a colorbond roof which is to be setback 7 metres from the front property boundary. The dwelling is to be located one metre from both side boundaries. The subject land is 1002m² with a frontage of 19.73 metres and a depth of 50.75 metres. The allotment has a significant downward slope in a north easterly direction and there is a total fall of approximately four metres diagonally across the allotment.

The slope of this allotment combined with the siting of the dwelling has led the proposal to require a retaining wall along the southern boundary. This retaining wall is to commence 5 metres from the front property boundary. It will start at approximately ground level and increase in height for a distance of approximately 26 metres where it reaches its maximum height of approximately 1.85 metres. A smaller retaining wall to a height of 800mm is to be located along the northern boundary; however as this is less than a metre in height it is not defined as development and is not a subject of this report. The proposal therefore involves approximately 1.85 metres of cut and approximately 700mm of fill over the entire block.

The height of the first retaining wall at 1.85metres can not be considered minor and could be subject to reasonable objection. As such Category 3 Public Notification was required.

REFER ATTACHMENT 4.2 (page 24)

SITE & LOCALITY

The subject land is located within the Residential (Mount Compass) Zone of the Alexandrina Development Plan. It forms part of a recently approved subdivision off Arthur Rd which created residential allotments from the last two remaining substantially large, vacant allotments within the township. This land is undulating in nature with height variations of some six metres throughout this section of the land division and variations of 16 metres across the site as a whole. The immediate locality is that of a number of newly created vacant allotments with recently made roads. Work has commenced on some already approved dwellings.

PUBLIC NOTIFICATION

The application was put on Category 3 Public Notification pursuant to Section 38(5) of the Development Act 1993 between the 29th September and 8th November 2005, inclusive of one public holiday.

No representations were received during this notification period.

.../cont.

4.2 455/976/05 – Fairmont Homes Pty Ltd (Continued)

REFERRALS

No referrals were required for this proposal.

CONSULTATION

Consultation has been undertaken with Council's Environmental Health Department (EHO Kim Vivian) with regard to the effluent disposal system. The advice of the EHO is that a waste control system must be applied for and approved prior to issuing Provisional Planning Consent. An application for a Waste Control System is yet to be received.

Consultation has been undertaken with Council's Engineering and Infrastructure Department (Matt James) who advised a retaining wall of this height would not be the preferred option but is of a scale that could be safely engineered. Neville Styan also requested that Council be contacted to inspect the site prior to excavation as the retaining wall could undermine the pipe on the adjoining sewer easement if not properly engineered.

ALEXANDRINA COUNCIL DEVELOPMENT PLAN

The following Principles of Development Control are seen as especially relevant to this application:

Residential (Mount Compass) Zone

- PDC 1 The Residential (Mount Compass) Zone should primarily accommodate detached dwellings at low densities on individual allotments.
- PDC 4 Buildings should not exceed 8.0 metres in height and should not cover more than 50 percent of the area of the allotment.
- PDC 5 Residential development should be provided with private and communal open space together with a screened area for storage of refuse containers and clothes drying facilities.
- PDC 13 Development should be of a standard of design appropriate to the locality with regard to external appearance, building materials, colours, siting, bulk, loss of privacy, overshadowing, landscaping and provision for future maintenance.
- PDC 14 Development should be compatible with the character and amenity of the locality.

.../cont.

4.2 455/976/05 – Fairmont Homes Pty Ltd (Continued)

Port Elliot and Goolwa

PDC 78 No building should be erected, added to, or altered on any land so that any portion of such building is erected, added to or altered to the existing boundary of a road than the distance prescribed for each road or portion thereof in [Table Alex/2](#).

A lesser distance than that prescribed may be appropriate where:

- a) the set-back of the proposed building is consistent with existing buildings on adjoining or nearby land particularly where buildings within the locality are of heritage significance;
- b) the proposed building will be substantially screened by existing vegetation, the natural form and features of the land or by the adjacent existing buildings;
- c) the bulk or height of the proposed building is not reflective and is of a colour which harmonises with the existing development;
- d) the external cladding of the proposed building is not reflective and is of a colour which harmonises with the existing development;
- e) the proposed building is to be sited on an allotment having two or more boundaries to a road with no resultant reduction in road safety by restriction of driver visibility;
- f) the siting of the proposed building will not diminish the safety of access from the site onto the adjoining roadway;
- g) the depth or, in respect of a corner allotment, the width of the allotment is insufficient to allow compliance with the distance prescribed;
- or
- h) the lesser distance is in accordance with any principle of development control stating that a lesser distance is appropriate within a particular zone or policy area.

Council Wide

Objective 29: The amenity of localities not impaired by the appearance of land, buildings, and objects.

PDC 58 The appearance of land, buildings and objects should not impair the amenity or character of the locality in which they are situated.

PDC 84 The excavation and/or filling of land should:

- a) be limited to no greater than 1.5 metres so as to preserve the natural form of the land and the native vegetation;

.../cont.

4.2 455/976/05 – Fairmont Homes Pty Ltd (Continued)

- b) only be undertaken in order to reduce the visual impact of buildings, including structures, or in order to construct water storage facilities for use on the allotment;
- c) only be undertaken if the resultant slope can be stabilised to prevent erosion; and
- d) result in stable scree slopes which are covered with top soil and landscaped so as to preserve and enhance the natural character or assist in the re-establishment of the natural character of the Mount Lofty Ranges Region.

PDC 135 Excavation and earthworks should take place in a manner that is not extensively visible from surrounding localities.

COMMENTS

The proposal purports development of a residential nature in a newly created residential subdivision within a well established residential township. The assessment of this application therefore relates to more specific issues, in particular the size, scale, appropriateness and impact of the retaining wall. The proposed dwelling should meet the requirements of the Residential (Mount Compass) Zone once a waste control system is approved but as the dwelling is contingent upon the retaining wall the dwelling cannot be approved without it.

Due to the height of the proposed retaining wall and its possible visual and amenity impacts, planning staff contacted the applicant advising them of the Public Notice requirements and suggested alternative options leading to a reduced height. The applicants were also advised of a proposed retaining wall on an adjoining property and the suggestion was made that both property owners work together for a combined solution. The applicants chose to undergo Public Notification.

The proposed retaining wall is of considerable length, being approximately 26 metres along the southern boundary. This boundary forms the side boundary of the allotment, with only the width of the wall visible from the streetscape. The retaining wall is setback 5 metres from the front property boundary and starts at almost ground level. It increases in height towards the rear of the allotment until it reaches its maximum height of 1.85 metres.

The location of the wall along the side boundary makes its visual impact less intrusive, and this is further aided by the reduced height at the streetscape end of the allotment. It would be expected that retaining wall would have most impact upon the adjoining properties to the south, lot 7 and lot 6 Waye Street, Mount Compass. Neither property owner chose to make a representation during the public notification period.

.../cont.

4.2 455/976/05 – Fairmont Homes Pty Ltd (Continued)

The height of the proposed retaining is significant and will have a visual impact upon the locality. This impact is reduced considerably by the reduced height at the front of the allotment, setback some 5 metres from the front property boundary and one metre from the proposed dwelling. There is also the possibility of visual impact being reduced as the subdivision develops further and more dwellings are built. Therefore the proposal displays sufficient merit to warrant approval.

RECOMMENDATION

That the Development Assessment Panel approve Development Application 455/976/05 for a detached dwelling and retaining wall to a maximum height of 1.85 metres, at 3 Waye Court, Mount Compass, subject to the following conditions:

1. Excavation of the site shall be kept to a minimum to preserve the natural form of the land, and be managed in such a way as to prevent erosion.

Note: The applicant should contact Neville Styan of Council's Engineering and Infrastructure Department prior to commencing work on the retaining wall to ensure the wall is engineered in such a manner that it will not undermine the sewer pipe on the adjoining property.

4.3 455/871/05 - Gordon John Noack

SUMMARY TABLE

Date of Application	27 th July 2005
Subject Land	4 Graham Court, Strathalbyn
Assessment No.	A 10171
Relevant Authority	Alexandrina Council
Planning Zone	Rural Living Policy Area 8
Nature of Development	Change of use –truck parking
Type of Development	Merit
Public Notice	Category 3
Referrals	Nil
Representations Received	11
Representations to be heard	8
Date last inspected	9 th November 2005
Recommendation	Refusal
Originating Officer	Joanne Nightingale

ESD IMPACT/BENEFIT

- Environmental Increased possibility of pollution, noise increase.
- Social Decreased amenity due to noise.
- Economic May increase property value of applicant and may decrease value of adjacent properties.

THE PROPOSAL

Nature of Development

The application proposes to park a truck over three tonne tare in weight. The Alexandrina Council Development Plan Rural Living Policy Area 8 Zone does not list the parking of a truck as a non-complying form of development, therefore the application is consent on merit. The Development Plan does not describe categories of notice therefore the application under the Development Act 1993 is a Category three level of public notice as under Schedule 9 it is not defined as Category one or two and cannot be considered minor.

.../cont.

4.3 455/871/05 – Gordon John Noack (Continued)

Detailed Description

The application seeks to house a semi-trailer for restoration before being used as a business with the garaging address for registration being 4 Graham Court, Strathalbyn. The expected use of the vehicle is one Adelaide to Melbourne trip per week with the possibilities of more. The majority of the work is intended to be interstate and not local therefore the truck is not expected to return to the site every day but rather once a week.

It was further outlined at a later date that a contract had been gained with Star Track Parcel Freight as a tow-haulier, moving goods between their depots in different capital cities. No handling of goods is to be done on site and the doors are security sealed once loaded.

REFER ATTACHMENT 4.3(a) (page 29)

SITE & LOCALITY

The site is a rural living block of 1.3 hectares at the end of a cul de sac. As the allotment fronts the cul de sac it is a wedge shape with a narrow frontage which widens out to the rear of the allotment. The land is relatively flat with a dwelling fronting the allotment setback 23 metres, and a large shed is positioned 38 metres behind the dwelling. The shed area where the truck is proposed to be parked is 50 metres from the closest dwelling which sits to the west of the subject land. The access used for the truck is on the western boundary and is 10 metres from the neighbouring dwelling.

The dwelling to the east is 65 metres from shed on the subject land, but is 30 metres from the road where the truck will brake to turn into the subject land.

The access proposed to be used for the truck is screened on either side by mature trees. The eastern boundary is also screened by trees.

The locality is uniform in nature with large rural living allotments, characterised by mature trees with dwellings setback an average of 30 metres from the road frontage. Three properties to the north and west of the subject land back onto the main Wistow to Strathalbyn Road from which they are setback between 55 to 100 metres. All other properties are on neighbourhood roads.

REFER ATTACHMENT 4.3(b) (page 32)

PUBLIC NOTIFICATION

The application was placed on Category Three Public Notice on the 1st September 2005. Eleven valid representations were received, with two invalid well after the closing date.

.../cont.

4.3 455/871/05 – Gordon John Noack (Continued)

REFER ATTACHMENT 4.3(c) (page 34)

The applicant has also submitted a response to the representation.

REFER ATTACHMENT 4.3(d) (page 68)

The issues raised and responded to included; noise, amenity, commercial activity in a non-commercial zone, road safety for children and horses, and road deterioration.

ALEXANDRINA COUNCIL DEVELOPMENT PLAN

The following Principles of Development Control are seen as especially relevant to this application:

COUNCIL WIDE OBJECTIVES

Objective 2: A proper distribution and segregation of living, working and recreational activities by the allocation of suitable areas of land for those purposes.

A proper distribution and segregation of residential, business, commercial, industrial and recreational development benefits the community and enables a town to function more efficiently. Accessibility is safer and more convenient; property values remain more stable and fewer difficulties arise due to incompatible development being intermixed, e.g. workshops and housing. A traffic and transport system can be designed to cater for the future movement of people and goods, and public utility authorities can design and provide services appropriate to the pattern of anticipated growth.

PRINCIPLES OF DEVELOPMENT CONTROL

Form of Development

76 Development should take place on land which is suitable for the intended use of that land having regard to the location and condition of that land and the objectives for the zone in which it is located.

77 Development should take place in a manner which will not interfere with the effective and proper use of other land in the vicinity and which will not prevent the attainment of the objectives for that other land.

.../cont.

4.3 455/871/05 – Gordon John Noack (Continued)

- 80 Development should not detrimentally affect the amenity of its locality or cause nuisance to the community:
(a) by the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, wastewater, waste products, electrical interference or light; or
- 85 Development should not be undertaken if the construction, operation and/or management of such development is likely to result in:

(f) dust;
(g) noise nuisance

STRATHALBYN DISTRICT OBJECTIVES

Form of Development

Objective 1: Development in accordance with the Structure Plans for the Strathalbyn district and townships of Strathalbyn, Langhorne Creek, Milang and Clayton as shown on [Maps Alex/1 \(Overlay 1\) Enlargement B, C, D, E and F](#).

The Strathalbyn Structure Plan ([Maps Alex/1 \(Overlay 1\) Enlargement B and C](#)) show, in general terms, the plan for the future development of the urban area of Strathalbyn and its environs based upon:

- (g) definition of two rural living areas adjacent to the town to accommodate a range of residential and associated activities on small rural allotments;

Objective 5: Establishment of rural living areas to provide alternative living environments to urban areas.

Objective 6: Separation of incompatible land use.

PRINCIPLES OF DEVELOPMENT CONTROL

Form of Development

- 2 Development should not be undertaken if it is likely to affect adversely the health, safety and convenience of residents in the locality.
- 5 Development which is incompatible with other uses within the locality should not be undertaken.

.../cont.

4.3 455/871/05 – Gordon John Noack (Continued)

RURAL LIVING OBJECTIVES

- Objective 1:** A zone accommodating detached dwellings in association with a range of low intensity rural activities on various sized allotments.
- Objective 2:** Development maintaining the rural character and amenity of the zone.
- Objective 3:** Incorporation of significant vegetation buffers addressing potential land use conflict.

PRINCIPLES OF DEVELOPMENT CONTROL

Form of Development

- 1 Development within the zone should be for residential, agricultural and recreational purposes only and should be of a scale and intensity that is compatible with the rural living nature of the zone.
- 2 Commercial or retail development should not occur within the zone.

Noise

- 15 Development should prevent or minimise impacts resulting from noise.

Design Technique

- 15.1 Noise generated from development in the zone does not exceed:
- (a) 47dB(A) between the hours of 7am and 10pm measured and adjusted at the nearest existing or envisaged residential use.
 - (b) 40dB(A) between the hours of 10pm and 7am measured and adjusted at the nearest existing or envisaged residential use.

COMMENTS

The main impact of a development such as this is the coming and going of the vehicle and the noise that this generates. This impact extends along the route which the vehicle will take to reach its destination.

Many streets within the township's residential areas experience heavy vehicle traffic and have closer front setbacks than the subject land. However, there is an expectation of traffic noise in the main street of the township which does not exist in a rural living area which is designed to provide greater amenity through larger allotment size.

.../cont.

4.3 455/871/05 – Gordon John Noack (Continued)

The Alexandrina Council Development Plan reflects this expectation with objectives 1, 2 and 3. It is further reinforced with principles describing residential, agricultural and recreational uses being the only appropriate uses and the importance of amenity, particularly in regard to noise. This is reinforced to the extent that there is a principle regarding noise, which should not exceed 47dB (A) during the day.

This application has been considered on the merits of the information provided and it has been difficult to weigh up and make a decision. The amenity and noise issues are clearly supporting refusal in the Development Plan but, the use described is minimal.

RECOMMENDATION

That the Development Assessment Panel refuse development application 455/871/05 for a change of use - truck parking at 4 Graham Court, Strathalbyn, as it will detrimentally affect the amenity of the locality. In particular, it is at odds with the following provisions of the Development Plan:

Council Wide Principles of Development Control

Form of Development

76 Development should take place on land which is suitable for the intended use of that land having regard to the location and condition of that land and the objectives for the zone in which it is located.

80 Development should not detrimentally affect the amenity of its locality or cause nuisance to the community:
(a) by the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, wastewater, waste products, electrical interference or light; or

85 Development should not be undertaken if the construction, operation and/or management of such development is likely to result in:

- (f) dust;
- (g) noise nuisance

Strathalbyn District Principles

.../cont.

4.3 455/871/05 – Gordon John Noack (Continued)

Form of Development

- 2 Development should not be undertaken if it is likely to affect adversely the health, safety and convenience of residents in the locality.
- 5 Development which is incompatible with other uses within the locality should not be undertaken.

Rural Living Objectives

- Objective 1: A zone accommodating detached dwellings in association with a range of low intensity rural activities on various sized allotments.
- Objective 2: Development maintaining the rural character and amenity of the zone.
- Objective 3: Incorporation of significant vegetation buffers addressing potential land use conflict.

And Principles

Form of Development

- 1 Development within the zone should be for residential, agricultural and recreational purposes only and should be of a scale and intensity that is compatible with the rural living nature of the zone.

Noise

- 15 Development should prevent or minimise impacts resulting from noise.

If the Panel should choose to approve Development Application 455/871/05 the following conditions should be attached:

1. The truck shall not access or leave the site on a Saturday or Sunday.
2. The truck shall access and leave the site only once a week.
3. The truck shall not access or leave the site before 8 am or after 6 pm.
4. Only one truck shall be at the site at any time.
5. No loading or unloading of the truck shall occur on the site.

ITEM 5. DEVELOPMENT APPLICATIONS - LAND DIVISION

5.1 455/D156/04 - RL Wood Pty Ltd

SUMMARY TABLE

Date of Application	10 th January 2005
Subject Land	7 Kingdon Place Goolwa South
Assessment No.	A 5492
Relevant Authority	Alexandrina Council
Planning Zone	Residential
Nature of Development	Land division creating one extra lot
Type of Development	Merit
Public Notice	N/A
Referrals	Planning SA SA Water
Representations Received	N/A
Representations to be heard	N/A
Date last inspected	2 nd August 2005
Recommendation	Refusal
Originating Officer	Joanne Nightingale

ESD IMPACT/BENEFIT

- Environmental Increased in density and therefore use of services, stormwater, pollution, decrease in vegetation.
- Social Greater availability of housing on smaller allotment close to centre of town.
- Economic Possible increase in rate base, financial benefit to owner and wider community.

BACKGROUND

This application was deferred from the 15th August Development Assessment Panel meeting and the applicant was not available again until the end of October.

.../cont.

5.1 455/D156/04 – RL Wood Pty Ltd (Continued)

THE PROPOSAL

Nature of Development

The proposal is a Torrens Title Land Division creating one additional allotment. It is a consent on merit decision under the Residential Zone of the Alexandrina Council Development Plan as land division is not listed as complying or non-complying. It is a category one form of development both in the Development Plan and the Development Act 1993, therefore not requiring public notice.

Detailed Description

The applicant seeks to create one additional allotment from a corner lot just south of the Goolwa (Residential) zone commonly known as Little Scotland. The site area of the existing allotment is 720 square metres. The land division if approved will create one allotment of 391 square metres and the second lot of 329 square metres. The larger lot will contain the existing dwelling and the second lot has had proposed dwelling plans submitted in order to show the viability of the allotment.

REFER ATTACHMENT 5.1 (a) (page 72)

SITE & LOCALITY

The site is a corner allotment relatively flat, with one dwelling facing Kingdon Place and a number of sheds to the rear. There are a number of large mature trees both on the allotment and the portion of the road reserve that is footpath. It is an irregular rectangular shape that is 15.91 metres wide and (at its furthest corner) 49.1 metres long.

I consider the locality to encompass the southern side of Kingdon Place, Admiral Terrace, to the East of Oliver Street and North of Barrage Road. The southern side of Barrage Road could be included but I consider it to be more in keeping with the rest of the South Lakes area. This southern side of Barrage Road does have three examples of corner allotments which have been divided to minimums similar to those sought in this application and should be mentioned. The smallest lots created are 322 square metres and the largest created by the division 400 square metres, both below the described minimum of 560 square metres.

Within the locality that I have described the bulk of the allotments are 700 square metres in size. The largest lot is 1100 square metres and the smallest lots are nine strata title allotments facing Admiral Terrace on the corner of Kingdon Place with site areas of 235 square metres. A land division has occurred directly opposite the subject land on a corner lot but research has shown that two dwellings existed on this allotment supporting the division. The division created an allotment of 346 square metres and 352 square metres.

.../cont.

5.1 455/D156/04 – RL Wood Pty Ltd (Continued)

The allotments to the north of Kingdon Place could also be taken into account. However, they are influenced by the railway line at their rear, making some sense of their odd shapes and varied sizes.

REFER ATTACHMENT 5.1(b) (page 77)

REFERRALS

SA Water advised that financial, augmentation and easement requirements would need to be fulfilled for the provision of water supply services as is alteration of internal pipe work to the corporations satisfaction.. Planning SA responded with no report but three conditions to be added to any approval.

CONSULTATION

Consultation has been undertaken with Council's Environmental Health and Engineering and Infrastructure Departments (Kim Vivian and Neville Styan) with regard to the effluent disposal system. Neville Styan advised that allotment 512 would be required to connect to the common effluent system via a new drain to be constructed from the existing connection on Kingdon Place then heading west to Shepherd Avenue then south along Shepherd Avenue. Contours and spot levels are required along the drain route to prove sufficient fall is present to allow drainage via gravity (no pumping systems allowed), two flushing points are to be provided on down stream ends of straight runs of new drain, and all other conditions as per S.T.E.D.s' guidelines.

Consultation has been undertaken with Council's Engineering and Infrastructure Department (Dennis Zanker) on the issues of access and stormwater. The advice of Dennis is that one Eucalypt street tree would be required to be removed to create the access to the new carport on lot 511. A roll over kerb is present therefore crossovers do not need constructing and stormwater is OK.

Alexandrina Council Development Plan

The following Principles of Development Control are seen as especially relevant to this application:

COUNCIL WIDE PRINCIPLES

Land Division

- 6 Land should not be divided:
- (c) unless wastes produced by the proposed use of the land, or any use permitted by the principles of development control, can be managed so as to prevent pollution of a public water supply or any surface or underground water resources;

.../cont.

5.1 455/D156/04 – RL Wood Pty Ltd (Continued)

- 7 When land is divided:
(d) provision should be made for the disposal of wastewaters, sewage and other effluents from each allotment without risk to health including connection to a common effluent drainage system where available in the general area or preferably, the use of envirocycle systems where appropriate;
- 9 The minimum allotment area within the townships of Goolwa, Port Elliot, Middleton and Mount Compass should generally be 1000 square metres and the minimum road frontage 25 square metres (except at the ends of cul-de-sacs). A smaller number of allotments from 560 to 1000 square metres may be appropriate within the townships of Goolwa, Port Elliot and Middleton where satisfactory provision be made for sewage disposal and existing allotments are of such a size.

PORT ELLIOT AND GOOLWA

Form of Development

Objective 1: Compact living and business areas ensuring residents are within reasonable distance of community facilities.

RESIDENTIAL ZONE

Land Division

- 5 Land should not be divided in the zone if there is a substantial number of vacant allotments elsewhere in the locality or adjacent localities within the zone.
- 6 Land division should not be undertaken in Goolwa within the zone if all service facilities cannot be extended or provided at minimal cost.

Appearance of Land and Buildings

- 8 Development should be compatible with the character and amenity of the locality.

COMMENTS

The described minimum for this area is clearly 560 square metres and this minimum should only be approved if existing allotments are of such a size and sewage disposal is adequate. Due to some development that has been approved in the area, it is difficult to decide whether this density is appropriate. However, if you look at the locality as I have described the decision becomes clearer.

.../cont.

5.1 455/D156/04 – RL Wood Pty Ltd (Continued)

Within the defined locality there is only the strata title development and the corner division due to the existence of two dwellings on the title. Although within reasonable proximity of the town centre and services, the locality does not support the continued division of allotments well below the minimum of 560 square metres as described by the development plan.

If the panel wish to approve this development the application will need to be deferred pending the confirmation of the availability of access into the S.T.E.D.s scheme without pumping.

RECOMMENDATION

That the Development Assessment Panel refuse application 455/D156/04 for the creation of one additional allotment at 7 Kingdon Place, Goolwa South on the grounds that it is at variance with:

COUNCIL WIDE

Principle 9 The minimum allotment area within the townships of Goolwa, Port Elliot, Middleton and Mount Compass should generally be 1000 square metres and the minimum road frontage 25 square metres (except at the ends of cul-de-sacs). A smaller number of allotments from 560 to 1000 square metres may be appropriate within the townships of Goolwa, Port Elliot and Middleton where satisfactory provision be made for sewage disposal and existing allotments are of such a size.

ITEM 6. DEVELOPMENT ASSESSMENT - BUILDING

ITEM 7. MATTERS REFERRED FOR FOLLOW UP

ITEM 8. GENERAL ITEMS FOR DISCUSSION

8.1 455/D031/05 - Bill Scutchings - Boundary Realignment, Langhorne Creek

File Ref: 455/9031/05
Officer: Cherry Getsom
From: Olden & Van Senden

REPORT

This application to re-align seven existing titles was deferred at the last Panel meeting of the 24th October. The proposal involved the re-alignment of seven (7) existing titles along either side of the Mount Barker Road, Langhorne Creek, with the subject land located between Kent Road and Scott Roads. The majority of the site is located in the Flood Zone of the Alexandrina Development Plan with a small section of one of the existing allotments being split between the Flood Zone and the Country Township Zone

REFER ATTACHMENT 8.1 (page 78)

As a section of the land included in the proposal falls within Area A, identified in Figure FI/1 of the Flood Zone, it is removed from the list of exclusions to non-complying development in that zone. The proposal was therefore classified as non-complying.

Proposed allotment 17 is to be a considerably smaller than the other allotments at 413m² and is to contain only a water pump and filter system and be utilised solely for water supply management purposes. A number of private easements have been created leading to this allotment and the purpose of this allotment is to create a legal means to effect an orderly and equitable distribution of the water supply to the property as a participant in the Langhorne Creek Water Supply Company.

Concerns were raised regarding this allotment and its ability to be on sold with the new owner obtaining control over easement rights and therefore water access for adjoining land owners.

Additionally, existing allotment 105 is located within the township boundary of Langhorne Creek and is of uniform size and shape to those within the township. The re-alignment proposal involves amalgamating this allotment into proposed allotment 16. This also allowed for the additional title to assist in creating proposed allotment 17. Although noted in the report, I don't believe I made it clear during the Panel meeting that although allotment 105 is within the township boundary, and adjacent the Country Township Zone it is actually located within the Flood Zone.

.../cont.

8.1 455/D031/05 – Bill Scutchings – Boundary Realignment, Langhorne Creek
(Continued)

Report

The Panel determined to defer a decision on the application pending investigations into amalgamation of proposed allotments 14 and 17.

A Land Management Agreement was also recommended as a means of controlling the proposed easements and water supply. This would also remove the requirement to amalgamate allotment 105 into allotment 16 and therefore retain this allotment within the Country Township Zone. As noted above allotment 105, is located within the Flood Zone and as such the number of allotments within the Flood Zone and the Country Township Zones remains unchanged by the proposed re-alignment. Whilst its size and shape suggest allotment 105 has the ability to be utilised for residential purposes, the zoning guidelines of the Flood Zone, and the low lying nature of the land would make the provision of a residential dwelling particularly difficult.

The applicant's representative has requested that the proposed configuration remain unchanged as water supply makes amalgamation of allotments 14 and 17 difficult. He has suggested creating an "Association" rather than a Land Management Agreement to manage allotment 17. This association works on the basis that each of the titles with an easement to allotment 17 owns a share of this title. Allotment 17 is a title in its own right with all other allotments having equal shares of the ownership of allotment 17. This ownership is registered on each title, these shares can not be on sold and can not be changed.

The following additional information has been provided by the applicant regarding the realignment proposal and the use of an association.

The need to maintain water supply to each allotment is vital and to achieve this the association is proposed. For the water supply infrastructure to be owned by any one of the larger blocks proposed would undoubtedly lead to major difficulties in the future as the various titles are on sold over time.

With the water supply distribution infrastructure located on the one small parcel it separates it from the rest of the titles and no one individual has total control over the water supply. Ownership of this small title is in the hands of all the larger titles being proposed via the setting up of an association (say The Scutchings Water Supply Association - TSWSA). TSWSA owns the small title and administers the water supply according to a set of rules and standing orders set up at the time of the land division being finalised.

.../cont.

8.1 455/D031/05 – Bill Scutchings – Boundary Realignment, Langhorne Creek
(Continued)

Ownership of TSWSA is again set out in the standing orders of the association and in this case each of the larger titles would hold equal shares in the association and hence the small title thus protecting each titles water needs.

Another important aspect of having the small title is the issue of the various easements over the property as a whole which cover the service and distribution piping for the water supply. Easements of this nature can only be over real property and can only be in favour of real property. Easements can not be over or in favour of a person they must be over and in favour of land (and hence titles). In TSWSA owning the small title and with all the easements over the whole of the land being in favour of the small title, it thus has control of the water supply infrastructure not only on the small title but also in the easements over the whole property. In the form being proposed the TSWSA memorandum of association would clearly setout ownership, water distribution, dispute resolution, future on selling of land, share allocation, how shares can and can not be dealt with and any other issues deemed appropriate at the set up stage.

It would also clearly state how amendments may be made to the memorandum should this be necessary at some future date and more importantly how the small title can be deal with together with rules for disposing of the small title should the water supply no longer be required.

Initiating an Association is seen as less costly and easier to manage for the applicant and removes that ongoing responsibility associated with a LMA from Council.

RECOMMENDATION

That the Development Assessment Panel support the applicant's request to establish an Association for Development Application 455/D031/05 and once the association is in place allow planning staff to approve the proposal under delegation subject to concurrence from the Development Assessment Commission.

ITEM 9. **NEXT MEETING**

Monday 19th December 2005 with the time to be advised.

ITEM 10. **CLOSURE**