

# 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" on 19 November 2008 commencing at 10:00 am

Your attendance is requested.

10:00 a.m.            Development Assessment Panel commencement

11:30 a.m.            Conclusion of meeting.

JOHN COOMBE  
CHIEF EXECUTIVE

ALEXANDRINA COUNCIL

AGENDA FOR THE DEVELOPMENT ASSESSMENT PANEL MEETING  
TO BE HELD ON 19 NOVEMBER 2008 AT 10:00 AM  
IN COMMUNITY CHAMBERS "WAL YUNTU WARRIN"

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**Development Assessment Panel  
Report and Agenda  
on 19 NOVEMBER 2008 commencing at 10:00 am  
in the Community Chambers "Wal Yuntu Warrin"**

**PRESENT**

**APOLOGIES**

**IN ATTENDANCE**

**ITEM 1. CONFIRMATION OF MINUTES**

Minutes of the Alexandrina Council Development Assessment Panel held on 15<sup>th</sup> October 2008.

**RECOMMENDATION**

That the minutes of the Alexandrina Council Development Assessment Panel held on 15<sup>th</sup> October 2008 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/D091/08 - Areti Pty Ltd

**SUMMARY TABLE**

Date of Application	20 August 2008
Subject Land	Lot 301 Waterport Road, Port Elliot
Assessment No.	A 21103
Relevant Authority	Alexandrina Council
Planning Zone	Landscape (Port Elliot and Goolwa District)
Nature of Development	Land Division creating eight (8) additional allotments
Type of Development	Non Complying
Public Notice	Not yet applicable
Referrals	Planning SA, SA Water, Dept of Water Land & Biodiversity Conservation, Native Vegetation Council Secretariat, Dept of Health
Representations Received	Not yet applicable
Representations to be heard	Not yet applicable
Date last inspected	3 November 2008
Recommendation	Proceed to a full assessment
Originating Officer	Tom Gregory

**ESD IMPACT/BENEFIT**

- Environmental                      The creation of additional allotment will allow for an increase in land ownership and the possibility of an additional eight detached dwellings within the Landscape (Port Elliot and Goolwa District) Zone.
- Social                                      Increasing density in this semi-rural locality could lead to further demands for improved local services.
- Economic                                Direct economic benefit to the current land owner. The proposal could provide for a possible economic benefit for the area from a tourism aspect.

.../cont.

3.1 455/D091/08 – Areti Pty Ltd (Continued)

**THE PROPOSAL**

This application seeks to create eight additional allotments within the Landscape (Port Elliot and Goolwa District) Zone. Land Division where additional allotments are proposed is listed as a non-complying form of development within this Zone.

The applicant currently holds 13.72 hectares of land, and is seeking to create the additional allotments on the eastern portion of their allotment, fronting onto Bay View Road.

Seven of the proposed allotments are to be 1500 square metres in size, having a 24 metre frontage to Bay View Road. The other additional allotment could be described as a 'hammer-head' style allotment of 4000 square metres in size, with a 3 metre wide access 'handle' to Bay View Road, south of the other additional allotments.

A plan of division has been attached.

REFER ATTACHMENT 3.1(a) (page )

**SITE & LOCALITY**

The subject land is described as an undulating open rural landscape that rises in elevation to the north-west as it abuts the land which forms the 'hilly backdrop' for the townships of Port Elliot and Middleton.

The subject land is not regular in shape and somewhat represents a 'T' like configuration with frontage to both Waterport Road and Bay View Road.

The portion of the subject land that fronts Waterport Road contains the Authenticity Health and Wellness Retreat that has been in operation since 1997 in a substantially sized old homestead. In addition to this main structure are a number of outbuildings of various sizes and condition, some used in conjunction with the retreat and others housing farm type implements and other typical machinery associated with small farming operations.

The land in the general locality is fairly open and used for small scaled cropping purposes, however there is a small number of dwellings in the locality also. A few dwellings are located within the Landscape (Port Elliot and Goolwa District) Zone, however a considerable majority are located within the adjoining Rural Living Zones.

The site of the proposed allotments is approximately 200 metres north-east of the retreat, on the portion of the allotment that has frontage to Bay View Road.

.../cont.

## 3.1 455/D091/08 – Areti Pty Ltd (Continued)

This portion of Bay View Road is the boundary for a Rural Living Zone that contains a cluster of 24 de-facto rural living allotments to the east of the subject land. This cluster has frontage to Bay View Road and the main Victor Harbor – Goolwa Road. The average sized allotment in this rural living enclave is approximately 0.5 hectares.

A plan of the subject land and locality is attached

**REFER ATTACHMENT 3.1(b) (page )**

### **PUBLIC NOTIFICATION**

Should the Development Assessment Panel determine that this application poses merit to proceed to the next stage in the Non-Complying process, this application will be Category 3 Publically Notified once a Statement of Effect is received from the applicant.

### **REFERRALS**

The Development Assessment Commission has formally referred this application to a number of State Government agencies for comment.

The Department of Water, Lands and Biodiversity Conservation and the Department of Health had no comment to make on this application. The Native Vegetation Council Secretariat provided the following advice:

*The proposed subdivision is located on cleared land with little or no native vegetation present. However, Allotments 50-56 will each require new access from Bay View Road, which appears from the aerial photography to comprise vegetation along the frontages to the proposed allotments. It is unclear in the absence of a site inspection whether or not the vegetation is native or naturally grown, however if so, the driveways to these allotments should be located so as to minimise clearance.*

Planning SA indicated that development (including land division) should be located in appropriate zones, and that development should be staged, orderly and non-linear.

Planning SA advised that the Development Assessment Commission does not generally support non-complying land division applications, and emphasised that the creation of allotments for residential purposes is contrary to the objective for the zone.

.../cont.

## 3.1 455/D091/08 – Areti Pty Ltd (Continued)

### CONSULTATION

Consultation internally between Council's Departments have not yet been conducted. Only should the Development Assessment Panel resolve to proceed to a full assessment, will this consultation take place.

### COMMENTS

The proposal seeks to create an additional eight allotments within the Landscape (Port Elliot and Goolwa District) Zone. It is envisaged that each allotment will provide a site for one detached dwelling and be subject to an Encumbrance that will attempt to control the aesthetics of proposed built form, and require a high level of environmentally sustainable technology to be incorporated in the design of each dwelling.

It is perceived from the Applicant's Statement in Support of the application that the sales of the additional allotments will assist in the funding of an upgrade to the facilities at Authenticity Health and Wellness Retreat. The Applicant has indicated that the Retreat needs to further move towards attaining a higher profile to assist in further promoting tourism on the Fleurieu Peninsula.

The applicant has provided a brief Statement in Support of the Land Division, which has been included as an attachment to this report.

### REFER ATTACHMENT 3.1(c) (page )

Should the Applicant be successful in this development, in time the Applicant intends to further develop the land north of the Retreat (west of the subject site and some 17.5 hectares) into an area of gardens, ponds, paths and walkways. The Applicant proposes that this area would be subject to a Land Management Agreement that Council would be a part to, which would put the onus on the developer to develop the gardens in accordance with the agreement, and restrict future development of the land zoned Landscape (Port Elliot and Goolwa District).

Although a full assessment has yet to be undertaken, this application poses some merit in that the proposed allotments will be adjacent to the Rural Living Zones, where a number of dwellings and allotments currently exist at a greater density to that which can be achieved, or currently observed within the Landscape (Port Elliot and Goolwa District) Zone.

### RECOMMENDATION

**That the Development Assessment Panel resolve to proceed to a full assessment of Land Division Application number 455/D091/08.**

3.2 455/D096/08 - Murndal Pty Ltd

**SUMMARY TABLE**

Date of Application	17 <sup>th</sup> September 2008
Subject Land	Section 670 Burma Road, Kyeema
Assessment No.	A 14457
Relevant Authority	Alexandrina Council
Planning Zone	Watershed Protection
Nature of Development	Land Division creating one (1) additional allotment
Type of Development	Non Complying
Public Notice	Not Yet Applicable
Referrals	Planning SA, SA Water, Environment Protection Agency, Dept Water, Land & Biodiversity Conservation, Dept Health, Native Vegetation Council Secretariat
Representations Received	Not Yet Applicable
Representations to be heard	Not Yet Applicable
Date last inspected	8 October 2008
Recommendation	Proceed to full assessment
Originating Officer	Tom Gregory

**ESD IMPACT/BENEFIT**

- Environmental                      Creation of additional allotments within the locality of the Watershed could increase pressures in this environmentally sensitive area.
- Social                                      The possible impact on adjoining land owners who are not able to divide their properties for financial gain. Community perception is that this type of development is non-complying and therefore should not be approved.
- Economic                                Benefit to the applicant due to an increase in land value and the potential sale of the additional allotment. Limited economic benefit to Council with additional rating.

.../cont.



3.2 455/D096/08 – Murndal Pty Ltd (Continued)

**THE PROPOSAL**

This application seeks to create one additional allotment within the Watershed Protection Zone. Land Division where additional allotments are proposed is listed as a non-complying form of development within this Zone.

The applicant currently holds 247.6 hectares of land with substantial frontage to Burma Road. The subject land is used for a number of rural uses, and contains two habitable detached dwellings sited approximately 750 metres from each other. Each dwelling is independent from the other with respect to access, water supplies, and septic systems that are operational within each proposed allotment.

One dwelling (circa 1970) is situated in the centre of the property and is surrounded by a large number of outbuildings and farm buildings that are used in conjunction with the current operations on site. Access to this dwelling is gained via an internal track, which passes the second dwelling. The second dwelling (circa 1985) is located approximately 30 metres from Burma Road, and is currently fenced off in the configuration of this land division proposal. The proposal seeks to create a new title around the circa 1985 dwelling of approximately 2.7 hectares.

A plan of division has been attached.

**REFER ATTACHMENT 3.2(a) (page )**

The applicant has provided a brief Statement in Support of the Land Division, which has been included as an attachment to this report.

**REFER ATTACHMENT 3.2(b) (page )**

**SITE & LOCALITY**

The majority of the subject land is significantly undulating with a pleasant rural vista, and contains vast areas of open space with some areas of planted vegetation, and a number of dams.

The site of the proposed 2.7 hectare allotment is at a higher elevation to the remainder of the property, and is set upon a plateau that is visually screened from the road. This area is considerably flat compared to the remainder of the property.

The locality is comprised of large parcels of rural land in private ownership. Without a full and proper assessment of this application, it is difficult to ascertain the average sized allotment within close proximity to the subject land, however a general estimate would indicate that the proposed 2.7 hectare allotment would be the smallest allotment within the locality by far.

.../cont.

3.2 455/D096/08 – Murndal Pty Ltd (Continued)

**PUBLIC NOTIFICATION**

Should the Development Assessment Panel determine that this application poses merit to proceed to the next stage in the Non-Complying process, this application will be Category 3 Publically Notified once a Statement of Effect is received from the applicant.

**REFERRALS**

The Development Assessment Commission has formally referred this application to a number of State Government agencies for comment. The following is a list of the responses received at the time that this report was written. Please note that Planning SA has not yet responded to the application.

SA Water had no comment to make.

Department of Health had no comment to make.

Department of Water, Lands and Biodiversity Conservation had no comment to make.

Native Vegetation Council Secretariat indicated that:

*subject to there being no clearance of native vegetation for the construction of fences along the new boundary, the Native Vegetation Council considers that the proposal does not conflict with the planning principle concerning clearance of native vegetation. Any proposal to clear native vegetation, unless subject to an exemption under the Native Vegetation Regulations, requires the approval for the Native Vegetation Council.*

As the fences are currently in place, there is no intention of clearing native vegetation. Should this application be approved, the second part of the above response will be made into an 'advisory note' to be placed on the final Decision Notification Form.

The Environment Protection Agency indicated that they had a significant concern in supporting the application as it could create a precedent for other similar development of a type that is not envisaged in the Development Plan, and is likely to have adverse effects on water quality and farming. Additional allotments in the Watershed are of a concern to the EPA on water quality grounds, as increasing the number of smaller allotments in the watershed will intensify the use of the land.

A copy of the full EPA referral has been attached for information.

.../cont.

3.2 455/D096/08 – Murndal Pty Ltd (Continued)

REFER ATTACHMENT 3.2(c) (page )

**CONSULTATION**

Consultation internally between Council's Departments has not yet been conducted. Only should the Development Assessment Panel resolve to proceed to a full assessment, will this consultation take place.

**COMMENTS**

In general terms, Council is not supportive of the creation of additional allotments within rural areas (outside of townships), especially within the Watershed of the Mount Lofty Ranges region. Further to this, the construction of a detached dwelling where another detached dwelling currently exists is also development of a non-complying nature. This said, the subject land contains two dwellings that are significantly independent from one another, and appear to have been in this configuration for some time.

It is believed that the proposal will not result in any significant change in the use and/or management of the subject land, even if the 2.7 hectare allotment is on sold, as these dwellings are completely independent from one another. For all intents and purposes, the current land owner could currently be collecting a financial gain by renting/leasing out the circa 1985 dwelling.

From the limited assessment undertaken so far, it is considered that this proposal may not have an impact upon the visual appearance and/or economic viability of the subject land, or the amenity and character of the general locality.

It is therefore recommended that the Development Assessment Panel resolve to proceed to a full assessment of this non-complying Land Division Application creating one additional allotment.

**RECOMMENDATION**

That the Development Assessment Panel resolve to proceed to a full assessment of Land Division Application number 455/D096/08.

ITEM 4. **DEVELOPMENT APPLICATIONS - CATEGORY 3**

ITEM 5. **DEVELOPMENT APPLICATIONS - LAND DIVISION / COMMUNITY TITLE**

ITEM 6. DEVELOPMENT APPLICATIONS - BUILDING

ITEM 7. MATTERS REFERRED FOR FOLLOW - UP

ITEM 8. GENERAL ITEMS FOR DISCUSSION

8.1 Complaint Handling Policy

File Ref: 4.14.1(A)  
Officer: Sally Roberts  
From: Local Government Association of SA

REPORT

At the 26 March 2007 Development Assessment Panel meeting a Code of Conduct, which must be observed by members of the Panel, was adopted. Recently the Local Government Association has prepared a Complaint Handling Policy to add to this Code of Conduct to ensure that there is a process in place to deal with complaints when and if they arise. The policy is attached for your information and consideration.

REFER ATTACHMENT 8.1 (page )

Provided that the Panel agrees with the policy it should be adopted and added to the Code of Conduct accordingly.

RECOMMENDATION

That the Development Assessment Panel adopt the Complaint Handling Policy prepared by the Local Government Association and add this to their Code of Conduct.

8.2 Update On Retirement Village At Lot 401 Abbots Lane, Strathalbyn - Development Application 455/742/07

File Ref: 455/742/07  
Officer: Sally Roberts

REPORT

The matter was relisted to be heard on 30 October 2008 where submissions were made on the traffic issue. Regardless of the expert advice received from traffic engineers engaged by the applicant and Council the third party still did not concede that the traffic layout would be adequate. The Court therefore heard from the traffic engineers and the third party.

Agreement was reached on the matter of flooding with the preparation of a Deed and a Supplementary Deed that covered the delivery of stormwater via easements on adjoining properties located on Old Bull Creek Road. The Supplementary Deed was approved for signing and sealing at the 3 November 2008 Council meeting and upon the Court receiving these documents it will deliver its decision.

It is expected that the Court will approve the development given the agreed position on the flooding issue and the expert advice agreeing that the traffic movements would be acceptable.

RECOMMENDATION

That the report be received.

8.3 455/308/08 - Variation To 455/102/00 - Change Of Condition 9 To Allow The Use Of Three Audible Bird Scaring Devices In Association With The Existing Vineyard

File Ref: 455/308/08  
Officer: Andrew Sladden

REPORT

In June 2008, the Development Assessment Panel refused Development Application 455/308/08 - Variation to 455/102/00 – Change of Condition 9 to allow the use of three audible bird scaring devices in association with the existing vineyard.

The applicant subsequently lodged an Appeal with the Environment, Resource and Development (ERD) Court. Prior to the Compulsory Conference, the applicant put forward the following compromise for consideration:

.../cont.

**8.3            455/308/08 – Variation to 455/102/00 – Change of Condition 9 to allow the use of three audible bird scaring devices in association with the existing vineyard**

*“Our client proposes that Condition 9 of the current approval (DA 455/102/00) be varied to list a series of requirements regulating to operation of bird scaring devices. It is proposed that the condition would read as follows:*

9.    *Audible bird scaring devices may only be used –*
- (a) with a maximum sound burst duration from any one device of ten seconds;*
  - (b) with a minimum burst frequency (e.g. period of silence) of ten minutes;*
  - (c) with the maximum volume of each device limited to 50%;*
  - (d) between 7:00 hours and 20:00 hours;*
  - (e) when no more than three devices operate at any one time;*
  - (f) with no concurrent sound bursts amongst the devices;*
  - (g) when sited in the locations depicted on the attached plan; and*
  - (h) between the 1<sup>st</sup> of January and the 31<sup>st</sup> of March.”*

This proposed condition is based on the original acoustics report and each device will be no closer than 650m from any dwelling.

**REFER ATTACHMENT 8.3(a) (page )**

This compromise was presented to the joinders of which a number of issues were raised.

**REFER ATTACHMENT 8.3(b) (page )**

The applicants have put forward the option of a demonstration of the proposed devices in accordance with the proposed amendment to Condition 9. At the time of writing this report the time and date of the demonstration has yet to be finalised.

In reply to the above, the legal representative of the Applicant provided a response.

**REFER ATTACHMENT 8.3(c) (page )**

On 31 October 2008, the Conference was resumed at which the Applicant has undertaken to arrange a demonstration and Council will be advised so appropriate persons can attend. Given that this is yet to occur, a Directions hearing has been set for 10 December 2008 and a trial date for 12 – 14 January 2009. Should it get to this point, Council will need to engage an Acoustics Engineer to provide evidence.

**REFER ATTACHMENT 8.3(d) (page )**

.../cont.

- 8.3 455/308/08 – Variation to 455/102/00 – Change of Condition 9 to allow the use of three audible bird scaring devices in association with the existing vineyard

RECOMMENDATION

That the report be received and the Panel resolve to attend the demonstration before deciding on a compromise.

- 8.4 455/955/07 - Private Air Strip

File Ref: 455/955/07  
Officer: T Gregory

REPORT

This application has a Directions Hearing scheduled for 6<sup>th</sup> November 2008. A verbal report will be given at the meeting.

RECOMMENDATION

That the report be received.

Next meeting scheduled for Wednesday 17<sup>th</sup> December 2009 – date and time to be confirmed.