



# Development Assessment Panel

20 May 2013

# MID MURRAY COUNCIL

## DEVELOPMENT ASSESSMENT PANEL

### Agenda

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

Monday 20 May 2013, 10.00am

1. **PRESENT**

Bruce Ballantyne (Presiding Member), David Hughes, James Miller,  
Graham Gaston, Mardi Jennings, Peter Raison and Brian Taylor

2. **IN ATTENDANCE**

Kelvin Goldstone, Director – Development & Environmental Services  
Geoff Parsons, Manager – Development Services  
Aaron Curtis, Senior Development Officer – Planning  
Jake McVicar, Development Officer – Planning  
Melissa Marschall, Minute Secretary

3. **COMMENCEMENT AND WELCOME** AM

4. **APOLOGIES**

5. **CONFIRMATION OF PREVIOUS MINUTES**

(Page 2857 – 18/3/2013)

Minutes of the Mid Murray Council Development Assessment Panel meeting held on 18 March 2013.

(Page 2860 – 6/5/2013)

Minutes of the Mid Murray Council Development Assessment Panel special meeting held on 6 May 2013.

**RECOMMENDATION**

**moved that the minutes of the Mid Murray Council Development Assessment Panel Meeting held on 18 February 2013 and minutes of the Mid Murray Council Development Assessment Panel Special Meeting held on 6 May 2013 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,  
17 June 2013, 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 20 May 2013, 10.00am**

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## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.1 DEVELOPMENT APPLICATION 711/106/13 – NBN CO LIMITED

*Reporting Officer:* Aaron Curtis  
*Position:* Senior Development Officer - Planning

**Development No.** 711/106/13  
**Applicant** NBN Co Limited  
**Subject Land** Lot 305 in DP85171, 4-6 Walker Avenue, Mannum, Hundred of Finniss  
**Proposal** Telecommunications Facility (30m monopole with 3 attached panel antennas, 3 attached remote radio units, freestanding equipment cabinet and security fencing)

#### **INTRODUCTION**

The applicant, NBN Co Limited, lodged the above development application with Council on 28 March 2013, seeking approval for a telecommunications facility at Lot 305 in DP85171, 4-6 Walker Avenue, Mannum, Hundred of Finniss.

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

#### **BACKGROUND**

The applicant, NBN Co Limited, is a Government Business Enterprise, established by the Federal Government, to design, build and operate the National Broadband Network (NBN). The NBN seeks to create a high speed broadband network to all Australian households and businesses, using a combination of optic fibre, wireless and satellite technology.

The majority of households and premises will be serviced via optic fibre service. However, in many regional townships, such as Mannum, the primary service will be fixed wireless. Fixed wireless delivers a broadband service over the air from a radio network base station to an antenna and network equipment installed at the end user premises.

The fixed wireless network is engineered to meet the speed and service requirements for a known number of users in the coverage area. This means that the bandwidth per end-user has the potential to be more stable than mobile wireless, even in peak times of use. This is quite different to a mobile wireless service where speeds vary due to demand.

#### **SUBJECT LAND**

The subject site is Lot 305 in DP85171, 4-6 Walker Avenue, Mannum, Hundred of Finniss. The site is a rectangular shaped allotment of 1.527ha, having a corner frontage to Walker Avenue along its north-western boundary and frontage to Wanke Road along its north-eastern boundary.

The site is currently used as a commercial storage facility. Four large sheds sit upon the land and are evenly spaced within the southern two thirds of the site. The northern one third of the site nearest to Wanke Road appears undeveloped/unused.

The land is under private ownership in the name of B & D Forrest. I understand NBN Co Limited will enter into a lease with the owners to enable the development to proceed on the land.

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The developed part of the site is securely fenced around its perimeter. The unbuilt upon areas within the securely fenced area are surfaced with rubble, and used for manoeuvring/parking, tank storage and for storage of shipping containers.

The majority of the site is devoid of vegetation, other than a small cluster situated within the vacant area near the Wanke Road boundary. The site falls gently from north-west down to south-east, the sharpest fall being near the site's south-eastern boundary.

Photos taken while on-site on 26 March 2013 are attached with written annotations confirming the viewing angle of the photos taken.

#### ***DESCRIPTION OF LOCALITY***

The site is positioned near the north-eastern edge of the Mannum township. This site is surrounded by residential land uses on all sides, except as follows:

- a) At the junction of Walker Avenue and Wanke Road, there is a small cut-out allotment owned by SA Water, occupied by two large water towers;
- b) Abutting the site on its south-western side is a large 'hammerhead' allotment occupied by a large shed, having a narrow 'handle' frontage to Walker Avenue;
- c) Abutting the site on its south-eastern side is another large 'hammerhead' allotment, that is vacant, having a narrow 'handle' frontage to Wanke Road;
- d) On the opposite side of Walker Avenue, there is a large reserve under the ownership of the Mid Murray Council.

The remaining land in the locality, comprising residential land use, consists generally of small allotments of between 500m<sup>2</sup> and 1,000m<sup>2</sup>, occupied mainly by single storey detached dwellings and ancillary buildings and structures.

Some residential sized allotments fronting either side of Wanke Road are vacant. Land further west of Wanke Road (fronting Dollard Avenue) comprises generally larger rural living sized allotments, also predominantly occupied by single storey detached dwellings.

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

The applicant seeks approval for a telecommunications facility, comprising the following key elements:

- a) 30m high monopole;
- b) Three panel antennas strap mounted to the top of the monopole;
- c) Three remote radio units below the antennas;
- d) Freestanding equipment cabinet at ground level;
- e) Security fenced compound.

The tower and equipment cabinet will be contained within a fenced compound that will occupy a small area of unused land, opposite the Walker Avenue boundary. This land is presently surplus to the landowners requirements, nestled between an existing storage shed to the south-west on the same allotment and the SA Water site directly north-east.

Detailed plans in support of the proposed construction are attached.

**SITE SELECTION AND BACKGROUND**

NBN Co Limited seeks to identify a site where the take up of fixed wireless broadband facility would be highest. Typically, new sites must be located within, or immediately adjacent to, the identified ‘search area’. A range of other key parameters influence the final site selection as follows:

- a) Visual prominence of site;
- b) Potential for co-location;
- c) Availability of suitable land;
- d) Occupational health and safety implications;
- e) Construction issues;
- f) Topographical constraints;
- g) Policy constraints;
- h) Environmental impacts;
- i) Cost implications.

NBN Co Limited undertook an investigation of suitable sites in Mannum to service the ‘search area’, which is defined as the main township itself plus the immediately adjacent rural living area to the west and north-west. Three candidate sites were selected for in-depth investigation, two fronting Walker Avenue and a third at Cowirra as follows:

**Candidate A** – New monopole – Existing commercial storage facility

**Candidate B** – New monopole – SA Water tower site

**Candidate C** – Co-location – Existing Crown Castle Telecommunications Facility.

The preferred site was found to be Candidate A. Candidate B is the adjacent site owned by SA Water and which offered enhanced screening of the tower above Candidate A. However, negotiations to secure lease of this property could not be reached. Candidate C was not viable because the site was too far from Mannum to meet coverage objectives.

Consequently, the applicant seeks to erect the facility on the commercial storage site.

**CLASSIFICATION OF DEVELOPMENT**

The site is located within the Commercial Zone of the Mid Murray Council Development Plan (Consolidated 6 December 2012) as identified on Map MiMu/61.

The proposed development constitutes a “Telecommunications Facility” as defined under Schedule 9 of the *Development Regulations 2008* as follows:

**Telecommunications facility** means a facility within the meaning of the *Telecommunications Act 1997 of the Commonwealth*.

Under the *Telecommunications Act 1997*, a “Facility” means:

**Facility** means:

- (a) Any part of the infrastructure of a telecommunications network; or
- (b) Any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.1 DEVELOPMENT APPLICATION 711/106/13 – NBN CO LIMITED

The proposed development, being for the purpose of transmitting a wireless internet service, clearly constitutes a “Telecommunications Facility” within the meaning of the *Development Act 1993*. It is also clear the associated works such as the equipment compound and fence are also captured within this broad definition.

I note that a “Telecommunications Facility” is neither listed as being a complying or non-complying form of development in the Commercial Zone. On this basis, the application is subject to an “on-merit” assessment against the relevant provisions of the Mid Murray Council Development Plan.

#### **REFERRALS**

The application did not trigger a referral to any statutory body under Schedule 8 of the *Development Regulations 2008*.

#### **PUBLIC NOTIFICATION**

Development of the kind proposed is neither listed as being a Category 1 or Category 2 form of development under Principles of Development Control 16 or 17 of the Commercial Zone. On this basis, I must turn to Schedule 9 of the *Development Regulations 2008*. Under Schedule 9, Clause (6)(1)(q) states:

##### **Part 1 – Category 1 development**

(6)(1) Any development which consists of any of the following, other than where the site of the development is adjacent land to land in a zone under the relevant Development Plan which is different to the zone that applies to the site of the development or where the development is classified as non-complying under the relevant Development Plan:

(q) the construction of, or change in use to, a telecommunications facility the total height of which does not (or will not) exceed 30 metres in a Commercial, Local Commercial, District Commercial, Commence/Industry, Industry/Commerce, Industrial/Commercial, Industry Deferred, Industry/Business, Local Business, Public Purpose, Service Depot, Service Industry, Showgrounds, Special Industry, Deferred Industry, Extractive Industry, Business, Technology Park, Office, Local Office, Deferred Urban, Industrial, Light Industrial, Industry, Light Industry, Commercial Light Industry or General Industry Zone, as delineated in the relevant Development Plan. (my underlining)

The application involves construction of a “Telecommunications Facility” not exceeding 30 metres in height within a Commercial Zone, as delineated in the relevant Development Plan. On this basis, the application would, on the face of it, appear to be a Category 1 form of development under Schedule 9.

However, I note the site of the development is adjacent land that is zoned Residential under the Mid Murray Council Development Plan. On this basis, the application must be a Category 2 form of development under Schedule 9, Clause (19) of the *Development Regulations 2008* as follows:

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.1 DEVELOPMENT APPLICATION 711/106/13 – NBN CO LIMITED

- (19) Except where the development falls within Part 1 of this Schedule, is within the City of Adelaide, or is classified as non-complying development under the relevant Development Plan, a change of use of land in a situation referred to in Clause 6 of this Schedule where the site is adjacent land to land in a zone under the relevant Development Plan which is different to the zone that applies to the site of the development.  
(my underlining)

The application underwent the Category 2 public notification period with one representation being received, raising no objection to the development.

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

##### **Commercial Zone**

Objectives: 1, 2, 3 & 4

Principles of Development Control: 1, 2, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16 & 17

#### **ASSESSMENT**

Detailed assessment of the proposal has taken place against the relevant provisions of the Mid Murray Council Development Plan (Consolidated 6 December 2012), as provided below under headings.

##### Land Use

Principle of Development Control 1 of the Commercial Zone states that:

- 1** *The following forms of development are acceptable in the Commercial Zone:*

*Builder's yard*

*Motor repair station*

*Motor vehicle related business other than wrecking yard or a crash repair business*

*Office*

*Petrol filling station*

*Public service depot*

*Retail showroom*

*Service industry*

*Service trade premises*

*Store*

*Warehouse.*

A "Telecommunications Facility" is not envisaged within the Commercial Zone under Principle of Development Control 1. However, I note such facilities are anticipated within Commercial Zones under Council Wide Principle of Development Control 366 as follows:

#### **366** Telecommunications facilities should:

- (a) Be located and designed to meet the communications needs of the community;
- (d) Primarily be located in industrial, commercial, business, office, centre and rural zones;

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The facility will provide high speed wireless internet for residential premises and businesses in Mannum and the surrounding rural living areas. The facility has been sited in a location that best serves these needs.

Co-location of the facility with another tower was not possible in this instance, due to an absence of existing suitable infrastructure within or in close proximity to the town. Consequently, a new tower is proposed, on land in the Commercial Zone.

Telecommunications facilities are clearly envisaged within the Commercial Zone. Consequently, I consider this site to be suitable for the proposed development.

#### Appearance of Development

Council Wide Principle of Development Control 366 states that:

#### **366** Telecommunications facilities should:

- (b) utilise materials and finishes that minimise visual impact;
- (c) have antennae located as close as practical to the support structure;
- (f) be designed and sited to minimise the visual impact on the character or amenity of the local environment, in particular visually prominent areas, main focal points or significant vistas.

The subject site is recognised as being in an elevated part of the town. While this is acknowledged, I note the site is also not highly prominent, nor is it a major focal point, gateway or vista. This particular locality is also largely dominated by the two tall and bulky water towers. Consequently, a tower in this location is not unreasonable, in my view.

I accept the tower will be visible from parts of the town, particularly from land south, west and south-east. It is reasonable, in my view, to accept some degree of visibility of the tower, given that such infrastructure by necessity must be 'tall'. That said, I believe the applicant has minimised the overall extent of visual impact in the following ways:

- (a) The tower will be clustered next to two large water towers, and will be substantially screened by them for much of its height, particularly viewed from north and north-east;
- (b) The tower is of a slimline design, and has a maximum height consistent with the general height for such towers within an urban environment;
- (c) The tower and equipment cabinet can be finished in a mute grey tone, to enable it to blend with the surrounding environment;
- (d) A limited number of antennae will be strap mounted to the top of the pole, thus having a substantially reduced bulk than larger 'head frame' type attachments.

In summary, the proposed development is anticipated by the Development Plan in this particular location, and the overall design has minimised its impact, as desired by clause (f) above. Consequently, I consider this aspect of the development to be acceptable.

Emissions (Noise, Electrical Interference, Radiofrequency)

Telecommunications facilities have the potential to emit noise, electrical and radio waves. I have considered the impacts of each under headings below.

*Noise*

The applicant has confirmed the facility will generate minimal operational noise. The only noise emitted from the facility will be in the form of a small air conditioning unit, mounted to the side of the proposed equipment cabinet. The applicant has confirmed the noise output from this unit is similar to a domestic air conditioner.

The nearest dwelling from the new equipment cabinet is to the west, located on the opposite side of Walker Avenue, some 50m away. The degree of separation provided by Walker Avenue, is such that the proposed noise output from the air conditioner unit is unlikely to be audible from this dwelling. Other dwellings in the locality will be further buffered.

Given the above, I consider this aspect of the development to be acceptable.

*Electrical Interference*

The NBN fixed wireless broadband network is licensed by the Australian Communications and Media Authority (ACMA) for the exclusive use of the LTE2300 frequency band. Given the NBN Co Limited has exclusive use of this sub-band, electrical emissions from the equipment within the frequency band will not cause interference.

The applicant has also confirmed that ‘filter’s will ensure that the facility meets specifications for emission of spurious signals outside of the NBN Co Limited frequency allocations. Finally, the facility will be properly grounded (i.e. ‘earthed’) in accordance with relevant Australian Standards.

Given the above, the proposed development will comply with current standards relating to electrical interference.

*Radiofrequency*

The ACMA and the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) set operational standards with respect to electromagnetic emissions (EME) and public health. ARPANSA has federal responsibility for protecting people and the environment from the harmful effects of radiation.

This facility is to be operated in compliance with the mandatory standard for human exposure to EME, being the Radio Communications Standard 2003. An EME report has been prepared in support of this development, and shows that maximum emissions will equate to 0.015% of the maximum exposure limit set under the Standard.

The proposed facility will result in less than 1% of the maximum exposure limit as set under the policy (where 100% of the limit is still considered to be safe). In addition, the facility will incorporate additional measures that reduce total amount of emissions and energy used as follows:

- a) Dynamic/adaptive power control is a network feature that automatically adjusts the power and hence minimises EME from the facility;
- b) Varying the facility's transmit power to the minimal required level, minimising EME from the network; and
- c) Discontinuous transmission, a feature that reduces EME emissions by automatically switching the transmitter off when no data is being sent.

The applicant has demonstrated that EME levels from the new facility will be compliant with current standards.

#### Landscaping

Council Wide Principle of Development Control 366(e) states that:

**366** Telecommunications facilities should:

- (e) incorporate landscaping to screen the development, in particular equipment shelters and huts:

Clause (e) seeks provision of landscaping in conjunction with such facilities, particularly to screen ground level equipment which have the potential to detract from the streetscape appeal. While the intent of this clause is clear, I do not believe landscaping is necessary in conjunction with this development because:

- a) More than half the width of the compound facing Walker Avenue will be taken up by the access gates. The position for the gates will prevent opportunity for landscaping either in front of or behind the front compound fence, meaning that any remaining plantings are unlikely to screen the facility effectively from Walker Avenue.
- b) The view of this site from Walker Avenue is already compromised to some extent. The area where the facility is proposed comprises an existing vacant area, bounded on one side by a large Zincalume shed, at the rear by a shipping container and to the other side by a large water tower.
- c) Mannum is typically subject to hot dry summers and cool but mild winters. With the exception of drought tolerant vegetation, most plantings are unlikely to be successful in this location unless they are regularly watered. The facility is not 'manned', meaning that regular watering of any plantings is unlikely to occur.

#### Fencing

Principle of Development Control 5 of the Commercial Zone states that:

- 5** *Development that adjoins, or is separated by a road from residential areas should be screened by a landscape buffer and/or fencing.*

The compound is proposed to be fenced around its perimeter with 2.5m high (approx.) chain wire mesh fence, having three chains of wire fixed to the top of the chain wire. This fence can be finished in PVC coated finish in 'black' (subject to condition), thereby enhancing its external appearance.

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The security fence will provide a partial screen from the adjacent residential area, as desired by Principle of Development Control 5. Consequently, I consider this aspect of the development to be acceptable.

#### Stormwater Discharge

The proposed development will not alter the nature of existing surface stormwater movement across the site, on the basis that the majority of the fenced compound will remain unbuilt upon.

A 5m x 5m monopole foundation in concrete or similar material will be constructed as a durable base for the tower. While this will collect surface water, such water is expected to grade gently away from the foundation and seep into existing natural ground.

Consequently, I do not expect the proposed development to result in concentrated discharges of surface water from the site.

#### Infrastructure

Council Wide Principles of Development Control 43, 44 and 45 state that:

**43** *Infrastructure required for development should:*

- (a) *Be able to be economically provided;*
- (b) *Be of a sufficient standard, design and capacity to accommodate the proposed development;*
- (c) *Not have a detrimental impact on the environmental qualities and the amenity of the area;*
- (d) *Not necessitate the removal of native vegetation;*
- (e) *Not increase the level of risk to public health;*
- (f) *Be provided at full cost to the developer without public subsidy;*
- (g) *Not compromise the level of service to other existing users; and*
- (h) *Not be at risk of damage by flood waters.*

**44** *Development should only be undertaken where demands placed on essential services such as water supply, common effluent drains or electricity can be met by existing facilities or their expansion.*

The facility will draw power from an existing point of supply in Walker Avenue that will run via new service line up to the proposed equipment cabinet. I understand the existing power main is adequate to service the development, such that the development will not place excessive loads on existing power services.

I also note the facility is not dependent on other services such as water or sewer. Consequently, existing services in place are suitable to service the development.

#### Car Parking

Principle of Development Control 8 of the Commercial Zone states that:

**8** *Development should provide:*

- (a) *On-site car parking in accordance with Table MiMu/1, that is surfaced with suitable impervious hard pavement;*

- (b) *Loading and unloading areas and on-site manoeuvring areas that enable commercial vehicles to enter and exit the site in a forward direction;*
- (c) *On-site car parking for commercial vehicles that meets the requirements of AS2890.2; and*
- (d) *Storage areas that are located at the rear of sites and screened from public view.*

The facility will not generate demand for on-site car parking on a permanent or regular basis. It is expected that a single maintenance vehicle may visit the site 1 – 2 times per year. I note the fenced compound is capable of accommodating room for the parking of a single vehicle. Alternatively, such vehicles can park on-street within Walker Avenue.

This aspect of the development is clearly acceptable.

### Vehicular Access

Principle of Development Control 10 of the Commercial Zone states that:

- 10** *Access to off-street parking areas should, where possible, be shared by adjoining development.*

A set of double access gates are proposed to be incorporated within the external fence, facing Walker Avenue, thereby permitting entry of maintenance vehicles into the compound during maintenance operations.

The verge in the vicinity of the new access gates comprises a concrete upright kerb and channel, with gravel verge. The gravel verge next to the kerb is unobstructed by any trees, poles, signs etc. thereby allowing entry/exit for maintenance vehicles via the new gates.

In the absence of a formed crossover, a new one will need to be formed. I recommend a condition be imposed, requesting construction of a new crossover, in accordance with Council's requirements and specifications, prior to the commencement of construction.

Subject to this condition, I consider this aspect of the development to be acceptable.

### **CONCLUSION**

The application satisfies a majority of the relevant provisions of the Mid Murray Council Development Plan (Consolidated 6 December 2012). Consequently, I recommend that Development Plan Consent be granted, subject to conditions and notations.

**RECOMMENDATION**

moved that pursuant to Section 35(2) of the Development Act 1993 that the proposed development is not “Seriously at Variance” with the relevant provisions of the Mid Murray Council Development Plan (Consolidated 6 December 2012) and that pursuant to Section 33(1)(a) of the Development Act 1993, Development Plan Consent be granted to Development Application 711/106/13, subject to the following conditions and notations:-

**Conditions**

1. The development shall be carried out in accordance with the details submitted with the application and the following approved plans, other than where required to be varied by conditions 2-5 inclusive:

<b>Plan Number</b>	<b>Plan Type</b>	<b>Dated</b>	<b>Prepared By</b>
<b>Not Stated</b>	<b>Planning Report</b>	<b>March 2013</b>	<b>Planning Report</b>
<b>5MNN-51-01-MAN-T1 Revision 02</b>	<b>Cover Sheet</b>	<b>13.03.13</b>	<b>NBN Co Limited</b>
<b>5MNN-51-01-MAN-C1 Revision 02</b>	<b>Site Specific Notes and Antenna Table</b>	<b>13.03.13</b>	<b>NBN Co Limited</b>
<b>5MNN-51-01-MAN-C2 Revision 02</b>	<b>Overall Site Plan</b>	<b>13.03.13</b>	<b>NBN Co Limited</b>
<b>5MNN-51-01-MAN-C3 Revision 02</b>	<b>Site Setout Plan</b>	<b>13.03.13</b>	<b>NBN Co Limited</b>
<b>5MNN-51-01-MAN-C4 Revision 01</b>	<b>Site Elevation and Details</b>	<b>07.03.13</b>	<b>NBN Co Limited</b>

2. Except where otherwise approved, all exterior surfaces of the monopole and equipment cabinet shall:
  - a) Be of non-reflective materials;
  - b) Be of neutral grey tone or other tone approved by Council’s Director – Development & Environmental Services;
  - c) Be maintained in good and reasonable condition at all times.
3. A minimum 3m wide concrete crossover shall be constructed at the edge of the Walker Avenue pavement, at the applicant’s cost, prior to commencement of construction, in accordance with the Driveway Crossover Specification and Special Conditions, prepared by the Mid Murray Council, dated 2011 (see attached to this DNF), such that maintenance vehicles can enter the compound access gates, from Walker Avenue. The crossover shall be maintained in good and useable condition at all times thereafter.
4. Except where otherwise required to satisfy any other condition of this Consent, the applicant shall ensure that, in the event of damage being caused to Council infrastructure, the damaged infrastructure shall be repaired or reinstated, at the applicant’s cost, to the satisfaction of Council’s Director – Infrastructure Services:

- (a) To its original condition; or
- (b) Where (a) is not achievable, in accordance with the relevant Australian Standard (applicable to that particular type of infrastructure).

5. The compound security fence shall be coated in Plastic Vinyl Coating (PVC) in black. The compound security fence shall be maintained in good and reasonable condition at all times.

#### Notations

1. This approval does not imply compliance with the Electricity Act 1996 (as amended), or the Regulations thereunder. It is the responsibility of the owner and the person undertaking development to ensure compliance with the same.

You are advised to contact appropriate authorities including ETSA, Telstra, SA Water and Council's STEDS department in relation to the location of supply lines and other requirements prior to commencing work.

2. Development Approval Required Before Commencement

No site works or construction can be undertaken on the land or building by a person unless Development Approval has been granted.

If this Decision Notification Form refers only to Development Plan Consent, Building Rules Consent must be granted before the Development Approval is obtained.

3. Expiry Date for Planning and Building Consents and Development Approvals

Development Plan Consent is valid for 12 months. The applicant must obtain Development Approval within 12 months of the date of the decision or the consent will lapse.

It is necessary to obtain Building Rules Consent (if shown as STILL REQUIRED on this Decision Notification Form) before full Development Approval is granted.

Once Development Approval is obtained, substantial work on the approved development must be commenced within twelve months of the date of Development Approval or the approval will lapse.

The approved development must be substantially completed within 36 months (3 years) of the operative date of Development Approval, or the approval will lapse and a new application must be lodged with the relevant authority.

4. This application has been assessed and approved pursuant to the provisions of the Development Act 1993. The approval of the owner of the land to which this consent relates must be obtained prior to commencement of work.

- 5. During the period that the development is being undertaken, all waste materials associated with the building work should be secured and contained within the site. Upon completion of the development all wastes should be removed and appropriately disposed of.**
- 6. All building work shall be carried out in accordance with the requirements of the Development Act 1993 as amended and its Regulations.**
- 7. The applicant is responsible for the correct siting of the development (as shown on the Approved Plans) and shall ensure that the development is sited on the allotment in accordance with the Approved Plans.**
- 8. The granting of this consent does not absolve the applicant from obtaining all other consents which they may be required to do, pursuant to the provisions of any other statutes.**
- 9. You are advised to contact other authorities such as Telstra, SA Water etc. in relation to the location of their supply lines and requirements prior to commencing work on-site.**
- 10. The applicant is advised that any proposal to clear, remove limbs or trim native vegetation, unless subject to an exemption under the Native Vegetation Act 1991 requires the Approval of the Native Vegetation Council. Any queries regarding the clearance of native vegetation should be directed to the Native Vegetation Council Secretariat on 8124 4744.**
- 11. Please note that a rainwater tank (and any support structure) requires Council Development Approval where it does not comply with the following criteria:**
  - a) is part of a roof-drainage system; and**
  - b) has a total floor area not exceeding 10 square metres; and**
  - c) is located wholly above ground; and**
  - d) has no part higher than 4 metres above the natural surface of the ground.**
- 12. It is recommended that the applicant undertake a Dial Before You Dig inquiry to ensure there are no underground electricity or other utility cables, pipes or services in the area. Your inquiry may be lodged online [http://www.1100.com.au/](http://www.1100.com.au) or by calling telephone no. 1100.**
- 13. The applicant is advised of their obligation under the Electricity Act 1996 and Regulations to comply with relevant safe working procedures, including legislated distances between persons or machinery and powerlines. Given this, it is recommended that you have regard to the “Working Safely near Overhead Powerlines” Brochure, prepared by the Department for Transport, Energy and Infrastructure. For further information, you can contact the Office of the Technical Regulator on 8226 5500.**

14. If there is an intention to clear native vegetation on the land at any time, the applicant should consult the Native Vegetation Council to determine relevant requirements under the Native Vegetation Act 1991 and its Regulations. 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 9741 or visit: <http://www.nvc.sa.gov.au>.
15. The River Murray and many of its tributaries and overflow areas have abundant evidence of Aboriginal occupation and Aboriginal sites, objects or artefacts may be present on the subject land (eg. scarred trees, campsites, burial sites, middens, etc.). 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 planning 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.
16. The applicant is advised that should it be intended to store chemicals or chemical products in bulk or in containers having a capacity exceeding 200 litres, the activity may require an environmental authorisation under the Environment Protection Act 1993. The applicant may contact the Environment Protection Authority to ascertain relevant requirements on telephone 8204 2000, e-mail: [epainfo@epa.sa.gov.au](mailto:epainfo@epa.sa.gov.au) or visit: <http://www.epa.sa.gov.au>.
17. This approval does not obviate any considerations that may apply to the Environment Protection and Biodiversity Conservation Act 1999 (Cwth). For further information visit: <http://www.environment.gov.au/epbc>.
18. Guidance for the building and construction industry on pollution prevention of waters can be found by referring to the ‘Handbook for Pollution Avoidance on Building Sites’ and the ‘Stormwater Pollution Prevention Code of Practice’, both available at: <http://www.epa.sa.gov.au>.

Seconded

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.2 LAND DIVISION APPLICATION 711/C008/09 – EICHLER EARTHMOVERS PTY LTD

*Reporting Officer:* Geoff Parsons  
*Position:* Manager – Development Services

**Development No.** 711/C008/09  
**Applicant** Eichler Earthmovers Pty Ltd  
**Subject Land** Allotment 173 in FP209359, Section 518, 3 Esmeralda Street, Mannum, Hundred of Finniss  
**Proposal** 24 Month Extension of the Development Approval for Land Division Application 711/C008/09

#### **INTRODUCTION**

Land Division Application 711/C008/09 proposed the creation of four additional allotments in a community title format on an existing allotment with frontage to Esmeralda Street and Parker Street in Mannum.

Land Division Application 711/C008/09 was granted Development Plan Consent, Land Division Consent and Development Approval on 27 April 2010 by the Development Assessment Panel.

The applicants subsequently commenced some of the preliminary works on site, and applied for a certificate pursuant to Section 51 of the *Development Act 1993*, thus giving them three years to complete the development.

The three year period expired on 27 April 2013, and the applicants are subsequently seeking a (minimum) 24 month extension to allow them sufficient time to complete the development.

Of the sections below, “Subject Land” and “Locality” only contain brief descriptions, as the application only proposes an extension of the relevant consents. The planning merits of the proposals are not relevant considerations.

However there are several relevant points that must be considered when making a decision as to whether to extend the consent, and they are described in the commencement of the “Assessment” section below.

Copies of relevant information is attached.

#### **SUBJECT LAND**

The subject land is recognised as Allotment 173 in FP209359, Section 518, 3 Esmeralda Street, Mannum, Hundred of Finniss as contained in Certificate of Title Volume 5710 Folio 147.

The allotment is an irregular shape and has frontage to both Esmeralda Street and Parker Street, however access to the land is only obtained via Esmeralda Street due to the poor condition of the Parker Street and the topography of the land.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.2 LAND DIVISION APPLICATION 711/C008/09 – EICHLER EARTHMOVERS PTY LTD

#### **DESCRIPTION OF PROPOSAL**

As previously noted, Development Plan Consent, Land Division Consent and Development Approval for Land Division Application 711/C008/09 were issued on 27 April 2010.

The Development Approval for Land Division Application 711/C008/09 has never been extended as, despite the specific wording in the *Development Act 1993* and *Development Regulations 2008*, it is general practice in the industry to allow a period of 36 months before consents/approvals lapse in respect of a land division application as long as the Certificate of Approval fee is paid.

It has been common practice for Mid Murray Council to grant up to three 12 month extensions to consents or approvals previously, if sufficient rationale is provided.

The Development Assessment Panel has the opportunity to either grant the 24 month extension sought to the Development Approval, in which case the Development Approval will remain valid until 27 April 2015. Alternatively the Development Assessment Panel can refuse to extend the Development Approval, in which case the Development Approval will lapse and can no longer be acted on. A new land division application would need to be lodged in order to develop the site.

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

The subject land is located in an established section of the Mannum township and is surrounded by detached dwellings on medium to large sized residential allotments.

The Mannum Hospital is located to the west of the site, while Parker Street (a rubble road in poor condition), other residential allotments and the River Murray are located to the east.

Some subdivision of land has occurred in the locality and several dwellings are currently under construction in the area.

#### **REFERRALS**

No referrals were required to satisfy the provisions of Section 37 of the *Development Act 1993*, and Regulation 24 and Schedule 8 of the *Development Regulations 2008*.

#### **CLASSIFICATION**

A request to extend a consent or approval does not, in its own right, constitute 'development'. Accordingly no classification in the form of either, complying, merit or non-complying is applicable.

#### **PUBLIC NOTIFICATION**

A request to extend a consent or approval does not require categorisation as either Category 1, 2 or 3. Public notification is not required.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.2 LAND DIVISION APPLICATION 711/C008/09 – EICHLER EARTHMOVERS PTY LTD

For the information of the Development Assessment Panel, Land Division Application 711/C008/09 comprised a Category 1 form of development.

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

Relevant provisions of the Development Plan have not been listed as the request to extend a consent or approval is not 'development' and therefore should not be assessed against the relevant provisions of the Development Plan.

Instead case law from the Environment, Resources and Development Court notes the criteria against which a request to extend a consent or approval should be assessed. That case law is noted in the 'Assessment' section below.

#### ***ASSESSMENT***

##### Background

The background to the request to extend the relevant consents is as follows:-

Land Division Application 711/C008/09

- Application lodged on 12 March 2009;
- Development Plan Consent, Land Division Consent and Development Approval granted on 27 April 2010;
- Contact made with Council's Senior Development Officer - Planning on 18 March 2013 to investigate whether an extension was required to keep the Development Approval alive past 27/4/2013;
- Formal request (with accompanying rationale) to extend the Development Approval lodged with Council on 22 April 2013;
- Relevant fee paid on 22 April 2013.

The Development Approval for Land Division Application 711/C008/09 expired on 27 April 2013.

The 24 month extension, if granted, would ensure that the Development Approval for Land Division Application 711/C008/09 remains valid until 27 April 2015.

In the attached correspondence from the applicant (dated 19 April 2013) the rationale for the request is provided. Detail of what work has taken place to this point is also provided.

The legislation in the *Development Act 1993* and *Development Regulations 2008* relevant to this decision are noted below:-

**MID MURRAY COUNCIL – DEVELOPMENT REPORT**  
**7.2 LAND DIVISION APPLICATION 711/C008/09 – EICHLER EARTHMOVERS PTY LTD**

Legislative Requirements

*Development Act 1993*

**40 – Determination of application**

- (1) *A relevant authority must, on making a decision on an application under this Division, give notice of the decision in accordance with the regulations (and, in the case of a refusal, the notice must include the reasons for the refusal and any appeal rights that exist under this Act).*
- (2) *A development authorization under this Division remains operative for a period prescribed by the regulations.*
- (3) *A relevant authority may, on its own initiative or on the application of a person who has the benefit of any relevant development authorization, extend a period prescribed under subsection (2).*

*Development Regulations 2008*

**48 – Lapse of consent or approval**

- (1) *Subject to this or any other regulation, any consent or approval under Part 4 of the Act (whether subject to conditions or not) will lapse at the expiration of-*
  - (a) *subject to the operation of paragraph (b) – 12 months from the operative date of the consent or approval;*
  - (b) *if –*
    - (i) *the relevant development has been lawfully commenced by substantial work on the site of the development within 12 months from the operative date of the approval – 3 years from the operative date of the approval, unless the development has been substantially or full completed within those 3 years (in which case the approval will not lapse);*
    - (j) *if the relevant development involves the division of land and an application for a certification under section 51 of the Act has been lodged with the Development Assessment Commission, accompanied by the Certificate of Approval Fee under Schedule 6, within 12 months from the operative date of the relevant consent – 3 years from the operative date of the consent.*
- (2) *A period prescribed by subregulation (1) may be extended by a relevant authority-*
  - (a) *when the relevant consent or approval is given; or*
  - (b) *at such later time as may be appropriate.*
- (3) *If an approval is given, any consent which was necessary for that approval will not lapse unless or until the approval lapses.*
- (4) *In this regulation –*

**Operative date** of a consent or approval means –

- (a) *the date on which the consent or approval is given; or*
- (b) *if the decision to grant the consent or approval has been the subject of an appeal under the Act, the date on which any appeal is dismissed, struck out or withdrawn, or all questions raised by any appeal have been finally determined (other than any question as to costs,*

*whichever is the later.*

Case Law

The judgement of Her Honour Judge Trenorden of the Environment, Resources and Development Court regarding the matter of *Parry & Anor vs City of Holdfast Bay (7 May 2007)* identifies the following principles and “tests” that must be applied when considering a request to extend the operative date of a consent or approval:

1. *The relevant authority should not assess the development again on its merits. A fresh assessment against the same relevant provisions of the Development Plan is not required.*
2. *The relevant authority must take into account whether there have been any significant amendments to the Development Act 1993 or Development Regulations 2008 since the date of the granting of the original Development Approval.*
3. *The relevant authority must take into account whether there have been any material changes to the relevant provisions of the appropriate Development Plan since the date of the granting of the original Development Approval.*
4. *The relevant authority must have regard to the period of time that had elapsed after the lapse of the Development Approval.*
5. *The relevant authority should consider the reasons for the need for the extension.*

In the judgement, it was also made quite clear that an extension of the operative date of a consent or approval can be made, notwithstanding that the consent or approval may have lapsed prior to the request for the extension.

An assessment of each of these issues is given below in order to determine whether the extension should be granted.

Assessment of Extension of Operative Period of Approval

The *Development Act 1993* and *Development Regulations 2008* have been reviewed.

Since the Development Approval was granted on 27 April 2010, there have been four amendments made to the *Development Act 1993*.

These amendments have been reviewed. I note that none of the amendments resulted in any significant changes to the *Development Act 1993* that might have an impact on the assessment of the application.

In this same period there have been 20 amendments to the *Development Regulations 2008*.

The above amendments have been reviewed. While some minor changes have occurred that may affect the assessment of the applications, none of the changes are considered to be of substantial significance.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.2 LAND DIVISION APPLICATION 711/C008/09 – EICHLER EARTHMOVERS PTY LTD

Given all of the above, the legislative changes which have taken place since the Development Approval has been granted have limited or minimal implications for the request to extend the Development Approval.

#### Development Plan Amendments

Since the relevant consents have been granted there have been eleven amendments to the Mid Murray Council Development Plan as follows:-

*29 April 2010*

*Bushfires (Miscellaneous Amendments) DPA (Interim) (Ministerial) – [10 December 2009]*

*9 December 2010*

*Bushfires (Miscellaneous Amendments) DPA (Ministerial) – [9 December 2010]  
Mannum Township DPA – [9 December 2010]*

*17 November 2011*

*Barossa Valley and McLaren Vale Protection Districts DPA (Interim) (Ministerial) – [28 September 2011]  
Township Boundaries DPA – [6 October 2011]  
Statewide Wind Farms DPA (Interim) (Ministerial) – [19 October 2011]  
Mannum Waters Marina and Residential Development (Stage 1) DPA – [27 October 2011]  
River Murray Zone – Minor Amendments DPA (Interim) – [10 November 2011]*

*19 April 2012*

*Termination of the Barossa Valley and McLaren Vale Protection Districts DPA (Ministerial) and its removal from the Mid Murray Council Development Plan – [5 April 2012]*

*6 December 2012*

*Section 29(2)(c) Amendment – [29 November 2012]  
Section 29(2)(b)(ii) Amendment – [6 December 2012]*

With the exception of the Mannum Township DPA, none of the other DPAs have any relevance to the subject site and the approved development.

The Mannum Township DPA has resulted in substantial changes to the relevant Desired Character Statement, Zones, and Objectives and Principles of Development Control applying to the subject land and the Mannum Township, as well as the Principles of Development Control applying to the entire Council area.

In particular, the subject land was, at the time of the original applications, located in the Residential Zone. The Mannum Township DPA created a new zone within which the subject land now falls – the Residential Escarpment Zone.

If the applications were to be re-lodged today, the following provisions of the Residential Escarpment Zone, which did not previously apply, would now be relevant:-

*Desired Character Statement – New development will minimise alterations to the existing landform and be limited to existing vacant sites of the replacement of dwellings which are unsound or detract from the desired character with new detached dwellings.*

*PDC 3 – Development listed as non-complying is generally inappropriate and not acceptable unless it can be demonstrated that it does not undermine the objectives and principles of the Development Plan.*

*PDC 12 – Any alteration to existing boundaries should ensure that each site has a minimum site area of 800 square metres and an 18 metre frontage to a public road.*

*PDC15 – The design, scale location and appearance of development should be consistent with a desired character derived from detached dwellings of large allotments, landscaping and open space, and have regard to local topography and the enhancement of natural features, views and vistas.*

*PDC 30 – All development (including building work, a change in the use of the land, or division of an allotment) is non-complying with the exception of:*

*Detached dwelling*

*Residential outbuilding or domestic structure erected in association with a dwelling*

*Bed and breakfast accommodation*

*Land division that does not create an additional allotment.*

In addition to the above, there are a number of Council Wide provisions which now apply, which are substantially different to those applying at the time the original application was assessed.

The Environment, Resources and Development Court have suggested that relevant authorities should not re-assess the development against the provisions of the Development Plan which applied at the time the application was originally assessed.

However it is appropriate for relevant authorities to consider changes which have occurred to the Development Plan which would, if the application was to be assessed against them, potentially yield a different result.

In this instance, the process for the assessment of the application would certainly change. Land Division Application 711/C008/09 was originally assessed as a 'merit' form of development, however if lodged today, the application would be assessed as a 'non-complying' form of development.

Furthermore the policy applying in both the Residential Escarpment Zone and the Council Wide section of the Development Plan are substantially different to those that applied at the time of the original assessment, and accordingly it is reasonable to expect that an assessment undertaken under the current version of the Development Plan would indeed yield a different result.

Timeframe that has elapsed since approval

As mentioned earlier, Council granted Development Approval to 711/C008/09 on 27 April 2010. A little more than 3 years has lapsed since the Development Approval was first granted.

Some work has occurred on the site since the Development Approval was granted (refer to the applicants request for an extension – dated 19/4/13) in the form of earthworks, power connection, water meter installation and connection and preliminary survey work.

Council has previously granted three consecutive 12 month extensions of time to other development applications however that is a rare occurrence.

Three years is a substantial timeframe and it could be argued that a reasonable person with an interest in the application could reasonably assume that the development was no longer to proceed.

Need for the Extension

The applicant, in correspondence dated 19 April 2013, has confirmed the reasons for not substantially commencing the development. Essentially it relates to the significant time involved in obtaining a suitable design for the future dwellings on the land, (due to delays in obtaining appropriate designs from the applicant's builder) which affected the works associated with the land division.

The applicant has not noted whether the development will be completed within the specified timeframe if the extension is granted, but has submitted details as to what works have been undertaken.

The reasons given by the applicant are sound. It was necessary to determine the building design and layout before the works associated with the land division could be completed.

**CONCLUSION**

Substantial changes have been made to the Mid Murray Council Development Plan which directly affect the subject land, and which would, if in place at the time the application was lodged, have potentially yielded a different outcome.

A three year period is a substantial timeframe and is generally considered sufficient to enable substantial commencement of any development. Any person with an interest in the land/development could reasonably consider that the relevant consents have lapsed/are no longer valid.

However the rationale provided by the applicant for not commencing the development is reasonable and it is acknowledged that a reasonable amount of work has been undertaken on the land.

Council staffs normal approach with respect to these matters is to allow one extension after the Development Plan has changed, but no further extensions after that.

## **MID MURRAY COUNCIL – DEVELOPMENT REPORT**

### **7.2 LAND DIVISION APPLICATION 711/C008/09 – EICHLER EARTHMOVERS PTY LTD**

This will be the first extension sought after the Development Plan has changed, and while a 24 month extension is sought, that is considered reasonable given the scale of the development (construction of 5 dwellings, an internal road etc.).

However it should be suggested to the applicant that this will be the only extension granted, and that the development must be substantially completed by 27 April 2015, otherwise the Development Approval will lapse.

#### **RECOMMENDATION**

**moved that pursuant to Section 40(3) of the Development Act 1993 and Regulation 48(2)(b) of the Development Regulations 2008, the Development Assessment Panel:**

- 1. grants a 24 month extension to the Development Approval granted for Land Division Application 711/C008/09 from the date on which the existing Development Approval was due to lapse (such that the Development Approval will now remain valid until 27 April 2015); and**
- 2. advises the applicant that this will be the only extension given and that, if the development is not completed by 27 April 2015 Land Division Application 711/C008/09 will lapse and further extensions are unlikely to be supported.**

**Seconded**

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.3 DEVELOPMENT APPLICATION 711/209/12 – ADELAIDE RELOCATION SERVICES

*Reporting Officer:* Geoff Parsons  
*Position:* Manager – Development Services

**Development No.** 711/209/12  
**Applicant** Adelaide Relocation Services  
**Subject Land** Allotment 87 in FP8274, Brenda Park Shack Road, Brenda Park, Hundred of Eba  
**Proposal** Alterations to Existing Domestic Outbuilding (Part Demolition of Shed, Construction of Attached Verandah & Installation of Two Personal Access Doors)

#### **INTRODUCTION**

Development Application 711/209/12 proposes alterations to an existing domestic outbuilding in the shack settlement area recognised as Brenda Park.

The alterations comprise the part demolition of the existing outbuilding and replacement of that section with an open, attached verandah.

This matter has a substantial history dating back to lodgement of Development Application 711/81/01.

The existing domestic outbuilding was erected unlawfully (i.e. without the benefit of Development Plan Consent, Building Rules Consent or Development Approval). Various enforcement matters have been on-going since that time.

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

#### **BACKGROUND**

For a detailed background to this matter please refer to the attached copy of the authors Affidavit, which was filed with the Attorney General's Office to obtain permission to continue enforcement proceedings, despite the fact that the legislated timeframes to take such action had lapsed.

Approval was eventually granted to commence proceedings in the Environment, Resources & Development Court. As a result of those proceedings, Development Application 711/209/12 was lodged in an effort to seek Development Approval for an outbuilding which would generally accord with a majority of the relevant provisions of the Development Plan.

The current proceedings will be kept alive until a suitable resolution (including actual construction of the alteration of the outbuilding, if approved) is achieved.

#### **SUBJECT LAND**

The subject land is identified as Allotment 87 in FP8274, Brenda Park Shack Road, Brenda Park, Hundred of Eba as contained in Certificate of Title Volume 5977 Folio 501.

The land is located within the Shack Settlement Policy Area of the River Murray Zone. The allotment has direct frontage to the River Murray.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.3 DEVELOPMENT APPLICATION 711/209/12 – ADELAIDE RELOCATION SERVICES

The land slopes gently towards to the river and currently contains an elevated detached dwelling, the unlawful domestic outbuilding, several rainwater tanks and a jetty/landing.

Several large trees exist on the allotment, with most being located between the dwelling and the river.

#### **DESCRIPTION OF PROPOSAL**

Development Application 711/209/12 proposes the alteration of the existing domestic outbuilding such that 17.09 square metres of the outbuilding will be converted to an attached, open verandah.

This will reduce the floor area of the enclosed portion of the outbuilding to 54 square metres, which accords with the relevant provisions in the Development Plan.

In addition, the application proposes the installation of two personal access doors on the northern and southern elevations which align with the direction of river flow.

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

The land is located in the Brenda Park shack area, and the locality principally comprises holiday homes on leased allotments with direct river frontage.

The River Murray is the major topographical feature within the area. Land to the west of the subject land is mostly open flood plain containing native vegetation.

The holiday homes in Brenda Park are split into three clusters, and the subject land contains the last dwelling in the middle cluster, and accordingly land directly to the south of the subject land comprises relatively 'untouched' native vegetation and flood plain land.

Additional holiday homes are located directly to the north of the subject land.

The locality enjoys a high level of amenity.

#### **CLASSIFICATION**

Principle of Development Control 28 of the Shack Settlement Policy Area states that there are no forms of complying development in the Shack Settlement Policy Area.

Principle of Development Control 29 of the Shack Settlement Policy Area states:

*PDC 29 – The following forms of development are **non-complying** in the Shack Settlement Policy Area:*

.....

*Outbuilding, except where all of the following are achieved:*

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.3 DEVELOPMENT APPLICATION 711/209/12 – ADELAIDE RELOCATION SERVICES

- (a) *Only one enclosed outbuilding and one open sided outbuilding may be constructed on the allotment (or lease site) at any one time*
- (b) *There is no more than two outbuildings on an allotment (or lease site) including any existing outbuildings already on the allotment (or lease site)*
- (c) *An enclosed outbuilding in the form of either one shed, or one garage, which is enclosed on two or more sides, may be constructed on an allotment (or lease site) subject to the following:*
  - (i) *There is a lawful existing dwelling already constructed on the allotment (or lease site)*
  - (ii) *The floor area of the enclosed outbuilding does not exceed 54 square metres*
  - (iii) *The enclosed outbuilding is not sited forward of the principal facade (river side) of the existing dwelling*
  - (iv) *The enclosed outbuilding has no internal walls, partitions or cladding*
  - (v) *The enclosed outbuilding is fitted with roller doors or personal access doors on two external elevations, whichever elevations relate to the direction of the river flow*
  - (vi) *It will not result in more than once enclosed outbuilding on the allotment (or lease site)*
- (d) *The open sided outbuilding in the form of either one garden structure (such as a gazebo) or one carport or one similar structure which is open on all sides, and which may or may not be roofed may be constructed on an allotment (or lease site) subject to the following:*
  - (i) *There is a lawful existing dwelling already constructed on the allotment (or lease site)*
  - (ii) *The floor area of the open sided outbuilding does not exceed 15 square metres*
  - (iii) *The outbuilding is not sited forward of the principal facade (river side) of the existing dwelling (as depicted in Figure 5.1)*
  - (iv) *The outbuilding has not internal walls, partitions or cladding*
  - (v) *It will not result in more than one open sided outbuilding on the allotment (or lease site)*

.....

The enclosed outbuilding complies with the above provisions. The attached verandah is not an “open sided outbuilding” as an outbuilding is considered to be a structure which is not attached to another (this is consistent with legal advice previously received by Council), meaning clause (d) in the above provision is not relevant.

An attached verandah is not listed in any other part of Principle of Development Control 29 (nor is an alteration to an existing outbuilding) and therefore Development Application 711/209/12 should be assessed through the ‘consent/merit’ process.

#### **REFERRALS**

One referral to the Minister administering the River Murray Act 2003 (the Department of Environment, Water and Natural Resources on the Minister’s behalf) was required pursuant to Section 37 (1)(a) of the *Development Act 1993* and Part 2, item 19 (g) of Schedule 8 of the *Development Regulations 2008*.

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.3 DEVELOPMENT APPLICATION 711/209/12 – ADELAIDE RELOCATION SERVICES

A copy of the response from the Department of Environment, Water and Natural Resources is attached.

The Department did not raise any objections but did recommend that several conditions and notations be attached to the Development Plan Consent, if so issued.

#### **PUBLIC NOTIFICATION**

Principle of Development Control 30 of the Shack Settlement Policy Area states:-

*All forms of development which are **acceptable** for the Policy Area are assigned **Category 1** (except where non-complying).*

The acceptable uses list in the Shack Settlement Policy Area states:-

*Acceptable forms of development are those that contribute to the desired character of the River Murray Zone as it applies to the Shack Settlement Policy Area. The following forms of development area **acceptable**:*

.....

*A residential outbuilding which includes a garage, carport or shed, or ancillary structures such as a pergola or garden shelter/gazebo (in accordance with total floor area and site coverage restrictions);*

*Alterations and additions to a residential outbuilding (in accordance with total floor area and site coverage restrictions)*

.....

While the attached verandah is not considered an outbuilding, the enclosed outbuilding does comply with the above provisions and accordingly the application can be assessed as a Category 1 form of development.

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

Mid Murray Council Development Plan – Consolidated 19 April 2012

##### **Council Wide**

*Objectives: 1, 6, 7, 18, 19, 51, 55, 86, 91, 92, 96 & 97*

*Principles of Development Control: 1, 6, 54, 55, 56, 62, 66, 70, 79, 81, 82, 84, 156, 157, 159, 160, 167, 197, 200, 201, 204, 221, 222, 223, 238, 241, 256, 257, 258, 259, 260, 265, 395 & 396*

##### **River Murray Zone**

*Objectives: 18, 20 & 21*

*Principle of Development Control: 21*

**Shack Settlement Policy Area**

*Desired Character Statement*

*Objectives: 1, 2 & 3*

*Principles of Development Control: 1, 2, 3, 5, 6, 14, 15, 16, 17, 18, 28, 29 & 30*

**ASSESSMENT**

It is not necessary to provide a complete and detailed assessment in this circumstance given that the matter has already been considered by both the Development Assessment Panel and Council staff on a number of occasions previously.

A domestic outbuilding is an acceptable form of development in the Shack Settlement Policy Area, and a number of the issues which would normally be considered (i.e. the amount of cutting and/or filling of land, stormwater management, impact on native vegetation) have been satisfactorily resolved. The development now proposed will not alter these matters.

What must be considered as part of this assessment is the size and design of the outbuilding, as these are the matters which have been the subject of the enforcement proceedings and disputes thus far.

The outbuilding was originally constructed without the benefit of Development Plan Consent, Building Rules Consent or Development Approval. In addition, the outbuilding was constructed such that it had a total enclosed floor area of approximately 72 square metres.

The Development Plan (both at the time the outbuilding was constructed and at the time of lodgement of Development Application 711/209/12) contained policy stating that domestic outbuildings in the Shack Settlement Policy Area should not exceed an enclosed floor area of 54 square metres.

Development Application 711/209/12 proposes to convert a portion of the existing enclosed floor area of the outbuilding to an attached verandah, the southern and eastern elevations of which would remain open.

The provisions of the Shack Settlement Policy Area directly relevant to the assessment of the application are as follows:-

*Objective 3 – Buildings, or structures, or levee banks, or earth mounds which do not impede or will not be damaged by flood waters.*

*PDC 15 – An outbuilding should only be constructed if it is ancillary to and in association with an existing dwelling on the same allotment.*

*PDC 16 – The number and size of a residential outbuilding or ancillary structure (but not including a water storage tank or a tank stand) per dwelling should be limited in accordance with the following:*

- (a) One garage, one carport or one shed for domestic storage, or a combination of these (under the same roof), provided in any case, the outbuilding does not exceed 54 square metres in floor area or roof area;*

## MID MURRAY COUNCIL – DEVELOPMENT REPORT

### 7.3 DEVELOPMENT APPLICATION 711/209/12 – ADELAIDE RELOCATION SERVICES

*(b) An open sided structure such as a pergola (solid roof or shade cloth or similar) or a gazebo or other roofed structure, or a deck area provided the total floor area or roof area does not exceed 20 square metres.*

*PDC 18 – An outbuilding or structure should:*

- (a) Be located behind the dwelling, not the river side of the dwelling so not to detract from the character of the waterfront;*
- (b) Be substantially smaller in building envelope, height and scale than the dwelling;*
- (c) In the case of a garage, carport or shed, have a roof pitch between 15 degrees to 25 degrees;*
- (d) Have a maximum roof span of 6 metres and a maximum wall height of 3.2 metres;*
- (e) In the case of a garage or shed, be fitted with roller doors, openings, or similar on two ends or sides (whichever elevations face the direction of the river flow).*

The proposal complies in respect to a majority of the above criteria. It is the only outbuilding on the allotment and it is constructed in accordance with an existing dwelling. Personal access doors will be constructed on the northern and southern elevations of the building (which align with the direction of river flow) and the outbuilding and attached verandah will be constructed of colour coated steel in colours which match the existing outbuilding (cream and grey).

Floor area is the most contentious issue associated with this matter. The Development Plan (consolidated 19 April 2012) contemplates a shed (and carport under the same roof potentially) providing the floor area of such does not exceed 54 square metres.

It also contemplates an open sided structure such a gazebo or verandah with a maximum area of 20 square metres.

The wording of the Development Plan, does not appear to contemplate a combination of the two under the same roof, such that the total floor area would be 74 square metres (i.e. a 54 square metre enclosed outbuilding and a 20 square metre attached open sided carport/verandah or similar).

I note that a later version of the Development Plan (that consolidated on 18 October 2012) does contemplate an enclosed shed of 54 square metres and an attached open sided carport/verandah or similar up to 36 square metres. I am aware that that policy was deliberately drafted to accommodate the type of development proposed in Development Application 711/209/12.

However as members would well be aware the provisions applying in latter versions of the Development Plan cannot be taken into consideration. This detail is provided for information only so members are aware of the policy direction that Council has taken.

The matter at hand is whether a 54 square metre enclosed shed and an attached 17 (approximately) square metre verandah is an appropriate form of development given the Development Plan policy.

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There is a clear intent in the Shack Settlement Policy to limit the amount of ground level enclosed buildings and structures so as to allow the free flow of water in the event of a flood or high river, and to minimise the potential for damage to life and property.

These are the primary reasons behind the specified floor area restrictions for outbuildings and the ground level enclosed areas of elevated dwellings.

Allowance of enclosed buildings and structures in excess of the floor area restrictions may result in those buildings and structures restricting the free flow of flood waters, and being more prone to damage than they otherwise might be.

There could also be a cumulative effect whereby allowing an increase in the floor area of enclosed outbuildings would be replicated resulting in a far greater amount of enclosed area on a flood plain which has, over time, been inundated on numerous occasions.

Thus it is considered critically important that the floor area restrictions specified in the Development Plan are adhered to.

In this instance, the Development Plan clearly anticipates/allows for both an enclosed outbuilding and an open sided outbuilding on each shack site. The enclosed outbuilding can have a maximum floor area of 54 square metres and the open sided outbuilding can have a maximum floor area of 20 square metres.

The Development Plan does not anticipate both the enclosed outbuilding and open sided outbuilding being attached, nor however does it directly speak against it.

Independent of one another, the buildings both comply with the maximum floor area restrictions. Combining them, in effect, changes little other than two of the elevations of the open sided structure are effectively enclosed.

In the authors view, the combination of the buildings is unlikely to displace a larger volume of flood waters, or make the buildings more likely to be subject to damage, than if the buildings were separated.

The development would, if approved and implemented, result in a decrease of the enclosed floor area on the flood plain, thereby achieving one of the main objectives of the policy applying in the Shack Settlement Policy Area.

Accordingly it is considered that the proposal generally complies with the relevant provisions of the Development Plan, and accordingly warrants support.

#### **CONCLUSION**

The application forms part of the ongoing attempt to resolve a long standing unlawful development issue.

If the Development Assessment Panel chooses to grant Development Plan Consent to Development Application 711/209/12 (and should Development Approval subsequently be issued and the approval implemented) then the building will comply with the relevant provisions of the Development Plan.

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However given the lengthy process and lack of compliance with Council's requests thus far, the proceedings currently underway will be kept alive until the Development Approval is implemented. If it does not occur, Council will push ahead with seeking orders to demolish the entire building.

**RECOMMENDATION**

**moved that pursuant to Section 35(2) of the *Development Act 1993* that the proposed development is not “Seriously at Variance” with the relevant provisions of the Mid Murray Council Development Plan (Consolidated 19 April 2012) and that pursuant to Section 33(1)(a) of the *Development Act 1993*, Development Plan Consent be granted to Development Application 711/209/12 subject to the following conditions and notations:-**

**Conditions**

- 1. Other than where required to be varied by conditions 2 to 11, the development shall be undertaken in strict accordance with the plans, details and specifications submitted with, and forming part of Development Application 711/209/12, inclusive of the following:**

<b>Plan Number</b>	<b>Plan Type</b>	<b>Prepared By</b>	<b>Dated</b>
Not stated	Site Plan	Amended by Paul Alisaukas	Sent in on Friday 19 October 2012 via email
Not stated	Floor Plan	Paul Alisaukas	Received at the Cambrai Office on Tuesday 15 January 2013
Not stated	Western Face / Elevation Plan	Paul Alisaukas	Received at the Cambrai Office on Tuesday 15 January 2013
Not stated	East Face / Elevation	Paul Alisaukas	Received at the Cambrai Office on Tuesday 15 January 2013
Not stated	Southern Elevation	Paul Alisaukas	Received at the Cambrai Office on Tuesday 15 January 2013
Not stated	Northern Elevation	Paul Alisaukas	Received at the Cambrai Office on Tuesday 15 January 2013
Not applicable	Email Correspondence	Paul Alisaukas	Friday 19 October 2012

- 2. All external surfaces of the enclosed outbuilding and attached verandah shall be finished in colours and materials which match those of the existing outbuilding, in accordance with the note of the Floor Plan, received at the Cambrai Office on 15 January 2013.**

- 3. In accordance with the note on the Floor Plan, received at the Cambrai Office on 15 January 2013, the southern and eastern elevations of the verandah shall remain open, and shall not be enclosed with any material, whether permanent or non-permanent, at any time.**
- 4. In accordance with the Southern Elevation Plan and Northern Elevation Plan, received at the Cambrai Office on 15 January 2013, both the southern and northern elevations of the outbuilding shall be fitted with personal access doors, which can be opened to allow the free flow of water, in the event of a high river or flood.**
- 5. In the event of damage being inflicted upon Council infrastructure, caused as a direct result of the proposed development (or any other kind of work), the damaged infrastructure shall be repaired and/or reinstated, at the applicant's cost, to the satisfaction of Council's Director – Infrastructure Services:-**
  - (a) To its original condition; or**
  - (b) Where (a) is not achievable, in accordance with the relevant Australian Standard (applicable to that particular type of infrastructure).**
- 6. The outbuilding must not be used for human habitation under any circumstances.**
- 7. All stormwater emanating from the outbuilding and attached verandah shall be managed such that it does not flow onto, or cause nuisance to, adjoining privately owned land.**
- 8. In accordance with email correspondence from Paul Alisauskas, dated Friday 19 October 2012, no cutting or filling of land shall take place to facilitate the development.**

**Conditions as required by the Minister for the River Murray**

- 9. During demolition and construction activities the property 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.**
- 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. adversely impact native vegetation;**
  - c. impede the natural flow of any surface waters;**
  - d. allow sediment to re-enter any water body;**
  - e. facilitate the spread of pest plant and pathogenic material.**

- 11. Stormwater run-off from the structures 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 a water storage tank would assist in complying with this condition.**

**Notations**

- 1. This approval does not imply compliance with the Electricity Act 1996 (as amended), or the Regulations thereunder. It is the responsibility of the owner and the person undertaking development to ensure compliance with the same.**

**You are advised to contact appropriate authorities including ETSA, Telstra, SA Water and Council’s Environmental Services (CWMS) Department in relation to the location of supply lines and other requirements prior to commencing work.**

- 2. Expiry Date for Planning and Building Consents and Development Approvals**

**Development Plan Consent is valid for 12 months. The applicant must obtain Development Approval within 12 months of the date of the decision or the consent will lapse.**

**It is necessary to obtain Building Rules Consent (if shown as STILL REQUIRED on this Decision Notification Form) before full Development Approval is granted.**

**Once Development Approval is obtained, substantial work on the approved development must be commenced within twelve months of the date of Development Approval or the approval will lapse.**

**The approved development must be substantially completed within 36 months (3 years) of the operative date of Development Approval, or the approval will lapse and a new application must be lodged with the relevant authority.**

- 3. The Council also advises that the proposed development will be located within the “River Murray Floodplain” which is subject to periodic flooding, which may cause extensive or total loss. Neither the Council or any of its Servants, Agents or Officers accept any responsibility for any such loss which may occur. Any conditions are imposed so as to maintain the natural character of the River Valley and to attain the Objectives of the River Murray Zone.**
- 4. The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act, 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 any way which causes or may cause environmental harm.**

**Notations as issued by the Minister for the River Murray**

5. 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.
6. If there is an intention to clear native vegetation on the land at any time, the applicant should consult the Native Vegetation Council to determine relevant requirements under the Native Vegetation Act 1991 and its Regulations. Note that ‘clearance’ means 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 9741 or visit: <http://www.nvc.sa.gov.au>.
7. The applicant is strongly 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>.
8. This approval does not obviate any considerations that may apply to the Environment Protection and Biodiversity Conservation Act 1999 (Cth). For further information visit: <http://www.environment.gov.au/epbc>.

**Seconded**

Kelvin Goldstone

**Director – Development & Environmental Services**