Riverland Regional Assessment Panel meeting

AGENDA

October 31 2019

at 1-30pm.
Notice is hereby given that a meeting of the Riverland Regional Assessment Panel will be held in the District Council of Loxton Waikerie Council Chamber, 29 East Terrace, Loxton on Thursday October 31 2019, commencing at 1.30pm.

CHERYLE PEDLER
ASSESSMENT MANGER
23 October 2019
Members:

Independent Presiding Member Mr B.G. Ballantyne
Independent Members Ms J Lewis, Messrs J.B. McVicar, G.D. Parsons
Elected Member Mr T Norton

Staff

Berri Barmera Council Mr D. Grieve (Senior Development Officer – Planning)
District Council of Loxton Waikerie Mr J. Hunt (Development Officer – Planning)
Renmark Paringa Council Mr R. Semrau (Principal Planner)

Assessment Manager Mrs C.G. Pedler

ITEM 1 WELCOME:

ITEM 2 PRESENT:

ITEM 3 APOLOGIES:

ITEM 4 CONFIRMATION OF MINUTES
The minutes of the meeting held September 19 2019 are attached at appendix for members information and adoption.

RECOMMENDATION:
That the minutes of the meeting held September 19 2019 be taken as read and confirmed.
ITEM 5  BUSINESS ARISING FROM THE PREVIOUS MINUTES

ITEM 6  DECLARATION OF INTEREST BY MEMBERS OF PANEL:

ITEM 7  HEARING OF REPRESENTATIONS:

ITEM 8  REPORTS:

Item 8.1  Development Application 551/108/19 – Kingston Vineyards Pty Ltd

Item 8.2  Development application 551/163/19 – L MacKinnon

Item 8.3  Development application 551/D007/19 – K Kratopulos
Item 8.1  Development Application 551/108/19 – Kingston Vineyards Pty Ltd

<table>
<thead>
<tr>
<th>Application No:</th>
<th>551/108/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council:</td>
<td>District Council of Loxton Waikerie</td>
</tr>
<tr>
<td>Relevant Authority:</td>
<td>District Council of Loxton Waikerie</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Kingston Vineyards Pty Ltd</td>
</tr>
<tr>
<td>Owner:</td>
<td>Kingston Vineyards Pty Ltd</td>
</tr>
<tr>
<td>Lodgement date:</td>
<td>9 May 2019</td>
</tr>
<tr>
<td>Description of development:</td>
<td>To erect a pump station comprising of an in ground concrete bunker, pump shed, external discharge manifold and suction pipes</td>
</tr>
<tr>
<td>Property details:</td>
<td>41 Farley Road, Kingston on Murray as contained in Certificate of Title Volume 6102 Folio 219</td>
</tr>
<tr>
<td>Zone / Policy Area:</td>
<td>River Murray Flood Zone / Primary Production Zone, Horticulture Policy Area 1 Map LoWa/30</td>
</tr>
<tr>
<td>Development plan provisions:</td>
<td>Loxton Waikerie Development Plan, consolidated 19 April 2017</td>
</tr>
<tr>
<td>Referrals / Agency consultations:</td>
<td>Department of Environment and Water</td>
</tr>
<tr>
<td>Form of assessment:</td>
<td>Merit</td>
</tr>
<tr>
<td>Public notification category:</td>
<td>Category 3</td>
</tr>
<tr>
<td>Recommendation:</td>
<td>Grant Development Plan Consent, subject to conditions and notes</td>
</tr>
<tr>
<td>Officer:</td>
<td>Jordan Hunt</td>
</tr>
<tr>
<td>Appendices follow report:</td>
<td>Development Application Form, Certificate of Title, Powerline Declaration, Pump Station Project Brief, Site Plan – Pump Station, Site Plan – Pump Station and Suction Pipes, Site Plan – Suction Pipes, Site Plan – Rising Mainlines, Elevation Plan, Landscape Plan, Internal Layout of Pump Station, Acoustic Engineers Report, Site Use Approvals, DEW Referral Response, Representation, Response to Representation</td>
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</tbody>
</table>

BACKGROUND:

The applicant is seeking Development Approval to erect a pump station comprising of an in ground concrete bunker, pump shed, external discharge manifold and suction pipes. The pump station will allow the existing vineyards and winery to have a consistent supply of River Murray water for irrigation purposes.

The applicant has included additional plans which indicate the extent of the entire irrigation project, however it is noted that these plans are for reference only and that the underground pipework is not considered to constitute development.

A full copy of the application plans and other relevant information is attached for Members reference.

PROPOSED DEVELOPMENT:

The proposed development is considered to comprise of the following elements:

- A concrete bunker which is 97.98 square metres in floor area and will house the pumps. The bunker is 14.2 metre long, 6.9 metre wide and 2.39 metres above natural ground level.
- A skillion roof pump shed which is 97.98 square metres in floor area and will house the required electrical equipment.
- The pump shed will be clad in pale eucalypt metal sheeting and includes ventilation louvers on the external walls. The shed is 14.2 metres long, 6.9 metres wide, 4.53 metres high and 2.39 metres above natural ground level.
- An above ground external discharge pipeline which is located at the western side of the proposed pump station.
- Suction pipes located in the River Murray with supporting pylons.
- Security fencing which surrounds the entire perimeter of the proposed pump station.
- Vegetation screening which is located on the western and southern sides of the proposed pump station.

SUBJECT LAND AND LOCALITY:

The subject land is known as 41 Farley Road, Kingston on Murray, as contained in Certificate of Title Volume 6102 Folio 219. The allotment is approximately 40 hectares in area and is bound by Holmes Road and Farley Road (as seen in figure 1). The frontage of the subject land is subject to the 1956 River Murray Flood Plain Overlay (as seen in figure 2). The allotment is dual zoned in that the frontage which abuts Holmes Road is partially located within the River Murray Flood Zone and the remaining balance of the land is located within the Primary Production Zone, Horticulture Policy Area 1 (as seen in figure 3).

The land is currently used as a vineyard in association with the applicants existing winery and does not contain any built form (as seen in figure 5). The applicant has an existing pump station which is located on the adjacent property to the east of the subject land; however this pump station is no longer able to cater for their water requirements (as seen in figure 6).

The adjoining allotment to the north is used as a vineyard and contains an existing dwelling and shedding. The adjoining land to the south is also used as a vineyard; however it does not contain any built form. To the east of the subject land, the adjacent allotment remains vacant, due to it being located wholly within the River Murray Flood Zone. The allotments to the west are located within the Rural Living Zone and generally consist of detached dwellings with associated outbuildings. Approximately 150 metres to the south of the subject land is the Kingston on Murray township which comprises of smaller allotments which are used for residential purposes (seen in figure 4).
The Berri Barmera Council, District Council of Loxton Waikerie, Renmark Paringa Council

Agenda for a meeting of the Riverland Regional Assessment Panel, to be held Thursday 31 October 2019.

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Figure 4 – Zoning
River Murray Flood Zone
Primary Production Zone (HPA 1)
Rural Living Zone
Township Zone

Figure 5 - Photograph of the subject land from Holmes Road
NATURE OF DEVELOPMENT:

The proposed development is considered to be located wholly within the River Murray Flood Zone. Therefore in determining the nature of the development, Council must consider the provisions of the River Murray Flood Zone of the Loxton Waikerie Development Plan (consolidated 19 April 2017). The River Murray Flood Zone does not advise if the proposed pump station is complying nor non-complying. The application is therefore to be considered on merit against the provisions of the Development Plan.

Further, in consideration of the category of public notification of the development, neither the Development Plan nor Schedule 9 of the Development Regulations 2008 provided specific categorisation. The application is therefore considered a category 3 form of development.
PUBLIC NOTIFICATION:

The proposed development was considered a Category 3 form of development in the zone. A notice was placed in The Loxton News on 28 August 2019 and adjoining owners and occupiers advised in writing. One response was received, as attached. It is summarised as follows:

Peter Barich

Mr Barich has concerns in regard to the amount of noise which could be produced by the proposed pump station, considering that it is proposed to be operating 24 hours a day, seven days a week. Mr Barich would like for independent acoustic testing to be undertaken once the pump station is completed to determine whether the pump station is operating at the indicated levels in the acoustic report. Mr Barich has indicated that he does not wish to be heard in support of his application.

Pursuant to Section 38, the applicant was given opportunity to provide a response to the representation received. This response is attached for members’ reference.

SERIOUSLY AT VARIANCE:

In making an assessment of the application, section 35(2) of the Act provides direction to the Panel, in that it must give consideration as to whether the application is seriously at variance with the Loxton Waikerie Development Plan.

35—Special provisions relating to assessment against Development Plan

(2) Subject to subsection (1), a development that is assessed by a relevant authority as being seriously at variance with the relevant Development Plan must not be granted consent.

The concept of being “seriously at variance” with the Development Plan is always difficult to define with precision. Debelle J said1 “… the expression “seriously at variance with the Development Plan” refers to that which is an important or grave departure in either quantity or degree from the Development Plan.” And it “…is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it….”

The application is for a pump station comprising of a concrete bunker, pump shed, external discharge manifold, suction pipes, security fencing and landscaping within the River Flood Zone.

Within the River Murray Flood Zone it is clear that the zone envisages that this type of development will occur, given it references ‘structure for the purposes of water extraction, wetland management and irrigation management’. The proposed development is considered to be for both the purposes of water extraction and irrigation management. Furthermore Principle of Development Control 11 of the zone expresses guidelines for water pumps.

It is clear that the zone anticipates pump stations given it mentions water extraction and water pumps. Therefore it is determined that the proposed development is expected to occur within the River Murray Flood Zone and cannot be considered to be seriously at variance with the Development Plan.

REFERRALS:

The application was referred to the Department for Environment and Water, their response is attached. The Department has no objection to the proposal and has directed that 5 conditions and 8 notes be attached to any decision of approval. Further to the directed conditions and note the Department of Environment did advise that Council may wish to consider an additional condition in respect of navigational safety. This additional condition has been included in the recommendation.

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1 Mar Mina (SA) Pty Ltd v City of Marion & Anor [2008] SASC 120 (33)
DEVELOPMENT PLAN PROVISIONS:

<table>
<thead>
<tr>
<th>Crime Prevention Module</th>
<th>Principles of Development Control: 2, 3, 6, 7, 8</th>
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The proposed pump station incorporates a natural colour scheme, landscaping and is surrounded by security fencing. Through the combination of these elements it is considered that the design will provide a robust environment that is highly restrictive to potential vandalism or graffiti. The fencing will clearly delineate that the pump station is a private building and that it is not to be used by the general public. Furthermore the design of the proposal seeks to limit access to the structure and compound, with it considered that no one of the general public will be able to access the area without appropriate access keys.

The proposed development is considered to be mostly consistent with Principles of Development Control 2, 3, 6, 7, and 8 of the Crime Prevention - General Module.

<table>
<thead>
<tr>
<th>Design and Appearance Module</th>
<th>Objective: 1</th>
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<tbody>
<tr>
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<td>Principles of Development Control: 1, 2, 3, 6, 16, 17, 18, 21, 23</td>
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The proposal seeks to limit the visual impact by utilising design elements and imitating the local environment and built form. The use of a skillion roof, ventilation louvers, and a pre-colour treated finish seeks to reduce the visual bulk of the pump station whilst still exhibit an overall design which is innovative and sympathetic to the scale of the existing locality. The walls of the shed will be clad in new Pale Eucalypt metal sheeting which is considered to be similar in colour to the native vegetation and vines within the locality. The concrete bunker will be finished in natural concrete which is considered to be neutral in colour and unlikely to pose any visual implications.

The proposed pump station is not considerably larger in floor area to that of the existing outbuildings within the broader locality. However, the proposal includes substantially higher wall heights. The design is considered to account for its overall mass and scale by including a skillion roof, coloured finish, landscape screening, and utilisation of the existing vines as a visual barrier. For these reasons it is considered that the proposal attempts to be compatible with the existing built form within the locality.

The proposed building is proposed to be setback 12.5 metres from Holmes Road to accord with the minimum setback expressed by the Development Plan, whilst also be compatible with the existing setbacks within the locality and positively contribute to the streetscape character.

The proposed development is considered generally consistent with Objective 1 and Principles of Development Control 1, 2, 3, 6, 16, 17, 18, 21 and 23 of the Design and Appearance – General Module.

<table>
<thead>
<tr>
<th>Hazards Module</th>
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<tr>
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<td>Principles of Development Control: 1, 2, 3, 4, 5</td>
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The proposed pump station has been designed to carefully consider the potential impacts of a flood event from the River Murray onto the subject land. The concrete bunker has been designed to limit flood water from entering the structure, as it has a wall height above the 1956 flood level. Furthermore the shed is located above the 1956 flood level and will suitably protect the electrical control equipment associated with the proposal. The proposed areas above the 1956 flood level will also provide an area for workers to use as a refuge in the event of a flood emergency. The pump station is not considered to significantly interfere with the natural flow of river, given built form exists within the locality and all excavated ground will be reinstated to natural levels once works are completed. The proposed suction pipes will be unobtrusive on the natural form.
of the river bed and are not anticipated to alter the land form and result in impacts to the flow of water during a flood event.

The entire proposal is not considered to result in an increase to potential hazard risk to the public, persons, or adjoining land during a flood event, significantly impede flood waters during a flood event, lead to erosion or destruction of vegetation during a flood or cause adverse effect on the floodway function.

The proposed development is considered consistent with Objectives 1, 2, and 4 and Principles of Development Control 1, 2, 3, 4, and 5 of the Hazards – General Module.

<table>
<thead>
<tr>
<th>Infrastructure Module</th>
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<td></td>
<td>Principles of Development Control: 1, 2, 3, 4, 12</td>
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The proposal will be suitably connected to an electricity supply via the installation of an electricity transformer which will be located alongside the proposed pump station building. The connection line will be located well above 1956 flood level. Access to the compound will be gained via a new access from Holmes Road, which is an all weather public road. The pipelines for the proposed pump will be placed within new and existing easements which the applicant will legally apply for. Existing drainage lines will be maintained, whilst it is expected that the roof catchment area will be connected to a rainwater tank. The applicant holds an existing water license, however it is understood that the applicant may need to apply to the Department of Environment and Water to increase their existing water allocation.

The proposed development is consistent with Objective 1 and Principles of Development Control 1, 2, 3, 4, and 12 of the Infrastructure – General Module.

<table>
<thead>
<tr>
<th>Interface Between Land Uses Module</th>
<th>Objectives: 1, 2, 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principles of Development Control: 1, 2, 3, 8, 9</td>
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</table>

The proposal could potentially create visual, noise, and operation impacts to the surrounding land uses and locality. However, the proposal incorporates a building design which is sympathetic to is bulk and scale, has suitable side setback distances, existing and proposed vegetation as screening and acoustic engineering measures, in order to reduce any visual, noise, and operational impacts. As such, proposal has been designed to minimise adverse impacts on surrounding land uses and not result in adverse health and amenity impact.

The applicant has provided an independent acoustic engineering report from Wood and Grieve Engineers. The report advises that the proposal at all times should not exceed 35 dB(A). The report provided for a series of noise attenuation measures, which have been included on the elevations plan. It was determined by the engineers that at all times the resulting noise from the pump station will not exceed 35 dB(A), therefore allowing the proposal to meet the Environment Protection (Noise) Policy.

The proposed development is considered consistent with Objectives 1, 2, and 3 and Principles of Development Control 1, 2, 3, 8, and 9 of the Interface between land uses – General Module.

<table>
<thead>
<tr>
<th>Landscaping, Fences and Walls Module</th>
<th>Objectives: 1, 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principles of Development Control: 3, 4, 5</td>
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</table>

The application includes a chain link fence which will not be visually obstructive or restrict cross ventilation, but still provide adequate security measures for the compound. The proposed landscaping has been included on the southern and eastern boundaries in order to reduce visual impacts on the adjoining land owners. The
northern side will be partially screened by existing vines. The frontage has not been screened with vegetation in order to reduce potential impacts from roots on the underground pipes. The landscaping does not increase the risk of bushfires, introduce pest plants or remove opportunities for passive surveillance.

The proposed development is considered consistent with Objectives 1 and 2 and Principles of Development Control 3, 4, and 5 of the Landscaping, Fences and Walls – General Module.

| Natural Resources Module | Objectives: 1, 2, 6, 13, 14  
|                         | Principles of Development Control: 1, 2, 3, 9, 30, 31, 32, 33, 36, 37, 41, 42 |

The applicant has indicated that they do not wish to alter with the existing land forms of the riverbed nor remove native vegetation during the installation of the suction pipes. The site of the pump station is within the vineyard and does not impact native vegetation. The proposal will only draw water from the River Murray and will not have the ability to recirculate water back into the river. Whilst acknowledging that the pump station is a building which quite large, it is not considered that it will significantly impact on the natural environment or detract from the scenically attractive areas within the locality, given it is located on private property and alongside an existing vineyard. The building design incorporate a finished floor level which is located above the 1956 flood level and will allow the development to be protected in the event of a flood. The proposed bunker will require substantial excavation of the subject land; however the natural land form will be reinstated once construction is complete, with no erosion impacts expected to occur on the subject land given its low lying nature.

The proposed development is considered generally consistent with Objectives 1, 2, 6, 13, and 14 and Principles of Development Control 1, 2, 3, 9, 30, 31, 32, 33, 36, 37, 41, and 42 of the Natural Resources – General Module.

| Orderly and Sustainable Development Module | Objectives: 1, 3, 4  
|                                         | Principles of Development Control: 1, 2, 8 |

The proposed pump station’s has been designed with the consideration of the potential for impacts on the adjoining land owners and locality. The use of a colorbond clad finish, skillion roof, landscaping, fencing, and acoustic attenuation is considered to allow the locality to still be a pleasant environment to reside in. Considering the mitigation measures included, it is considered that the proposal will not jeopardise the continuance of adjoining land uses.

It is acknowledged that the proposal is of reasonable scale; however this proposal allows the applicant to provide a sufficient water supply to their existing operations. The use of one building rather than proliferation pump sheds is considered to be an efficient and coordinated option and to be an orderly use of the land. The proposal is considered to be an appropriate land use for the Zone, given it is expressively mentioned within the envisaged forms of development. The proposed development is directly associated with the applicant’s existing vineyards and winery, and will allow the existing horticultural land uses to be further secured within the region.

The proposed development is considered to be mostly consistent with Objectives 1, 3, and 4 and Principles of Development Control 1, 2, and 8 of the Orderly and Sustainable Development – General Module.

| Siting and Visibility Module | Objective: 1  
|                            | Principles of Development Control: 1, 4, 5, 6, 9 |
The locality is scenically attractive with the associated section of River Murray remaining mostly untouched. The proposal does not seek to significantly alter the adjoining land which will accommodate the pipelines nor remove any existing native vegetation. It is considered that the suction pipes will not impact on the scenic qualities of the locality or the River Murray, given their scale and positioning.

The use of a pre-colour treated clad finish will assist in screening the proposal from the river edge and minimise any potential visual impacts. The proposed skillion roof attempts to minimise any visual impacts on the locality, and reduce the mass of the building. Furthermore the use of one large building is considered to be less visually obstructive than if the applicant were to propose several pumps sheds on the land, in order to meet their water requirements. The proposal will be located approximately 150 metres away from the edge of the river and is not considered to be a visual impact when viewed from this area, given the slope of the land.

The proposed development is considered consistent with Objective 1 and Principles of Development Control 1, 4, 5, 6, and 9 of the Siting and Visibility – General Module.

<table>
<thead>
<tr>
<th>River Murray Flood Zone</th>
<th>Objectives: 1, 3, 4</th>
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<tbody>
<tr>
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<td>Principles of Development Control: 1, 2, 3, 6, 9, 11, 18, 20, 21, 22, 23</td>
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</table>

It is clear that the River Murray Flood Zone envisions that pump stations are to occur within the Zone, as ‘a structure for the purposes of water extraction, wetland management and irrigation management’ is expressed within the envisaged forms of development. Whilst the proposal does exceed the envisaged guiding parameters for an outbuilding, by combining all the pumps into one building, the applicant is reducing the required number of suction lines within the River Murray, pump sheds on the land, and further reducing any potential impacts on the natural environment. Furthermore the proposal will be setback approximately 150 metres from the rivers edge and includes a 12.5 metre setback from the property boundary, which is far greater than the envisaged setback of 5.5 metres.

The proposed design ensures the structure is not impacted by flood waters and will locate all the at risk equipment at a finished floor level well above the 1956 River Murray flood level. The pipelines and supporting stand will not require any dredging to occur during installation, as the pump stand will be simply driven into the river bed. The proposal is considered to conserve the rivers natural features and ecological processes. Whilst the pump bunker will require significant earthworks, the surrounding ground will be reinstated to natural levels once the works are complete. The proposed security fencing will comprise of chain mesh which is considered to be an open design which will not impede on flood waters.

The external appearance of the building will be clad in Pale Eucalypt metal sheeting which is considered to be a similar colour to the natural environment throughout the locality. Through this cladding it is considered that the proposal will harmonise within the locality. The proposal is not considered to be a non-complying form of development within the Zone, it is not considered to impede upon flood waters, impact upon the natural environment or the River Murray or be visual obstructive to the locality.

The proposed development is considered consistent with Objectives 1, 3 and 4 and Principles of Development Control 1, 2, 3, 6, 9, 11, 18, 20, 21, 22, and 23 of the River Murray Flood Zone.

SUMMARY:

The consideration as to whether Development Plan Consent should be granted to the proposed development involves three primary concerns. The first requires an identification of the intended character imprinted upon the particular locality by the Development Plan. Secondly, there must be an assessment as to how the features of the proposed development may impinge upon that character and the associated amenity. Thirdly, a planning judgment made in the exercise of discretion will be reached by weighing the extent of compatibility...
between the proposed development and the Development Plan. The implications of the application should be carefully scrutinised\(^2\).

Further, in making an assessment, the Panel must also consider that not all planning issues are of equal weight. The first consideration must be of the suitability of the proposed use “at least prima facie, a suitable and appropriate use of the subject land having regard to the provisions of the development plan\(^3\), and after the land use is found suitable, then issues of, for example, infrastructure provision, character and amenity, and functional performance, should be considered. Whilst the provisions of a Development Plan are not mandatory, provisions of the Plan are directory and persuasive and one would normally expect a planning authority and the court to apply them unless, as a matter of judgment, there is good reason to depart from them.

The proposed pump station has been suitably designed and positioned so as to pose minimal impacts on the adjoining land owners, existing land use and the broader locality. When considering the use and then the design and reasoning behind the size and height of the proposed development, it is considered that it is an appropriate outcome in that it will suitably cater for the winery’s needs, protect the equipment from the risk of flood water, and limits a proliferation of pump sheds from occurring on the land. It is acknowledged that several dwellings are located in close proximity to the proposal. However through the use of acoustic mitigation measures, a pre-colour treated finish, skillion roof and landscape screening, the potential for impacts is significantly reduced.

When assessed against the relevant provisions of the Development Plan and having regard to the context of the locality and the nature of the proposed development, it is considered that the proposal, in its current form, on balance satisfies the relevant provisions of the Development Plan.

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\(^2\) Paradise Development (Investments) Pty Ltd v District Council of Yorke Peninsula [2008] SASC 139

\(^3\) Remove All Rubbish Pty Ltd v Corporation of the City of Salisbury and Anor (1989) 51 SASR 26
RECOMMENDATION:
1. The Riverland Regional Assessment Panel determines that Development Application 551/108/19 is not seriously at variance with the Loxton Waikerie Development Plan.
2. The Riverland Regional Assessment Panel determines to grant Development Plan Consent to Development Application 551/108/19 subject to the following conditions and notes:

Council conditions:
1. Development is to take place in accordance with the supporting documentation and plans relating to Development Application Number 551/108/19, except as modified by any conditions attached to this Decision Notification, specifically:

<table>
<thead>
<tr>
<th>Plan type</th>
<th>Reference</th>
<th>Dated</th>
<th>Received</th>
<th>Prepared By</th>
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<tbody>
<tr>
<td>Site Plan</td>
<td>83504512- KEW-DA-002</td>
<td>06/05/19</td>
<td>09/05/19</td>
<td>Stantec</td>
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<tr>
<td>Suction Pipes Plan</td>
<td>83504512- KEW-DA-100</td>
<td>08/05/19</td>
<td>09/05/19</td>
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<td>Rising Mainline Site Plan</td>
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<td>06/05/19</td>
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<td>83504512- KEW-DA-102</td>
<td>30/09/19</td>
<td>01/10/19</td>
<td>Stantec</td>
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<tr>
<td>Internal Pump Chamber Layout</td>
<td>K-300819-03</td>
<td>30/08/19</td>
<td>30/09/19</td>
<td>Bedlaw Industries Pty Ltd</td>
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<td>20/08/19</td>
<td>20/08/19</td>
<td>Stantec</td>
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<tr>
<td>Project Brief</td>
<td>83504512 - Memo</td>
<td>08/05/19</td>
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<td>Stantec</td>
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<td>Acoustic Engineers Report</td>
<td>42543</td>
<td>19/08/19</td>
<td>19/08/19</td>
<td>Wood &amp; Grieve Engineers</td>
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<tr>
<td>Response to representation</td>
<td>DA 551/108/19</td>
<td>26/09/19</td>
<td>26/09/19</td>
<td>Kingston Estate Wines</td>
</tr>
</tbody>
</table>

2. Stormwater run-off from all roof drainage systems must be retained on site shall be managed in a manner as to prevent erosion or pollution of the site.
3. Landscaping in accordance with the approved plans must be established upon the land within three (3) months of the completion of construction of the pump station as shown, to the satisfaction of Council. The landscaping must be provided with an automatic watering system to promote continued growth and survival. The landscaping must be maintained, and be replaced if any of the plantings become diseased or die.
4. Driveway access to the site is to be constructed and maintained to Council’s standards and satisfaction.

The following condition is attached at the request of the Department for Environment and Water:
5. In order to maintain navigational safety along the River Murray, a navigation beacon must be installed strictly in accordance with the following DPTI requirements:
   - A navigation beacon shall be a “Minor channel marker”, starboard daymark with lantern table, in accordance with the DPTI Standard Drawings S-6977 Sheets 1 and 2.
   - The day mark shall have reflective sheeting;
   - The light shall be Sealite SL60, F1 G 3s (0.5s on, 2.5s off), settings intensity 50%, A=B, B=0 and be mounted on the lantern table;
   - The daymark pole shall be 80 OD x 6 thick tube, and all dimensions of the daymark shall be as shown on sheet 2 of DPTI's standard drawing;
   - It is acceptable for the applicant to attach the daymark to another structure or different pile type, provided the daymark shape, post and size are not amended;
   - The lantern table shall be placed at 11.8m AHD, the bottom of the triangular dayshape at
12.9m AHD; and
- The applicant shall be responsible for the supply, installation and maintenance of the navigation beacon.

The following conditions are attached at the direction of the Department for Environment and Water:

6. During construction activities the subject land must be managed in a manner as to prevent erosion and pollution of the subject site and the environment, including keeping the area in a tidy state and ensuring any waste materials are appropriately contained to ensure no pollutants (including excavation or fill material) enter the River Murray system.
7. Any fill material brought to the site must be clean and not contaminated by construction or demolition debris, industrial or chemical matter, or pest plant or pathogenic material.
8. Any excavation or fill material surplus to the requirements of the development must be disposed of such that it will not:
   a) be located within the 1956 floodplain;
   b) impede the natural flow of any surface waters;
   c) allow sediment to enter any water body;
   d) adversely impact native vegetation;
   e) facilitate the spread of pest plant and pathogenic material.
9. Appropriate measures must be undertaken to minimise water quality impacts during works on or near the riverbed and other water bodies. The use of a silt curtain, coffer dam or similar may assist in complying with this condition.
10. Any exposed areas created or exacerbated during the works must be appropriately stabilised to minimise the potential for erosion and the entry of sediment into the River Murray.

Notes:
1. The development must be substantially commenced within 12 months of the date of this Notification, unless this period has been extended by Council.
2. You are advised that any act or work authorised or required by this Notification must be completed within three years of the date of the Notification unless this period is extended by the Council.
3. The applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

The following notes are attached at the request of the Department for Environment and Water:

4. The applicant is advised of their general duty of care under the River Murray Act 2003 to take all reasonable measures to prevent any harm to the River Murray through his or her actions or activities.
5. The subject land east of Holmes Road contains native vegetation. As such, prior to any clearance being undertaken, the applicant should consult the Native Vegetation Council to determine relevant requirements under the Native Vegetation Act 1991 and its Regulations, which may include the provision of a Significant Environmental Benefit. It is likely that the applicant will be required to apply for approval under Regulation 12(34) – Infrastructure. For further information contact the Native Vegetation Council on telephone 8303 9777 or visit: http://www.environment.sa.gov.au/managing-natural-resources/native-vegetation/clearing/infrastructure-construct-or-expand.
6. The applicant is encouraged to incorporate locally indigenous plant species into any landscaping, screen planting or revegetation activities at the site to enhance the natural character of the locality, stabilise soils and provide habitat for native species. For information on appropriate species to be planted, please contact State Flora at Bremer Road, Murray Bridge.
7. If the applicant wishes to use water (other than for firefighting purposes) from the River Murray Prescribed Watercourse, then pursuant to the *Natural Resources Management Act 2004*, they will be required to hold or obtain from the Department for Environment and Water (DEW): a Water Allocation Account, Water Resources Works Approval and Site Use Approval, and will also be required to source a water allocation from an existing licensee and apply to DEW to have the water transferred to their Water Allocation Account or Water Licence. If a Works Approval or Site Use Approval is already held, it may need to be varied to reflect any change in the intake location or land to be irrigated. The applicant will be required to install a water meter compliant with the DEW meter installation and specification standard. For further information contact the DEW Water Licensing Branch (Berri office) on 8595 2053 or visit: [http://www.environment.sa.gov.au/licences-and-permits/water-licence-and-permit-forms](http://www.environment.sa.gov.au/licences-and-permits/water-licence-and-permit-forms).

8. Prior to the commencement of any works, the applicant will be required to seek the approval of the Minister for Environment and Water in the form of an application for an amended Licence to Occupy to enable continued occupation of Crown land (including any portions of infrastructure installed on the riverbed), pursuant to the *Crown Land Management Act 2009*. In addition, Native Title notification may be required as a pre-requisite to the issue of any licence, pursuant to the provisions of the *Native Title Act 1993* (Cth). If required, the notification process is a minimum of 8 weeks – in addition to the assessment of the licence application. For further information please contact the Department for Environment and Water (Crown Lands Program, Berri) on telephone 8595 2105 and quote the Development Application number, or visit: [http://www.environment.sa.gov.au/managing-natural-resources/Land/Crown_lands](http://www.environment.sa.gov.au/managing-natural-resources/Land/Crown_lands).


10. The River Murray and many of its tributaries and overflow areas have abundant evidence of Aboriginal occupation and Aboriginal sites, objects or remains may be present on the subject land. Under section 20 of the *Aboriginal Heritage Act 1988* (the Act), an owner or occupier of private land, or an employee or agent of such an owner or occupier, must report the discovery on the land of any Aboriginal sites, objects and remains to the Minister responsible for the administration of the Act, as soon as practicable, giving the particulars of the nature and location of the Aboriginal sites, objects or remains. It is an offence to damage, disturb or interfere with any Aboriginal site or damage any Aboriginal object (registered or not) without the authority of the Minister for Aboriginal Affairs and Reconciliation (the Minister). If the planned activity is likely to damage, disturb or interfere with a site or object, authorisation of the activity must be first obtained from the Minister under Section 23 of the Act. Penalties may apply for failure to comply with the Act.

Item 8.2  Development application 551/163/19 – L MacKinnon

<table>
<thead>
<tr>
<th>Application No:</th>
<th>551/163/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council:</td>
<td>District Council of Loxton Waikerie</td>
</tr>
<tr>
<td>Relevant Authority:</td>
<td>District Council of Loxton Waikerie</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Lachlan MacKinnon C/- SW Architects</td>
</tr>
<tr>
<td>Owner:</td>
<td>Lachlan MacKinnon</td>
</tr>
<tr>
<td>Lodgement date:</td>
<td>15/07/2019</td>
</tr>
<tr>
<td>Description of development:</td>
<td>Two storey detached dwelling with a carport, verandah, and balcony under main roof, alfresco and retaining walls</td>
</tr>
<tr>
<td>Property details:</td>
<td>25 Wheatley Road, Loxton, as contained in Certificate of Title Volume 5777 Folio 65</td>
</tr>
<tr>
<td>Zone / Policy Area:</td>
<td>Rural Living Zone, River Murray Water Protection Area Map LoWa/43</td>
</tr>
<tr>
<td>Development plan provisions:</td>
<td>Loxton Waikerie Development Plan, consolidated 19 April 2017</td>
</tr>
<tr>
<td>Referrals / Agency consultations:</td>
<td>Department of Environment and Water</td>
</tr>
<tr>
<td>Form of assessment:</td>
<td>Merit</td>
</tr>
<tr>
<td>Public notification category:</td>
<td>Category 1</td>
</tr>
<tr>
<td>Recommendation:</td>
<td>Grant Development Plan Consent, subject to conditions and notes</td>
</tr>
<tr>
<td>Officer:</td>
<td>Jordan Hunt</td>
</tr>
<tr>
<td>Appendices follow report:</td>
<td>Development Application Form, Certificate of Title, Encumbrance, Site Plan, Floor Plan – Ground Floor, Floor Plan – First Floor, Roof Plan, Elevation Plans, Rendered Elevation Plan, Section Plans, Survey Plan, Applicants response to relevant provisions, DEW Referral Response</td>
</tr>
</tbody>
</table>

BACKGROUND:

The applicant is seeking development plan consent for a two storey detached dwelling with a carport, verandah and balcony under the main roof, an associated alfresco area, and two retaining walls. The dwelling will be located in an established rural estate, which has views over Thieles sandbar and the River Murray.

The allotment contains significant amounts of native vegetation and non native vegetation, with the ground levels remaining mostly undisturbed.

PROPOSED DEVELOPMENT:

The proposed development comprises:

- A two storey detached dwelling, with a carport, verandah, and balcony under the main roof. The dwelling is setback 72 metres from the front boundary, 4.39 metres from the eastern side boundary, and 4.68 metres from the western side boundary and 36.43 metres from the rear boundary. The dwelling has a wall height of 5.6 metres and an overall height of 8.47 metres.
- An alfresco area which incorporates a deck, a wall height of 5.6 metres, and an overall height of 9.57 metres.
- Two retaining walls which are located at the rear of the allotment and have a maximum height of 0.91 metres.
SUBJECT LAND AND LOCALITY:

The subject land is known as 25 Wheatley Road, Loxton as contained in Certificate of Title Volume 5777 Folio 65. The allotment is 4147 square metres in area, rectangular in shape and has a direct frontage to Wheatley Road (as seen in figure 1). The allotment is located wholly within the Rural Living Zone (as seen in figure 2), as well as within the River Murray Water Protection Area. The estate has been built on a sand hills, the eastern side tends to be significantly sloped as opposed to the western side; therefore leading to a mix of dwellings on either side of the estate which have significantly different ground levels and finished floor levels.

The subject land is currently vacant with the landform being mostly undisturbed. The allotment also contains a significant amount of vegetation, with some requiring removal to accommodate a safe and convenient driveway access for the proposal. Within the estate, most of the developed allotments have been cleared of vegetation, with only some still including it as screening or ground cover.

Figure 1: Aerial of the Subject Land

\[\text{\square} = \text{Subject Land}\]
The broader locality comprises of a mixture of single storey and two storey detached dwellings which are located on both the eastern and western sides of the estate. The adjoining allotment to the north has been developed and comprises of a single storey detached dwelling, garage and a landscaped frontage and rear yard, with the remaining balance of the land remaining undisturbed. The adjoining allotment to the south is currently vacant and contains a substantial amount of vegetation; however it does include a levelled pad area which is similarly in alignment with the proposed dwelling on the subject land. The adjoining allotments to the east comprises of dwellings which face the subject land, however given the proposals positioning, it is not anticipated that it will impact on their existing views. The adjoining allotment to the west comprises of a single storey detached dwelling which is located at a significantly lower ground level than the proposal.

**NATURE OF DEVELOPMENT:**

In determining the nature of the development, Council must consider the provisions of the Rural Living Zone of the Loxton Waikerie Development Plan.

Within the Rural Living Zone the non-complying table stipulates the following:

**Rural Living Zone**

**Non-Complying**

*Development (including building work, a change in the use of land, or division of an allotment) for the following is non-complying:*

*Dwelling*

*Except detached dwelling*

Given that the proposal comprises of a detached dwelling, the application cannot be considered as non-complying and therefore must be assessed “on merit” against the provisions of the Development Plan.
PUBLIC NOTIFICATION:

The Rural Living Zone of the Loxton Waikerie Development Plan provides specific categorisation, viz

Rural Living Zone

Public Notification Categories of public notification are prescribed in Schedule 9 of the Development Regulations 2008. Further, the following forms of development (except where the development is non-complying) are designated:

- Category 1
  - Detached Dwelling

The application is therefore considered one which is to be assessed on its merits against the principles of the Development Plan, and as category 1.

SERIOUSLY AT VARIANCE:

In making an assessment of the application, section 35(2) of the Act provides direction to the Panel, in that it must give consideration as to whether the application is seriously at variance with the Loxton Waikerie Development Plan.

35—Special provisions relating to assessment against Development Plan

(3) Subject to subsection (1), a development that is assessed by a relevant authority as being seriously at variance with the relevant Development Plan must not be granted consent.

The concept of being “seriously at variance” with the Development Plan is always difficult to define with precision. Debelle J said “… the expression “seriously at variance with the Development Plan” refers to that which is an important or grave departure in either quantity or degree from the Development Plan.” And it “… is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it…4.”

Within the Rural Living Zone, Principle of Development Control 1 envisages that Detached Dwellings are to occur within the Zone. Furthermore Principle of Development Control 7 provides guiding parameters for dwellings. The application can therefore not be considered to be seriously at variance with the Loxton Waikerie Development Plan.

REFERRALS:

The application was referred to the Department for Environment and Water, their response is attached. The Department has no objection to the proposal and has directed that 4 conditions and 6 notes be attached to any decision of approval.

DEVELOPMENT PLAN PROVISIONS:

It is important to note that the dwelling principally meets the guidance provided by the Development Plan. It is referred to the Panel for a decision, based on the position of the dwelling on the land and the potential for overlooking.

<table>
<thead>
<tr>
<th>Crime Prevention Module</th>
<th>Objective: 1</th>
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</thead>
<tbody>
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<td></td>
<td>Principles of Development Control: 1, 2, 7</td>
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</table>

The proposed two storey dwelling will have a clear presence to the frontage of the land which abuts Wheatley Road. The dwelling will overlook the road and provide appropriate passive surveillance to deter any potential

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4 Mar Mina (SA) Pty Ltd v City of Marion & Anor [2008] SASC 120 (33)
crime. Furthermore it will also be clear, given the nature of the locality; the building on the allotment is a private residence.

The proposed development is considered to be mostly consistent with Objective 1 and Principles of Development Control 1, 2, and 7 of the Crime Prevention - General Module.

<table>
<thead>
<tr>
<th>Design and Appearance Module</th>
<th>Objective: 1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principles of Development Control: 1, 2, 3, 6, 8, 10, 11, 15, 16, 18, 21</td>
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</table>

The proposal is considered to contemporary in nature and exhibitve of an innovative style. It is considered that the use of a number of gables, varied roof pitches and variations to the façades allows the proposal to be sympathetic to the scale of the building and allow it to blend in within the context of the locality. By strategically positioning windows and applying a mix of materials to the external surfaces, the proposed dwelling provides visual interest and limits potential visual impact from adjoining properties. The proposed dwelling will be finished in timber cladding and masonry, which is considered to highly complement the selected colour schemes for the painted cladding, roof sheeting, window frames, and exposed timber rafters.

The site positioning allows the proposed dwelling to be suitably positioned to achieve rivers views whilst still have a clear frontage, which provides a clear entry point and presence to Wheatley Road. The design incorporates the verandahs, carport and balcony under the main roof of the proposal so that they do not appear as simple add on elements, rather integral elements of the design which results in a coordinated appearance.

Whilst the dwelling is positioned significantly further back than the existing adjoining dwelling to the north, it is in accordance with the setback parameters for the Rural Living Zone. The positioning allows the dwelling to be setback so as to not overshadow or detrimentally overlook the adjoining allotments. Further, the pad for the dwelling will not require significant disturbance to the natural land form as the applicant has selected a section of the land which is relatively flat and clear of vegetation. It is considered that the proposed design is sympathetic of the existing context of the locality and that the design incorporates suitable architectural elements to allow the dwelling to be highly compatible and pose minimal impacts.

The proposed development is considered to be mostly consistent with Objective 1 and Principles of Development Control 1, 2, 3, 6, 8, 10, 11, 15, 16, 18, and 21 of the Design and Appearance – General Module.

<table>
<thead>
<tr>
<th>Hazards Module</th>
<th>Objectives: 1, 2</th>
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<tbody>
<tr>
<td></td>
<td>Principles of Development Control: 1, 2, 3, 22, 23, 24</td>
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</tbody>
</table>

The subject land is located within the River Murray Water Protection Area; however it is located well above the 1956 flood level and very unlikely to be impacted in the event of a flood. The use of the allotment is not considered to lead to pollution of the land or the River Murray, given the land will solely be used for residential purposes.

The allotment is significantly sloped towards the east, with land slip currently being managed by the existing vegetation. The proposed design positions the dwelling on a relatively flat portion of the land, where cut and fill will be minimal and where suitable engineered batter will be implemented. It considered that the location of the septic system will not result in any landslip implications which could effect the proposal, as the system is located near the frontage of the allotment. Existing drainage lines will remain mostly unaltered and where they are modified appropriate stormwater systems will be utilised around the dwelling. Where vegetation is removed, feature trees and landscaping will be implemented to further reduce the risk of land slip. It is considered that the proposal will be safe from the risk of natural hazards.
The proposed development is considered consistent with Objectives 1 and 2 and Principles of Development Control 1, 2, 3, 22, 23 and 24 of the Hazards – General Module.

<table>
<thead>
<tr>
<th>Infrastructure Module</th>
<th>Principles of Development Control: 1, 3, 4, 5, 7, 8, 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>The dwelling will be provided with a SA Water connection, a trenched electricity supply, a wastewater disposal system and will manage storm water via rainwater tanks and the street storm water system. Access to the dwelling will be provided via the existing crossover onto Wheatley Road; however some vegetation clearance will be required to accommodate a driveway.</td>
<td></td>
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<tr>
<td>The proposed development meets the relevant provisions of the Infrastructure – General Module.</td>
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</table>

| Interface between land uses Module | Objective: 1  
Principles of Development Control: 2, 3 |
<table>
<thead>
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<tbody>
<tr>
<td>The proposal has been positioned so as to minimise potential visual impacts on the adjoining land owners as well as reduce any potential overlooking and overshadowing. The applicant has provided a supporting sight lines plan which indicates that there may be some minor overlooking into the adjoining land owners yard to the north, however it is considered that these potential impacts are negligible, given the main orientation of the dwelling.</td>
<td></td>
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<tr>
<td>The proposed development meets the relevant provisions of the Interface between land uses – General Module.</td>
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</tbody>
</table>

| Landscaping, Fences and Walls Module | Objectives: 1, 2  
Principles of Development Control: 1, 3, 4, 5 |
<table>
<thead>
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<th></th>
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<tbody>
<tr>
<td>The proposal incorporates landscaping as well as the inclusion of feature trees and shrubs. It is expected that the applicant will incorporate vegetation which is native and complements the existing vegetation on the allotment. As the dwelling has a significant overall height, all proposed vegetation is not considered to restrict future solar access. The proposed retaining walls will form garden beds and assist in creating an attractive and functional rear private open space.</td>
<td></td>
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<tr>
<td>The proposed development is considered consistent the Landscaping, Fences and Walls – General Module.</td>
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</table>

| Natural Resources Module | Objectives: 1, 2, 10  
Principles of Development Control: 30, 31, 33, 34, 36 |
<table>
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<tbody>
<tr>
<td>The position of the proposed dwelling seeks to utilise an existing flat area which does not contain vegetation. The use of this area will reduce the potential for significant land modification. The proposed driveway will require the removal of vegetation; however, it is not considered that this removal will be detrimental to the locality or cause erosion or land slip. If the applicant intends to remove any vegetation, they will be required to contact the Native Vegetation Council prior to clearance. The proposal seeks to retain most of the existing vegetation, where as traditionally throughout the locality; native vegetation has been removed to accommodate dwellings and associated landscaping.</td>
<td></td>
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<tr>
<td>The proposed development is considered consistent with the Natural Resources – General Module.</td>
<td></td>
</tr>
</tbody>
</table>
Orderly and Sustainable Development Module

Objectives: 3, 4
Principles of Development Control: 1, 8

The design meets the relevant guiding parameters - it does not prejudice the zone for its intended purpose. Furthermore it is considered that the proposed development will effectively develop the vacant allotment and be positioned so as to not impact or jeopardise the adjoining land owners.

The proposed development meets the parameters of the Orderly and Sustainable Development - General Module.

Residential Development Module

Objectives: 1, 2
Principles of Development Control: 6, 7, 8, 10, 11, 14, 19, 20, 23, 24, 25, 27, 30, 31, 37, 38

Within the immediate locality, there is another two storey dwelling which has a similar building mass and proportion to the proposal. However other than that dwelling, everything within the immediate locality is single storey in nature.

The dwelling will face westerly so as to achieve a direct frontage to Wheatley Road, provide surveillance and emphasise its main entry point. The setbacks proposed allow for potential overshadowing to be reduced as well as restrict overlooking implications. The balcony balustrade/screening and all side windows have been set with a seal height above 1.5 metres in order to further reduce any overlooking.

The dwelling design attempts to imitate existing elements within the locality by incorporating a mix of roof pitches, materials and colours. It is clear that the proposal be different to those within the locality; however it is still considered that it will be compatible with the neighbouring buildings.

The selected setback distances are well-thought-out and accord with the relevant parameters provided by the Zone. It is crucial to note that within the locality, the existing built form is not setback uniformly and that the proposal is somewhat in keeping with the existing character of the locality. Furthermore the side setback distances account for the dwelling heights in order to limit any overshadowing on the adjoining land owners. The large side and rear setbacks also allow for suitable private open space which will be highly usable. The large southern side setback also allows a suitable driveway access to be installed along the boundary up to the carport, in order to provide suitable access and parking.

The proposed development is considered consistent with the Residential Development - General Module.

Siting and Visibility Module

Objective: 1
Principles of Development Control: 4, 5, 6, 7

The design of the dwelling features variations to the walls and roof lines, large eaves and verandahs in order minimise the dwellings impact of the landscape, reduce the buildings visual bulk, and complement the natural contours of the land. The selected colours and finishes are considered to be neutral and unlikely to detract from the visual character and amenity of the locality. The driveway will be built taking into consideration the natural contours of the land and aims to minimise interference with the existing vegetation and land form.

The proposed development is considered to be mostly consistent with Objective 1 and Principles of Development Control 4, 5, 6, and 7 of the Siting and Visibility – General Module.
Sloping Land Module

| Objective: 1 |
| Principles of Development Control: 1, 2, 3, 4, 5, 6, 7 |

It is clear that the overall design of the proposed development has accounted for the sloping nature of the subject land. The design seeks to utilise existing and proposed vegetation as a visual buffer to screen the dwelling, whilst suitably manage the site. It is proposed that the driveway is constructed of a hard compacted surface and attempts to follow the natural topography of the land in order to minimise the requirement for earthworks. The wastewater system for the dwelling has been approved by Council, where it was considered that the site of the system would not lead to any erosion impacts on the proposed dwelling. Overall the proposal seeks to mostly preserve the natural topography of the land, which is clear when considering that the dwelling pad will not be significantly filled, rather the site will be cut, retained, and battered.

The proposed development is considered to be mostly consistent with Objective 1 and Principles of Development Control 1, 2, 3, 4, 5, 6, and 7 of the Sloping Land – General Module.

Rural Living Zone

| Objectives: 1, 2 |
| Principles of Development Control: 1, 2, 7 |

The proposal is considered consistent with the relevant objectives of the Rural Living Zone in that the dwelling has been designed so as to not adversely impact on the amenity of the locality, whilst also provide an architectural design which is both visual sympathetic to its scale as well as be visually engaging. The proposal is considered to upgrade the visual amenity and character of the locality.

It is clear that the Zone expects detached dwellings to occur, in that it envisages them, exempts them from being non-complying, and provides guiding parameters. The proposed dwelling is considered to accord with the relevant setback distances for the Zone, however it is considered to be at odds with the maximum building height. The proposal exceeds the maximum building height for the Zone by 1.57 metres, however given that the proposal features several roof pitches, low roof lines and is setback from all boundaries, it is considered to be an appropriate parameter to apply dispensation to in this instance.

The proposed development is considered to be mostly consistent with Objectives 1 and 2 and Principles of Development Control 1, 2, and 7 of the Rural Living Zone.

SUMMARY:

The proposal seeks to establish a two storey detached dwelling within a locality which predominately made up of single storey dwellings. It is evident that the Rural Living Zone expects two storey dwellings to occur, when reviewing the guiding parameters for dwellings.

The proposal is considered to be of high architectural standard and somewhat dissimilar to what exists in the locality, however it is clear that the provisions of the Development Plan encourage innovative and modern designs. The design is considered to be sympathetic to the overall height and scale of the proposed dwelling. Through the use of varying roof pitches and gables and generous side setbacks, the applicant was able to produce a design which creates no overshadowing on the adjoining allotments. The proposed front setback distance is significantly deeper than the adjoining dwelling to the north, however it is considered appropriate given that dwellings throughout the estate tend to vary in positioning and that the positioning of the proposal will reduce overshadowing. The dwelling positioning is not considered to lead to a detrimental impact upon the streetscape of the locality.

The windows on the northern and southern sides of the dwelling have been positioned so that they have seal height 1.5 metres above the second storey finished floor level. The balcony balustrade has also been permanently screened to a height of 1.5 metres. Both measures are considered to be highly suitable in
reducing any potential overlooking impacts on the adjoining allotments. It is anticipated that the proposal will not produce any negative impacts in regard to overlooking on the adjoining allotments.

The design of the proposed dwelling is considered to be mostly consistent with the provisions of the Rural Living Zone, as well as the relevant provisions of the General Modules of Council’s Development Plan. The proposal does not meet with the maximum building height parameter expressed in the Rural Living Zone, however this is considered to be a minor aspect when reviewing the generous side setbacks and the building positioning on the land. The colours and finishes of the proposed dwelling are different to some of the colours and finishes seen in the locality, however it is anticipated that the proposed finishes are all quite neutral and will allow the building to blend in with the locality.

Whilst the proposed two storey detached dwelling is somewhat different to what currently exists within the locality, it is anticipated that dwellings of this type, scale, and style are appropriate within the locality and Zone. The design is considered to be sympathetic to the locality, with it unlikely that proposal will create any negative impacts.

I therefore believe, on balance, that the application is worthy of Development Plan Consent, subject to conditions and notes.
**RECOMMENDATION:**

1. The Riverland Regional Assessment Panel determines that Development Application 551/163/19 is not seriously at variance with the Loxton Waikerie Development Plan.

2. The Riverland Regional Assessment Panel determines to grant Development Plan Consent to Development Application 551/163/19 subject to the following conditions and notes:

**Council conditions:**

1. Development is to take place in accordance with the supporting documentation and plans relating to Development Application Number 551/163/19, except as modified by any conditions attached to this Decision Notification, specifically:

<table>
<thead>
<tr>
<th>Plan type</th>
<th>Reference</th>
<th>Dated</th>
<th>Received</th>
<th>Prepared By</th>
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<tr>
<td>Site Plan</td>
<td>P01</td>
<td>09/2019</td>
<td>30/09/19</td>
<td>SW Architects</td>
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<tr>
<td>Floor Plan – Ground Floor</td>
<td>P02</td>
<td>07/2019</td>
<td>15/07/19</td>
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<td>Floor Plan – First floor</td>
<td>P03</td>
<td>09/2019</td>
<td>30/09/19</td>
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<td>P04</td>
<td>07/2019</td>
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<td>09/2019</td>
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</tbody>
</table>

2. Stormwater run-off from all roof drainage systems to be directed to a storage tank or tanks. Overflow from the tank/s to be contained on site or directed to Councils stormwater system to the satisfaction of Council. Stormwater retained on site shall be managed in a manner as to prevent erosion or pollution of the site and be diverted away from wastewater disposal areas and buildings.

3. The dwelling must be connected to a rainwater tank of at least 5,000 litres, intended exclusively for domestic use and plumbed within the dwelling.

4. Landscaping shall be established upon the land within three (3) months of the completion of construction of the dwelling as shown, to the satisfaction of Council.

5. The landscaping shall be planted in accordance with the approved plans, and provided with an automatic watering system to promote continued growth and survival. Landscaping which may become diseased or die must be replaced.

6. The carport must not be enclosed around its perimeter with any solid cladding or doors.

7. Driveway access to the dwelling is to be constructed and maintained to Council’s standards and satisfaction.

The following notes are attached at the direction of the Department for Environment and Water:

8. During construction activities the property must be managed in a manner as to prevent erosion and pollution of the site and the environment, including keeping the area in a tidy state and ensuring any waste materials are appropriately contained to ensure no pollutants (including excavation or fill material) enter the River Murray system.

9. Any fill material brought to the site must be clean and not contaminated by construction or demolition debris, industrial or chemical matter, or pest plant or pathogenic material.

10. Any excavation or fill material surplus to the requirements of the development must be disposed of such that it will not:

   (a) be located within the 1956 floodplain;
   (b) impede the natural flow of any surface waters;
   (c) allow sediment to re-enter any water body;
   (d) adversely impact native vegetation;
   (e) facilitate the spread of pest plant or pathogenic material.

11. Stormwater runoff from the dwelling must be managed to prevent erosion or pollution of the site and the environment, and diverted away from wastewater disposal areas, such as septic tanks and aerobic systems. Connection to water storage tanks would assist in complying with this condition.

**Notes:**

1. The development must be substantially commenced within 12 months of the date of this Notification, unless this period has been extended by Council.

2. You are advised that any act or work authorised or required by this Notification must be completed
3. The applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

The following notes are attached at the request of the Department for Environment and Water:

4. The applicant is advised of their general duty of care under the River Murray Act 2003 to take all reasonable measures to prevent any harm to the River Murray through his or her actions or activities.

5. Prior to the clearance of any native vegetation, the applicant should consult the Native Vegetation Council to determine relevant requirements under the Native Vegetation Act 1991 and its Regulations, which may include the provision of a Significant Environmental Benefit. Note that “clearance” means any activity that could cause any substantial damage to native plants, including cutting down and removing plants, burning, poisoning, slashing of understorey, removal or trimming of branches, severing roots, drainage and reclamation of wetlands, and in some circumstances grazing by animals. For further information contact the Native Vegetation Council on telephone 8303 9777 or visit: http://www.nvc.sa.gov.au

6. The applicant is encouraged to incorporate locally indigenous plant species into any landscaping, screen planting or revegetation activities at the site to enhance the natural character of the locality, stabilise soils and provide habitat for native species. For information on appropriate species to be planted, please contact State Flora at Bremer Road, Murray Bridge on telephone 8539 2105 or within Belair National Park on telephone 8278 7777 or visit: http://www.stateflora.com.au

7. If the applicant wishes to use water (other than for firefighting purposes) from the River Murray Prescribed Watercourse or wells, then they may be required to apply to the Department for Environment and Water (DEW) for a water licence, pursuant to the Natural Resources Management Act 2004. Further, a permit is required for any work to be carried out on a well or for new wells to be drilled. For further information contact the DEW Water Licensing Branch on telephone 8595 2053 or visit http://www.environment.sa.gov.au/licences-and-permits/water-licence-and-permit-forms.

8. The River Murray and many of its tributaries and overflow areas have abundant evidence of Aboriginal occupation and Aboriginal sites, objects or remains may be present on the subject land. Under Section 20 of the Aboriginal Heritage Act 1988 (the Act), an owner or occupier of private land, or an employee or agent of such an owner or occupier, must report the discovery on the land of any Aboriginal sites, objects and remains to the Minister responsible for the administration of the Act, as soon as practicable, giving the particulars of the nature and location of the Aboriginal sites, objects or remains. It is an offence to damage, disturb or interfere with any Aboriginal site or damage any Aboriginal object (registered or not) without the authority of the Minister for Aboriginal Affairs and Reconciliation (the Minister). If the planned activity is likely to damage, disturb or interfere with a site or object, authorisation of the activity must be first obtained from the Minister under Section 23 of the Act. Penalties may apply for failure to comply with the Act.

## Item 8.3 Development application 551/D007/19 – K Kratopoulos

<table>
<thead>
<tr>
<th>Application No:</th>
<th>551/D007/19</th>
</tr>
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<tbody>
<tr>
<td>Council:</td>
<td>District Council of Loxton Waikerie</td>
</tr>
<tr>
<td>Relevant Authority:</td>
<td>District Council of Loxton Waikerie</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Konstantinos Kratopoulos C/- Anderson Surveyors Pty Ltd</td>
</tr>
<tr>
<td>Owner:</td>
<td>Konstantinos Kratopoulos</td>
</tr>
<tr>
<td>Lodgement date:</td>
<td>12/03/2019</td>
</tr>
<tr>
<td>Description of development:</td>
<td>Land Division – three (3) allotments in four (4) allotment, resulting in one additional allotment</td>
</tr>
<tr>
<td>Property details:</td>
<td>Lot 21 Carter Road, Taylorville as contained in Certificate of Title Volume 6045 Folio 144 Pieces 24 and 25, 108 Hartwig Road, Taylorville as contained in Certificate of Title Volume 6074 Folio 966 Lot 26, 108A Hartwig Road, Taylorville as contained in Certificate of Title Volume 6074 Folio 997</td>
</tr>
<tr>
<td>Zone / Policy Area:</td>
<td>River Murray Fringe Zone &amp; River Murray Flood Zone Maps LoWa/10, LoWa/27, LoWa/7</td>
</tr>
<tr>
<td>Development plan provisions:</td>
<td>Loxton Waikerie Development Plan, consolidated 19 April 2017</td>
</tr>
<tr>
<td>Referrals / Agency consultations:</td>
<td>State Commission Assessment Panel &amp; SA Water Corporation</td>
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<tr>
<td>Form of assessment:</td>
<td>Non-complying</td>
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<td>Public notification category:</td>
<td>Category 3</td>
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<tr>
<td>Officer:</td>
<td>Jordan Hunt</td>
</tr>
<tr>
<td>File reference:</td>
<td>551/D007/19</td>
</tr>
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</table>
| Appendices follow report:| • Development Application  
• Certificate of Titles  
• No Government Interests Declaration  
• Plan of Division  
• SA Water Referral Response  
• SCAP Referral Response  
• Statement in Support |

### HISTORY OF THE SITE:

The land has proposed to be divided a number of times in the past. The following land division applications are attached to the relevant titles:

- 551/D529/03 – Non-Complying – Refused – Development Assessment Commission
- 551/D502/03 – Non-Complying – Approved – Development Assessment Commission
- 551/D031/05 - Non-Complying – Refused – Development Assessment Commission
- 551/D031/06 – Merit – Approved – District Council of Loxton Waikerie
- 551/D002/10 – Non-Complying – Approved – Development Assessment Commission
- 551/D008/17 – Non-Complying – Refused – Development Assessment Commission

### PROPOSED DEVELOPMENT:

The applicant seeks to create one additional allotment and re-designate the configurations of the existing allotments. The proposal is identified to comprise of two separate components:

- Create one 2.241 hectare allotment which will include the existing dwelling
- Create three new allotments through a boundary realignment of the existing titles.

Allotment 50 does not form part of the division process, rather is only included on the plan of division to indicate easements and re-designate its allotment number.

**SUBJECT LAND AND LOCALITY:**

The subject land is known as:
- Lot 21 Carter Road, Taylorville as contained in Certificate of Title Volume 6045 Folio 144;
- 108 Hartwig Road, Taylorville which comprises of pieces 24 and 25 as contained in Certificate of Title Volume 6074 Folio 966;
- 108A Hartwig Road, Taylorville which comprises of Lot 26 as contained in Certificate of Title Volume 6074 Folio 997.

Allotment 21 is predominately used for horticultural purposes, as the land contains significant amounts of pistachio and olive trees. The allotment contains a number of outbuildings which are used in association with the land use. The allotment is located within both the River Murray Fringe Zone and the River Murray Flood Zone.

108 Hartwig Road is formed by existing pieces 24 and 25. Piece 24 is irregular in shape in that it extends down the entire length of Hartwig Road and includes a narrow access strip to the existing dwelling. Piece 24 is used primarily for horticulture purposes, and contains an existing dwelling with associated outbuildings. Piece 25 remains mostly cleared, however it does contain an existing outbuilding.

Allotment 26 is a battle-axe style allotment which contains an existing dwelling, which has a direct access to Hartwig Road. The allotment is located wholly within the River Murray Fringe Zone and is subject to an easement for water supply purposes.

![Figure 1 – aerial photograph of the subject land. Approximation of subject land outlined in red.](image-url)
NATURE OF DEVELOPMENT:

In determining the nature of the development, Council must consider the provisions of the River Murray Fringe Zone and the River Murray Flood Zone of the Loxton Waikerie Development Plan (Consolidated 19 April 2017).

River Murray Fringe Zone

Non-complying Development

Development (including building work, a change in the use of land, or division of an allotment) for the following is non-complying:

Land division creating additional allotment(s)

Except where one of the following applies:

(d) in any other location, to excise a dwelling that existed as of 1 December 2011 from an allotment that also existed as of 1 December 2011 provided that the:

(i) excised allotment:

(A) contains the existing dwelling
(B) has a minimum area of 1 hectare
(C) where all new allotment boundaries are located at least 40 metres from the existing dwelling unless where it is located adjacent to a road reserve or existing non-horticultural or non-farming activities

(ii) remaining allotment has a minimum area of 8 hectares for land to be used for horticultural development, or 100 hectares for land to be used for farming.

The proposal is considered to meet with parts (A) and (B) of exception (d) in that the plan of division results in the excision of the existing dwelling onto an allotment which is at least 1 hectare in area. The dwelling however will not be setback 40 metres from all new boundaries. Furthermore the resulting allotment which includes piece 51 requires the creation of a new boundary within the River Murray Flood Zone.
The River Murray Flood Zone states the following exceptions for land division:

**River Murray Flood Zone**

**Non-complying Development**

Development (including building work, a change in the use of land, or division of an allotment) for the following is non-complying:

*Land division*

Except where the land division is for the purpose of any of the following:

(a) creating an allotment to accommodate an existing dwelling

(b) creating a public road or a public reserve

(c) a minor adjustment of allotment boundaries to remove an anomaly in the current boundaries with respect to the location of existing buildings or structures.

Proposed piece 51 is not considered to be in accordance with any of the land division exceptions listed for the River Murray Flood Zone. The application is therefore a non-complying form of development.

**PUBLIC NOTIFICATION:**

If this application is to proceed it will require Category 3 public notification in the River News and notices sent to adjoining land owners. Following public notification and referral responses a detailed report would then be presented to the Panel for a decision.

**SERIOUSLY AT VARIANCE:**

In making an assessment of the application, section 35(2) of the Act provides direction to the Panel, in that it must give consideration as to whether the application is seriously at variance with the Loxton Waikerie Development Plan.

35—Special provisions relating to assessment against Development Plan

(2) Subject to subsection (1), a development that is assessed by a relevant authority as being seriously at variance with the relevant Development Plan must not be granted consent.

The concept of being “seriously at variance” with the Development Plan is always difficult to define with precision. Debelle J provides “…the expression “seriously at variance with the Development Plan” refers to that which is an important or grave departure in either quantity or degree from the Development Plan.” And it “…is not enough that the proposal might conflict with the Development Plan; it must be seriously at variance with it.…”5

The application is for a land division within the River Murray Fringe Zone and the River Murray Flood Zone. Within the River Murray Fringe Zone Principle of Development Control 16 expresses parameters for development of this nature to occur. Furthermore within the River Murray Flood Zone, Principles of Development Control 24 and 25 express parameters for development of this nature to occur. The application can therefore not be considered seriously at variance with the Development Plan.

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5 Mar Mina (SA) Pty Ltd v City of Marion & Anor [2008] SASC 120 (33)
STATEMENT OF SUPPORT:
A Statement of Support has been provided in accordance with 17(1) of the Development Regulations 2008; it is attached to this report.

PLANNING CONSIDERATIONS:

River Murray Flood Zone

Principle of Development Control 25

*Boundary realignments for residential purposes should result in:*

(a) any new roads being located behind existing dwellings, rather than between existing dwellings and the public waterfront reserve

(b) the provision of a reserve of 50 metres in width above pool level along the waterfront or, where this is not practicable, the provision of maximum possible width of reserve above pool level along the waterfront.

The plan of division only seeks to create one new boundary line within the River Murray Flood Zone. All existing driveways and roads are located behind the existing dwellings and will not provide additional access to the riverfront. The proposal does not include a provision of a reserve along the waterfront; however this is due to the land owner having existing infrastructure and horticultural trees located near the rivers edge.

The proposal is considered to be partially in accordance with Principle of Development Control 25 of the River Murray Flood Zone.

River Murray Fringe Zone

Principle of Development Control 16

*Land division should not occur unless it is for the alteration of the boundaries of an allotment, and results in allotments of at least 100 hectares in area, unless:*

(a) the minimum allotment area is 8 hectares and is for the purpose of facilitating the use of the land for horticultural activities.

Proposed allotment 54 and pieces 53 and 51 will be used for horticultural purposes and result in allotments in excess of 8 hectares. Proposed allotment 52 is only 2.241 hectares in area and will not be used for horticultural purposes, rather contain the existing dwelling. The proposal is considered to be partially in accordance with Principle of Development Control 16 of the River Murray Fringe Zone.

SUMMARY:

The proposed land division seeks to excise the existing dwelling and realign the existing boundaries so as to create two useful horticultural allotments. The existing dwelling contained within proposed lot 52 will not be setback 40 metre setback from all new proposed boundaries; however existing vegetation allows a closer setback to be considered appropriate. Whilst the proposal seeks to create a new boundary within the 1956 River Murray flood plain, the new boundary is not considered to impact on the function of the River Murray or detrimentally impact upon the locality. Ultimately the proposal allows the land to be reconfigured so that the existing residential land use is separated from the horticultural land uses and the larger remaining allotments being redesigned so that they are of a suitable shape and size which accommodates horticultural activities.

RECOMMENDATION:
The Riverland Regional Assessment Panel resolves to determine to proceed with an assessment pursuant to the Development Act 1993 and Regulation 17(3)(b) of the Development Regulations 2008.
ITEM 9 OTHER BUSINESS:

ITEM 10 NEXT MEETING:
The next scheduled meeting of the RRAP is November 21 2019.

ITEM 11 CLOSE: