



# Development Assessment Panel

25 May 2009

MID MURRAY COUNCIL

DEVELOPMENT ASSESSMENT PANEL

Agenda

Meeting to be held in the Council Chambers, Main Street, Cambrai

Monday 25 May 2009, 10.00am

1. **PRESENT**

Frank Wieser (Presiding Member), James Miller, Graham Gaston, Ross Dawkins,  
Jeff Howie, Mick Morrissey and Marie Rudloff

2. **IN ATTENDANCE**

Kelvin Goldstone, Environmental Services Manager  
Geoff Parsons, Senior Development Officer – Planning  
Jennifer Brewis, Development Officer - Planning  
Melissa Marschall, Minute Secretary

3. **COMMENCEMENT AND WELCOME** AM

4. **APOLOGIES**

5. **CONFIRMATION OF PREVIOUS MINUTES**

(Page 2586 – 27/4/2009)

Minutes of the Mid Murray Council Development Assessment Panel meeting held on  
27 April 2009.

**RECOMMENDATION**

moved that the minutes of the Mid Murray Council Development  
Assessment Panel Meeting held on 27 April 2009 be taken as read and confirmed.  
Seconded

6. **DECLARATION OF INTEREST BY MEMBERS OF PANEL**

## MID MURRAY COUNCIL

### 7. DEVELOPMENT REPORT

#### RECOMMENDATION

moved that the report be received.

Seconded

### 8. LATE CORRESPONDENCE

### 9. OTHER BUSINESS

### 10. NEXT MEETING

To be held in the Council Chambers, Main Street, Cambrai on Monday, 29 June 2009, commencing at 10.00am.

### 11. CLOSURE

MID MURRAY COUNCIL

DEVELOPMENT ASSESSMENT PANEL

Development Report

Meeting to be held in the Council Chambers, Main Street, Cambrai

Monday 25 May 2009, 10.00am

Table of Contents

Item No.	Subject	Page No.
	Development Report	
7.1	711/D012/07 – A Davis-Ross.....	1

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.1 LAND DIVISION APPLICATION 711/D012/07 – A DAVIS-ROSS

<i>Reporting Officer:</i>	<i>Jennifer Brewis</i>
Development No.	711/D012/07
Applicant	A Davis-Ross
Subject Land	Lot 100 of DP50332, Maranatha Road, Hundred of Tungkillo
Proposal	Land Division (Torrens Title) - Creation of One Additional Allotment

#### ***INTRODUCTION***

The above mentioned application was brought before the Panel in January 2008 to decide whether to proceed with an assessment of the proposal or to refuse it at that early stage. The Panel resolved to proceed with an assessment of the application.

Copies of plans and details submitted with the application are attached.

#### ***DESCRIPTION OF PROPOSAL***

The proposal is for the creation of one additional allotment. The allotment (Lot 102) will be approximately one hectare in area. The proposal will result in the building previously used as a "Managers Residence" being located on Lot 102, thereby separating it from the remainder of the land (previously used as a camp).

#### ***SUBJECT LAND***

The subject site is identified as Lot 100 of DP50332, Maranatha Road, Hundred of Tungkillo as contained in Certificate of Title Volume 5631 Folio 523. The land is wholly located in the Hills Policy Area of the Rural Zone as defined in the Mid Murray Council Development Plan Map MiMu/96.

In addition, Hills Policy Area Fig HF(HPA)/5 it identifies the subject land as being located in the Hills Face Precinct.

The subject site currently has an area of 46.4 hectares. There is extensive native vegetation located upon the site, particularly to the rear of the existing dwelling and where the proposed boundary is to be located.

A more open area on the northern part of the lot contains various transportable buildings which were previously used as part of a Christian camp. This camp area includes cabins and a caravan/camping area. In mid 2005 the current owners advised Council this camp was no longer in use. The Building Fire Safety Committee has therefore not carried out inspections to ensure the buildings meet current fire safety requirements for overnight accommodation.

Within the documentation provided it explains that since the use of the camp ceased the "cooks quarters" have been utilised as a residence. Approval for the use of this building as a residence has not been sought or granted.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.1 LAND DIVISION APPLICATION 711/D012/07 – A DAVIS-ROSS

A building previously used as a “Managers Residence” is located in the north eastern portion of the site. It is accessed via Maranatha Road and has a fence in close proximity to the dwelling, which separates the building from the unused camping area.

Maranatha Road is the only formed gravel road which gives access to the proposed land.

Attached are maps which identify the subject land and locality.

#### ***NATURE OF THE LOCALITY***

Nearby land is predominantly used for grazing purposes. There are several other dwellings in close proximity to the subject site which are also accessed via Maranatha Road.

An allotment similar in dimensions to the one proposed, and also containing a detached dwelling, is located in the north eastern corner of the subject site. This was previously approved in 1998.

#### ***REFERRALS***

The Development Assessment Commission has undertaken referrals to the following agencies:-

- SA Water;
- PIRSA;
- ETSA;
- Electra Net.

A copy of the responses received are attached except for PIRSA who had no comment to make.

Council is not required to undertake any referrals pursuant to Schedule 8 of the Development Regulations, 1993.

#### ***PUBLIC NOTIFICATION***

Pursuant to the requirements of the Development Act and Regulations the proposed development was considered to be of a type which warranted Category 3 public notification.

A notice was placed in The Murray Valley Standard on 19 February 2009 and letters were sent to adjoining land owners. Council received one written representation opposing the development.

#### ***RELEVANT PROVISIONS OF THE MID MURRAY COUNCIL DEVELOPMENT PLAN***

Members are advised that the relevant Development Plan at the time the application was lodged was that consolidated on 24 March 2005. The application must be assessed against the Development Plan that was in force at the time of lodgement.

### Council Wide

*Objectives: 1, 2, 10, 32, 33 & 39*

*Principles of Development Control: 3, 10, 11, 13, 36, 103 & 110*

### Rural Zone

*Objectives: 4, 7 & 23*

*Principles of Development Control: 1, 14, 24, 27 & 28*

### Hills Policy Area

*Objective: 1*

*Principle of Development Control: 1*

### **ASSESSMENT**

Information has been provided in relation to the personal circumstances of the owners of the land. However Council must assess the application against the relevant provisions of the Development Plan irrespective of other factors.

An assessment of the various issues associated with the proposal is provided for below.

#### Native Vegetation

Council's Development Plan places an emphasis on the conservation of native vegetation, as can be seen in the various provisions quoted below:-

##### *Council Wide Objective 39*

*Retention of environmentally-significant areas of native vegetation.*

##### *Council Wide Principle of Development Control 13*

*Allotment boundaries should be located where interference with native vegetation and drainage lines will be minimal and in locations which enhance the management of the natural features and so that the allotments can accommodate the proposed or likely development without the need for clearance of native vegetation.*

##### *Council Wide Principle of Development Control 103*

*Development liable to create significant adverse effects on natural features, areas of significant native vegetation, drainage systems, water catchments and storage areas, the River Murray or any associated water bodies, fragile land, scenic routes or scenically attractive areas, or areas of environmental significance, should not be undertaken.*

##### *Council Wide Principle of Development Control 110*

*Land should not be divided, or allotment boundaries rearranged in a way which increases the number of allotments or part allotments over areas of native vegetation or adjoining areas of native vegetation, and which provides for development to occur without the need to clear native vegetation.*

Rural Zone Objective 4

*Retention and maintenance of wetlands and existing native vegetation for its conservation, biodiversity, and habitat value and environmental management function.*

Rural Zone Objective 7(c)

*No adverse impact generated by horticulture and irrigated pasture. Development and use of land for horticulture and irrigated pasture which does not contribute to the degradation of the River Murray by way of:-*

*(c) undue impacts on remnant vegetation.*

Rural Zone Principle of Development Control 1

*Development should not be undertaken unless it is consistent with the Desired Future Character and Acceptable Uses for the Zone.*

There is existing native vegetation located behind and around the dwelling proposed to be located on the one hectare allotment. The above mentioned provisions of the Development Plan surround the preservation and conservation of vegetation and how development should be designed and sited so that this is achieved.

There are exemptions within the Native Vegetation Act which allow the removal of vegetation along boundaries. This means that while the applicant has advised that they will not seek the removal of vegetation there is the risk that it will be removed in the future as there are no measures in place at present which prevent the vegetation being removed as per the exemptions in the NV Act. The proposed development places the native vegetation upon the site at risk of removal and as such is at variance with the listed provisions.

The applicant has advised Council that they are prepared to consider a Land Management Agreement (LMA) which would prevent the fencing of the allotment boundaries and the removal of vegetation. However members should note that LMA's take a significant period of time to prepare and can cost approximately \$2,000. The cost for the creation of an LMA is typically borne by the applicant. However the future enforcement costs for Council (staff and Court costs if necessary) would be borne by Council.

While the LMA has the potential to remove the concerns surrounding the loss of native vegetation, advice previously received from Council's Solicitors outlined difficulties sometimes encountered when enforcing LMA's. The question Council's DAP needs to consider is how far Council wish to go to facilitate development?

It should be further noted that the allotment that is to be created will not have any available cleared land for outbuildings or further built form upon the one hectare allotment without requiring the removal of native vegetation.

Allotment Size

The allotment which has already been created (approx 1 hectare in size containing one existing dwelling) was done so in accordance with the policies in force at the time. These policies are no longer in place. Objective 2 of the Council Wide section seeks to have residential forms of development confined to defined urban areas. The creation of allotments in rural areas does not retain rural land for primary production purposes.

Below is a list of relevant provisions in this regard:-

Council Wide Objective 10

*Division of land for purposes appropriate to the location and intended use of the land.*

Council Wide Objective 32

*Retention of rural areas for agricultural and pastoral purposes.*

Council Wide Objective 33

*Maintenance of the character of rural areas.*

Rural Zone Principle of Development Control 24

*A dwelling should only be established on an allotment with a minimum size of 36ha, other than the area defined as Figs HF(MWPA)/1 to 5 and Figs HF(HPA)/1 to 5 where an allotment with a minimum size of 900ha is required.*

Rural Zone Principle of Development Control 27

*Creation of additional allotments should not occur other than to excise a dwelling that existed at 26 June 2003.*

Rural Zone Principle of Development Control 28

*Allotments including realignment of existing allotments should be located and be of size and configuration which:-*

- (a) takes account of environmental features and site constraints;*
- (b) provides sufficient space in appropriate locations for the siting of buildings, structures and associated services and infrastructure;*
- (c) protects native vegetation;*
- (d) is able to satisfactorily accommodate an appropriate use of the land (existing or proposed) consistent with land use policies for the Rural Zone; and*
- (e) ensures existing dwellings are on allotments of 36ha.*

Hills Policy Area Objective 1

*Retention of the open rural character as derived from large land holdings used for primary production and dispersed isolated built form.*

In the Hills Policy Area it specifically lists the creation of an allotment as non-complying development. This is unlike the general Rural Zone provisions which allow land division to excise a dwelling which existed prior to June 2003.

The proposal is to create a one hectare allotment (which contains a building used as a dwelling). Principles 27 and 28 of the Rural Zone relate to the formation of allotments to excise dwellings which existed prior to June 2003. The design technique of Principle of Development Control 27 notes that allotments should be of a size that conforms to the requirement in Principle of Development Control 24, which in the Hills Face Precinct is 200ha. The proposed allotment obviously does not meet the minimum development unit (MDU) requirement.

Allotment size requirements in the Rural Zone are in place to ensure residential development does not encroach upon rural/farming activities, thereby preventing potential land use conflicts in the future.

In this instance the applicant argues that the topography of the land will reduce any land use conflict occurring as spray drift, noise and other activities commonly occurring in rural areas will be reduced by the valley and dense vegetation. Council staff acknowledge, and to a certain extent, concur with the statement.

### Existing Use Rights

Principle of Development Control 28 (c), (d) & (e) of the Rural Zone notes:-

#### Rural Zone Principle of Development Control 28

*Allotments including realignment of existing allotments should be located and be of a size and configuration which:*

- (c) protects native vegetation;*
- (d) is able to satisfactorily accommodate an appropriate use of the land (existing or proposed) consistent with land use policies for the Rural Zone; and*
- (e) ensures existing dwellings are on allotments of 36ha.*

The details that have been provided by the applicant correctly explain that consideration must be given to the existing land uses when considering an application. However, the use of the “cooks quarters” as a residence has not been authorised and the use of the camp site has ceased. The proposed Lot 103 has no approved land use upon it. The proposed one hectare allotment will not be of a size suitable (according to the provisions of the Development Plan) to accommodate an acceptable use (nor the existing use).

There are several dwellings in the immediate locality accessed via Maranatha Road and as such, the existing character of the area is unlikely to be altered. However by allowing further subdivision in this location Council are essentially allowing a de-facto rural living area to be created, which is not located adjacent to a township and will not have access to services and facilities that existing townships offer.

### Service and Infrastructure

Due to the existing built form and previous site usage the creation of an additional allotment in this location will not require additional services and infrastructure to be supplied to the site beyond what is already available.

*CONCLUSION*

The creation of a one hectare allotment in this location will potentially result in the clearance of native vegetation. The allotment will not be of a suitable size to accommodate a desired use or be of a size contemplated in the Rural Zone provisions.

It is therefore considered that Development Application 711/D012/07 is at variance with the relevant Objectives and Principles of Development Control of the Mid Murray Council Development Plan and is therefore not supported.

**RECOMMENDATION**

moved that pursuant to Section 33(1)(a) and (c) of the Development Act, 1993 Development Plan Consent be refused to Development Application 711/D012/07 for the following reasons:-

1. The proposal will potentially lead to the removal of vegetation so will not conserve or preserve native vegetation:-

Council Wide Objectives 10, 32 & 33  
Rural Zone Principles of Development Control 24, 27 & 28  
Hills Policy Area Objective 1.

2. The created allotment will not be of a suitable size to accommodate a desired use or be of a size outlined in the Rural Zone provisions:-

Council Wide Objectives 10, 32 & 33  
Rural Zone Principles of Development Control 24, 27 & 28  
Hills Policy Area Objective 1.

Seconded

Kelvin Goldstone,  
MANAGER, ENVIRONMENTAL SERVICES