



Development Assessment Panel

28 April 2008

MID MURRAY COUNCIL

DEVELOPMENT ASSESSMENT PANEL

Agenda

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

Monday 28 April 2008, 10.00am

1. **PRESENT**

Frank Wieser (Presiding Member), Graham Gaston, Ross Dawkins, James Miller, David Burgess and Inez Bormann

2. **IN ATTENDANCE**

Kelvin Goldstone, Environmental Services Manager
Julie Lewis, Senior Development Officer - Planning
Jennifer Brewis, Development Officer – Planning
Josephine Henderson, Development Officer – Planning
Melissa Marschall, Minute Secretary

3. **COMMENCEMENT AND WELCOME** AM

4. **APOLOGIES**

Brian Taylor

RECOMMENDATION

moved that the apology be received.

Seconded

5. **CONFIRMATION OF PREVIOUS MINUTES**

(Page 2511 – 31/3/2008)

Minutes of the Mid Murray Council Development Assessment Panel meeting held on 31 March 2008.

RECOMMENDATION

moved that the minutes of the Mid Murray Council Development Assessment Panel Meeting held on 31 March 2008 be taken as read and confirmed.

Seconded

MID MURRAY COUNCIL

6. DEVELOPMENT REPORT

RECOMMENDATION

moved that the report be received.

Seconded

7. LATE CORRESPONDENCE

8. OTHER BUSINESS

9. NEXT MEETING

To be held in the Council Chambers, Main Street, Cambrai on Monday, 26 May 2008, commencing at 10.00am.

10. CLOSURE

MID MURRAY COUNCIL

DEVELOPMENT ASSESSMENT PANEL

Development Report

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

Monday 28 April 2008, 10.00am

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Reporting Officer: Josephine Henderson

Development No.	711/608/07
Applicant	AR & DA Young
Subject Land	Lot 1 of DP69984, Billabong Road, Pompoota, Hundred of Burdett
Proposal	New Dwelling
Development Plan	31 May 2007

INTRODUCTION

This development application has been lodged with Council where Development Plan Consent is sought for a new dwelling on a vacant site.

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

SUBJECT LAND

The subject land is identified as Lot 1 of DP69984, Billabong Road, Pompoota, Hundred of Burdett as contained in Certificate of Title Volume 5962 Folio 336. It is located in the River Murray Zone, Primary Production Policy Area, as defined in the Mid Murray Development Plan Map MiMu/99. The southern corner of the subject site is located in the Floodplain Policy Area. The proposed dwelling appears to be located wholly within the Primary Production Policy Area.

The proposed location of the dwelling is approximately 385 metres from the river's edge. A designated watercourse does run through the middle of this property, the site sloping either side down and into this watercourse, which runs towards the River Murray. Two stone ruins are located next to the watercourse. They are in the process of being restored by the owner (no application has been lodged for this work). The total allotment size is 4.6 hectares.

Attachment 1 identifies the subject site and locality of the subject site.

DESCRIPTION OF PROPOSAL

Development Plan Consent is sought for a new dwelling.

The dwelling has been designed to incorporate the two stone ruins currently located on site. The living area totals approximately 163 square metres, with approximately 76 square metres of verandah area and approximately 26 square metres of carport. The floor area includes three bedrooms (one with an ensuite), bathroom, laundry, kitchen, lounge room, family room and dining area. One of the stone ruins is to be converted into a studio.

The two stone ruins, though currently being restored, are not habitable (and have not been used for many years) and do not have approval to be used for any form of human habitation.

The proposed dwelling will be connected to an aerobic waste control system.

REFERRALS

No referrals have been undertaken at this stage.

PUBLIC NOTIFICATION

No public notification has occurred at this stage.

RELEVANT PROVISIONS OF THE MID MURRAY COUNCIL DEVELOPMENT PLAN

Council Wide

Objectives: 1, 2, 6, 7, 33 & 34

Principles of Development Control: 1, 5, 6, 26, 28, 34, 116 & 128

River Murray Zone

Objectives: 1, 10 & 20

Principle of Development Control: 16

Primary Production Policy Area

Objectives: 16 & 17

Principles of Development Control: 1, 2, 20, 23, 28 & 37

ASSESSMENT

Under the Development Act, Section 39(4)(d), Council is not required to make an assessment against the Development Plan of a non-complying application for the purposes of determining whether to proceed with a full assessment. However, some of the planning issues can be summarised. (Please note, only key issues will be discussed.)

The proposed development does not meet Principles 23 and 37 of the Primary Production Policy Area, both of which state that the minimum land parcel size to construct a dwelling upon is 36 hectares. Anything less than 36 hectares will be a non-complying form of development (unlike the Rural Zone where dwellings are assessed on merit). The subject site is 4.6 hectares. Residential use is potentially acceptable so long as the proposed dwelling is in association with farming, horticulture, viticulture or land based aquaculture. The proposed development is not associated with any of these requisite activities.

A key concern regarding this application is that the majority of land parcels in the general Pompoota area are well under the minimum 36 hectare requirement. To approve this application could set a precedent in allowing other land parcels to be developed for residential purposes, turning an area that is specifically zoned for primary production activities into an urban residential area. The cumulative effect of approving a dwelling here and a dwelling there will result in the fragmentation of primary production land, and constrict any future acceptable land uses from expanding and/or sustaining/achieving a commercially viable level of operation (as typically large land parcels are required for primary production).

For instance, Principle 28 of the Primary Production Policy Area requires a minimum of 300 metres separation distance from a detached dwelling and primary production activities that require chemical spraying. The adjoining land parcel (Lot 2) and other surrounding allotments do crop the land (including irrigated crops), which should be assumed to require spraying and could result in chemical spray drift. The proposed dwelling location is approximately 200 metres from the typical area that is cropped on Lot 2. Achieving the required separation distance would see the proposed house site either relocated in the floodplain area or close to the watercourse and requiring substantial vegetation clearance and site works to mitigate the site slope, both of which are undesirable.

Alternatively, one can argue that the land is not viable for primary production due to the nature of the allotment, i.e. the watercourse that runs through the centre of the property, the gradient slope and small size of the site. These factors do preclude the viability of this land parcel; however, in the larger picture of the area, it is undesirable to encourage non-complying development of this nature, which will potentially have a long-term negative effect on the viability of primary production activities in the area.

An additional concern regarding the proposed location of the dwelling is its proximity to the designated watercourse running through the subject site. Principle 128 of the Council Wide Principles of Development Control states the waste control system must be located 100 metres from the River Murray and any designated watercourse. The River Murray is approximately 385 metres from the proposed development and the soakage area is just on 100 metres from the designated watercourse. The Principle also requires development to be located a minimum of 25 metres from the watercourse. The proposed dwelling is currently approximately 16 metres from the watercourse. Irrespective of the above, it is undesirable to locate development close to a watercourse, especially given that the Floodplain Policy Area also straddles the subject site, and the 1956 flood level is just below the proposed area of development.

The proposed dwelling location is further problematic due to its proximity to pepper trees and other tree species. Though pepper trees and willows are considered feral species and can be removed, due to the site slope and watercourse proximity, this could result in destabilisation of the ground surface area, increased soil erosion and consequent silting of the watercourse.

As part of the initial non-complying process, where Council request the Brief Statement, the applicant was also advised to provide a Heritage Assessment for the site to confirm if the two stone ruins (currently located on site) are of heritage significance. In response, the applicant has provided limited information, including a general history of the Pompoota area and an oral history statement claiming that these two ruins were inhabited in the 1950's. No supporting evidence has been provided that identifies these two ruins as being of heritage significance. Based on my previous experience as a professional heritage consultant, I would not consider these structures as being sufficient to warrant listing as Local Heritage Places or as being a place of heritage significance. Consultation with Kate McDougall (who is currently undertaking the Heritage Survey for the Mid Murray Council area, including the Pompoota area) concurs with this opinion and does not believe these structures meet any of the criteria for local heritage listing, as per Section 23(4) of the Development Act 1993, and consequently the ruins do not warrant listing as a Local Heritage Place.

The only instance where a proposed development of this nature warrants consideration is when there is an opportunity to better manage and conserve items of heritage value. As this property is not considered to be of heritage value, the justification for allowing a dwelling on the subject site for conservation purposes is insufficient to warrant proceeding with this application.

CONCLUSION

In a bid to circumvent a growing trend to fragment and utilise primary production land for unacceptable uses that do not support primary production activities, such as residential development; and due to the site specific issues, such as proximity to watercourses and floodplain areas; this application should not be proceeded with.

The applicant's planning consultant has indicated the applicant is willing to dedicate more funds to fully investigate the history of development on this allotment if it is resolved to proceed to assess the application. Staff advised that this investigation should be undertaken first, but it has not been pursued by the applicant. Hypothetically speaking, even if a level of heritage significance could be substantiated, it is unlikely there will be support for combining the stone ruins with the proposed built form (i.e. – it would need to be a different dwelling proposal if a level of significance was hypothetically established).

However, it is apparent that any dwelling on this site will not satisfying the minimum allotment size for a dwelling and separation distances from conflicting land uses will not be able to be achieved, hence the recommendation not to proceed to assess.

Based on the provisions of the River Murray Zone, Primary Production Policy Area, Development Application 711/608/07 is seriously at variance with the Development Plan of the Mid Murray Council, and therefore warrant refusal of Development Plan Consent.

RECOMMENDATION

moved that the Development Assessment Panel resolve not to proceed with an assessment of the application pursuant to Section 39(4)(d) of the Development Act 1993, and Development Plan Consent be refused to Development Application 711/608/07.

Seconded

MID MURRAY COUNCIL – DEVELOPMENT REPORT
6.2 DEVELOPMENT APPLICATION 711/042/08 – I BUGEJA

Reporting Officer: Josephine Henderson

Development No. 711/042/08
Applicant I Bugeja
Subject Land Lot 8 of CP20695, Section 259, Swan Reach Road,
Sedan, Hundred of Bagot
Proposal Shed

INTRODUCTION

This development application has been lodged with Council where Development Plan Consent is sought for a building. This allotment is subject to a Land Management Agreement (LMA).

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

SUBJECT LAND

The subject land is identified as Lot 8 of CP20695, Section 259, Swan Reach Road, Sedan, Hundred of Bagot as contained in Certificate of Title Volume 5821 Folio 121. It is located in the Rural Zone, Murray Plains Policy Area, as defined in the Mid Murray Development Plan Map MiMu/76.

The LMA that covers this land stipulates each allotment can only have one 30 square metre shed. This shed is to be used only in association with the recreational activity of horse riding. The shed is not to be used for any form of human habitation, and should not impact on any native vegetation. The allotments have been designed as a community horse riding area. Horses are not to be kept on site.

Attachment 1 identifies the subject site and locality of the subject site.

DESCRIPTION OF PROPOSAL

Development Plan Consent is sought for a building. The proposed building is a one roomed area with a glass sliding door and two windows. It has a central support post. The structure will be made from timber – the walls also being clad in timber and the roof clad in iron sheeting (the applicant has not specified whether this is Colorbond or zincalume sheeting, as “custom orb” refers to the profile of the material).

REFERRALS

No referrals are required under Schedule 8 of the Development Regulations 1993.

PUBLIC NOTIFICATION

No public notification is required for this application.

Due to the limitations set by the LMA, this application has been classified as Category 1 as per Schedule 9, Section 2(1)(f).

RELEVANT PROVISIONS OF THE MID MURRAY COUNCIL DEVELOPMENT PLAN

Council Wide

Objectives: 55 & 56

Principles of Development Control: 40, 186 & 189

Rural Zone

Objective: 20

Principles of Development Control: 1, 18 & 20

Murray Plains Policy Area

Principles of Development Control: 1

ASSESSMENT

In relation to the Development Plan, the construction of a shed is typically an acceptable form of development, so long as it is in association with farming activities or a lawful existing dwelling. The LMA precludes farming activities occurring on this land or the construction of a dwelling, and specifies horse riding activities as being the acceptable land use. Therefore, in this instance, the LMA guides how the land should be used, stating that each allotment can only have one shed per allotment and is to be used in association with horse riding (but not horse keeping). The LMA does not define "shed". *The Concise Oxford Dictionary of Current English* defines "shed" as meaning: "One-storeyed shelter for storing goods or vehicles or keeping cattle etc, or for use as workshop, etc, consisting of roof with some or all or no sides open."

On face value, the proposed development does not fit the typical notion of what a rural horse-associated shed would look like, coming across more like a habitable room. The applicant was queried about the logistics of using a "shed" that is raised 500mm off the ground, has steps leading to a glass sliding door entryway and a central support column, and the feasibility of effectively using this building for horse associated purposes. The applicant's response is attached (dated 27 February 2008). Planning staff are of the opinion that this building does not fit the notion of a rural shed to be used for horse related activities.

No prior applications have been lodged for this allotment (Lot 8). However, the applicant (Irene Bugeja) did own Lot 13. Irene sought and gained approval for a standard shed on this allotment in 2002. This property was sold in 2007. Four other allotments (Lot 1, 9, 10 and 11) have also had an approval for a shed. Each of these five applications fit the notion of a shed, being clad in sheeting, with a concrete floor, and generally look like a typical shed (not a habitable room). These applications were approved between 2000 and 2002.

Unfortunately, there is no clear definition of what a shed should look like in this situation, and is a good example of where a LMA can be more problematic than beneficial. The Development Plan does not speak either way on this issue, nor does it define what a horse associated shed should look like. The LMA does clearly state that the land “shall only be used for low intensity recreational activity in the nature of horse riding” (Clause 2.2.1), and that “...the only building that may be permitted on the Land subject to Council’s prior approval under Clause 2.4.1 and under the Act will be a single shed of no greater than 30 square metres...” (Clause 2.4.4). The LMA also states that the land is not to be used for residential purposes (Clause 2.2.2), i.e. – human habitation of a shed.

Due to this anomaly, the Panel needs to determine whether it considers this building as a “shed” that would be appropriate to use for horse associated activities, and whether this is the type of development they want to see occur on this land (giving regard to the LMA requirements). Consideration should also be given to the fact that this application is a clear departure from previous shed approvals related to this LMA.

The applicant has stated that no native vegetation will be cleared or damaged with the construction of this building, as per one of the requirements of the LMA. The site is problematic to access as no formal roads have been constructed to date. Existing access routes are meandering dirt tracks that weave through the dense mallee scrub vegetation. It is feasible, however, that the building could be constructed with minimal damage occurring to the surrounding land.

In relation to recent bushfire regulations that have come into effect, the subject site is more problematic. Council Wide Bushfire Protection Principle 186 requires:-

- a) the proposed building/structure to be located away from vegetation cover comprising trees and shrubs;
- b) not have poor access;
- c) not have rugged terrain;
- d) provide adequate building protection;
- e) and have a dedicated fire-fighting water supply.

The bushfire risk is deemed unacceptable if one or more of the above points is not met. Council Wide Bushfire Protection Principle 189 requires that the building be designed and configured to reduce the impact of a bushfire.

The proposed building does not meet a), b) and d) of Principle 186, nor does the proposal nominate how the design will reduce the impact of a bushfire, as required in Principle 189. The following bushfire issues exist for the proposed building:-

- the proposed building location is not readily accessible (particularly if you are not familiar with the design of the land division);
- is surrounded by native vegetation in the form of mallee scrub;
- and a wholly timber constructed building that is raised off the ground (with no base in-fill) is more likely to burn down in a bushfire than a standard sheet-clad shed on a concrete floor.

Alternatively, the proposed building will blend in with the surrounding environment, and verbal confirmation has been given that a rainwater tank will be connected to the building.

The five previous applications for a shed did not require a bushfire assessment under the relevant Development Plan for that time. Though these issues are now more problematic, it does not cause the application to be *seriously* at variance with the Development Plan. It does, however, result in the proposed development not being an orderly form of development as per the intentions of the LMA, i.e. – due to the nature of the LMA requirements and limitations as identified above.

CONCLUSION

A structure that fits the standard notion of a rural horse-associated “shed” is supportable on this allotment. It is the planner’s view that this building does not represent this notion, and will encourage human habitation. The proposed structure is contrary to the standard design of the five previous sheds that have been approved on various allotments within this LMA area, and could be considered not an orderly form of development. Furthermore, given the recently gazetted bushfire requirements, any application in this land division is unlikely to meet all of the requirements, particularly of Council Wide Principle 186, causing the proposed development to be at variance with these Principles of the Development Plan.

Based on the provisions of the Rural Zone, Murray Plains Policy Area, Development Application 711/042/08 is at variance with the Development Plan of the Mid Murray Council and the Land Management Agreement, and therefore warrants refusal of Development Plan Consent.

RECOMMENDATION

moved that pursuant to Section 33(1)(a) of the Development Act, 1993 Development Application 711/042/08 be refused for the following reasons:-

- (a) The proposed development does not meet bushfire requirements, being surrounded by mallee scrub, having poor access, having an insufficient building protection zone, and being of a design that will not reduce the impact of a bushfire:-

Council Wide Objectives 55 & 56
Council Wide Principles of Development Control 186 & 189.

- (b) As per the Land Management Agreement, the proposed development does not conform to the notion of a “shed” that will be used for horse riding activities only, and is therefore not an orderly form of development in regards to this LMA:-

Clauses 2.2.1, 2.2.2, 2.4.1 & 2.4.4
Council Wide Objective 1
Council Wide Principle of Development Control 1.

Seconded

MID MURRAY COUNCIL – DEVELOPMENT REPORT

6.3 DEVELOPMENT ASSESSMENT PANEL – REPORT TO COUNCIL

Reporting Officer: Kelvin Goldstone

Attached is a draft report for presentation to Council in accordance with Section 56A of the Development Act and the Terms of Reference adopted by Council.

RECOMMENDATION

**that the report to Council on the activities of the Development Assessment Panel for the period January 2007 to January 2008 be endorsed.
Seconded**

Kelvin Goldstone
MANAGER, ENVIRONMENTAL SERVICES