



## Agenda Report for Decision

**Meeting Date: 24 August 2023**

<b>Item Name</b>	State Commission Assessment Panel (SCAP) Decision Review Request: 4619 Victor Harbor Road, Hindmarsh Valley (Development Application 23005920)
<b>Presenters</b>	Margaret Smith, Troy Fountain and Damon Huntley
<b>Purpose of Report</b>	Decision
<b>Item Number</b>	5.1
<b>Strategic Plan Reference</b>	4. Discharging Statutory Obligations
<b>Work Plan Reference</b>	4.3 Ensure the State Commission Assessment panel continues to operate effectively
<b>Confidentiality</b>	Not Confidential (Release Immediately)
<b>Related Decisions</b>	N/A

### Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Note the Decision Review Request from Mr Graham Mulvihill, care of Mr Craig Rowe of C L Rowe and Associates (the Applicant) to the Commission (**Appendix A**).
3. Note Development Application DA 23005920 documentation by the Applicant for Restricted Development – Land Division comprising the division of one (1) allotment into three (3) allotments, intended to be used for rural living purposes at 4619 Victor Harbor Road, Hindmarsh Valley (**Appendix B**).
4. Note the Assessment Report and Minutes from the SCAP meeting held on 10 May 2023 (**Appendix C**).
5. Affirm the decision of the SCAP to refuse to proceed to assess DA 23005920 under section 110 of the *Planning, Development and Infrastructure Act 2016 (the Act)*.
6. Authorise the Chair of the Commission to sign the letter to the Applicant advising of the Commission's decision not to proceed to assess DA 23005920 (**Attachment 1**).
7. Authorise the Chair of the Commission to sign the letter addressed to the Presiding Member of the SCAP, advising of the Commission's decision to not proceed to assess DA 23005920 (**Attachment 2**).
8. Authorise the Chair to make any minor amendments to the letters as required.

## Background

On 21 March 2023, the Applicant lodged a development application seeking Planning Consent and Land Division Consent for the proposed division of land of one (1) allotment into three (3) allotments, intended to be used for rural living purposes.

The application was categorised as Restricted Development for Land Division in the Rural Zone and Limited Land Division Overlay, according to Table 4 of the Planning and Design Code (the Code). Restricted Development is assessed by the Commission as the relevant authority, in accordance with section 110 of the *Planning, Development and Infrastructure Act 2016* (the Act). The decision was delegated to the SCAP.

Pursuant to Section 110 (14) of the Act, the SCAP first decides whether it would proceed with an assessment of the application or refuse the application without proceeding to an assessment.

Section 5 of the Commission's *Practice Direction 4 Restricted Development* (the Practice Direction) dated December 2022, prescribes the circumstances under which the Commission would assess restricted development:

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

The site is in the Rural Zone and Limited Land Division Overlay of the Code. The Desired Outcomes (DOs) of the Zone and Overlay seek to retain land intended for primary production. The proposed land division would directly conflict with these policies, by creating additional allotments for rural living purposes.

The SCAP considered that the application had no reasonable prospect of a favourable assessment, having regard to the above DOs of the Rural Zone within the Planning and Design Code. Accordingly, on 10 May 2023 the SCAP refused the application without proceeding to an assessment (**Appendix C**).

On 5 June 2023, the Applicant submitted a request for the Commission to review the SCAP decision as permitted under section 110(15) of the Act (**Appendix A**).

## Discussion

The Assessment Report (prepared by PLUS staff) that was presented to the SCAP on 10 May 2023 recommended that the application proceed to an assessment (refer to **Appendix C**). However, after reviewing the proposal the SCAP formed the view that the application should not proceed to an assessment for the following reasons:

- a) *The proposed development does not meet the intent of the State Planning Policies or desired outcomes for the Rural Zone.*
- b) *The size of the additional allotments may create a context for future land division proposals of a similar nature in the Rural Zone, contrary to primary production objectives.*

The applicant's request for the Commission to review the SCAP's decision includes additional information to support their position that it is 'fair, reasonable, and appropriate' for the Commission to return a decision to proceed with an assessment of the application.

Pursuant to section 110(18) of the Act, the Commission may either affirm the decision of the SCAP or refer the matter back to the SCAP with a direction that the application for planning consent be assessed.

In accordance with section 110(19) of the Act, no appeal to the Environment, Development and Resources Court lies against the decision of the SCAP to refuse the application without proceeding to an assessment or the review decision made by the Commission.

**Conclusion**

The SCAP, having regard to the Code, Practice Direction 4, and the Act, determined that the application to create two additional allotments for rural living purposes at 4619 Victor Harbor Road, Hindmarsh Valley had insufficient planning merit to have a reasonable prospect of a favourable assessment. In accordance with the applicant's request, the Commission is tasked with the administrative review of this decision.

Should the Commission affirm the decision of the SCAP to refuse to proceed to assess DA 23005920, draft letters to the Applicant and Presiding Member of the SCAP advising of the Commission's decision not to proceed to assess DA 23005920 are provided for consideration (**Attachments 1 & 2**).

Procedural matters

*Delegation*

Under section 110(15) of the Act, a review of a decision by the Commission's delegate must be undertaken 'by the Commission itself'.

*Procedures for a review*

Under section 110(17) of the Act, on an application for review, the Commission may adopt such procedures as the Commission thinks fit and is not bound by the rules of evidence and may inform itself as it thinks fit.

**Attachments:**

1. Suggested letter from the State Planning Commission to the Applicant (#20470783).
2. Suggested letter from the State Planning Commission to the Presiding Member, SCAP (#20470783).

**Appendices:**

- A. Decision Review Request by the Applicant to the State Planning Commission, dated 5 June 2023 (#20472863).
- B. Development Application 23005920 Documentation (#20472916).
- C. SCAP Assessment Report and Meeting Minutes 10 May 2023 (#20472920).

Prepared by: Damon Huntley

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Endorsed by: Margaret Smith

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Date: 11 August 2023

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#20470783

29 August 2023

Mr Graham Mulvihill  
C/- Mr Craig RoweLevel 10  
83 Pirie Street  
Adelaide SA 5000GPO Box 1815  
Adelaide SA 50011800 752 664  
saplanningcommission@sa.gov.auBy email: [clowe@internode.on.net](mailto:clowe@internode.on.net)

Dear Mr Rowe

**Decision Review Request – Development Application 23005920 – Land Division at 4619  
Victor Harbor Road, Hindmarsh Valley SA 5211**

I refer to your request dated 5 June 2023 to review a decision of the State Commission Assessment Panel (SCAP) to refuse Development Application (DA) 23005920 without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016* (the Act).

At its meeting held on 10 August 2023, the State Planning Commission reviewed the decision of the SCAP (from its meeting held on 10 May 2023), taking into consideration your decision review request, the original Development Application documentation, the SCAP Assessment Report and the Commission's *Practice Direction 4 – Restricted Development*.

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

Following this review, the Commission resolved to affirm the decision of the SCAP not to proceed to assess DA 23005920.

Pursuant to section 110(19) of the Act, there is no appeal to the Environment, Resources and Development Court against this decision to refuse the application without making an assessment, either against the initial decision by the SCAP or the subsequent decision by the Commission.

Yours sincerely

**Craig Holden**  
Chair

#20471309

29 August 2023

Level 10  
83 Pirie Street  
Adelaide SA 5000

GPO Box 1815  
Adelaide SA 5001

1800 752 664  
saplanningcommission@sa.gov.au

Ms Rebecca Thomas  
Presiding Member  
State Commission Assessment Panel

By email: [scapadmin@sa.gov.au](mailto:scapadmin@sa.gov.au)

Dear Ms Thomas

**Decision Review Request – Development Application 23005920 – Land Division at 4619 Victor Harbor Road Hindmarsh Valley SA 5211**

On 5 June 2023, the State Planning Commission (the Commission) received a request from Mr Graham Mulvihill, care of Mr Criag Rowe (the Applicant) to review a decision of the State Commission Assessment Panel (SCAP) to refuse Development Application 23005920 (DA) without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016* (the Act).

At its meeting held on 10 August 2023, the Commission reviewed the decision of the SCAP, taking into consideration the following from the Commission's *Practice Direction 4 – Restricted Development*:

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

As a result of the review, the Commission can advise that it resolved to affirm the decision of the SCAP not to proceed to assess DA 23005920.

I have written to the Applicant to advise them of the Commission's decision.

Yours sincerely



**Craig Holden**  
Chair

## Huntley, Damon (DTI)

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**From:** clowe@internode.on.net  
**Sent:** Tuesday, 6 June 2023 10:51 AM  
**To:** SA Planning Commission  
**Subject:** DA ID 23005920 - Proposed land division (one allotment into three), 4619 Victor Harbor Road, Hindmarsh Valley  
**Attachments:** Application-to-the-State-Planning-Commission-Version-2.pdf; Council comments - land division.pdf; Request SPC.pdf

Good morning

Attached please find an application to the State Planning Commission seeking a review of a decision made by the State Commission Assessment Panel; and a request to address the State Planning Commission to support of the requested review.

Should you require any additional information or wish to discuss the subject matter, please do not hesitate to contact me on telephone 0430 348 377.

Regards.

Craig Rowe




**Urban & Regional Planners**  
**Local Government Consultants**

PO Box 573  
GOOLWA SA 5214  
Phone: 0430 348 377

# APPLICATION TO THE STATE PLANNING COMMISSION

## Decision Review Request

Review of a decision of the State Commission Assessment Panel (as delegate of the State Planning Commission) to refuse a restricted development application without proceeding to make an assessment pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016*

<b>Applicant:</b>	Graham Mulvihill
<b>Development Number:</b>	23005920
<b>Nature of Development:</b>	Land division (1 allotment into 3)
<b>Zone / Sub-zone / Overlay:</b>	Rural Zone/Limited Land Division Overlay
<b>Subject Land:</b>	4619 Victor Harbor Road, Hindmarsh Valley 5211 Allotment 200 (D69290) CT Volume 5961 Folio 535
<b>Date development application lodged:</b>	21 March 2023
<b>Date of decision of the State Commission Assessment Panel (SCAP):</b>	10 May 2023
<b>Do you wish to make a verbal presentation (deputation) at the Commission Meeting?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes*  *A request for a deputation must be made in accordance with the State Planning Commission Deputation, External Meeting and Event Policy
<b>Date:</b>	5 June 2023
<b>Signature:</b>	

Submit form to [saplanningcommission@sa.gov.au](mailto:saplanningcommission@sa.gov.au) or via the relevant Application Record on the SA Planning Portal.



5 June 2023



Urban & Regional Planners  
Local Government Consultants

State Planning Commission  
GPO Box 1815  
ADELAIDE SA 5001

PO Box 573  
Goolwa SA 5214

t: 0430 348 377  
e: [clrowe@internode.on.net](mailto:clrowe@internode.on.net)

Dear Sir/Madam

**Re: Development Application ID 23005920 – Proposed division of land at 4619 Victor Harbor Road, Hindmarsh Valley, into three (3) allotments (Graham Mulvihill).**

I act on behalf of the applicant in respect to the above development application, and hereby seek the opportunity to make a verbal representation to the State Planning Commission in relation to my requested review of the recent decision of the State Commission Assessment Panel's decision not to proceed to assessment.

I believe that it is not unreasonable that an assessment of the proposed land division may be favourable, given the following circumstances.

1. The assessing officer for the State Planning Commission (Ben Scholes) formed the opinion that the proposed land division did not demonstrate "fatal" flaws or unacceptable shortcomings in terms of potential planning merit; and considered the proposal worthy of proceeding to assessment.
2. In Mr Schole's report to SCAP (dated 10<sup>th</sup> May 2023) he expressed the opinions that:
  - the subject land was not considered to be particularly valuable rural land, landscape, environmental and food production land that ought to be subject to protection from urban encroachment;
  - the proposed land division would constitute a viable pathway to potentially achieving a more beneficial land use which would have no detrimental impact on the productivity of agricultural land uses in the locality and region;
  - use of the subject land for any primary production or agricultural purposes may not be compatible with the neighbouring existing and future urban-type land uses;
  - the "Land Supply Report for Greater Adelaide (Plan SA, June 2021) indicates that the subject land is located in the "Future Urban Growth Area" which is ultimately envisaged to yield an additional 2,600 allotments;
  - the creation of two additional allotments would marginally assist in the provision of housing opportunities in Victor Harbor;



- the proposed land division would not place any excessive additional demands upon social or community services and/or facilities, and should have negligible social and environmental impacts; and
  - the configuration and size of each of the proposed allotments would be sufficient to accommodate the anticipated future rural living land use and development thereof, including the siting of buildings, preservation of existing vegetation (if required), solar access, and/or the provision of private open space.
3. The administration of the City of Victor Harbor has advised that the proposed division of the subject land exhibits sufficient merit to warrant an assessment, due to unique circumstances of existing size, adjoining land uses and physical separation from primary production land (refer attached correspondence dated 5<sup>th</sup> June 2023).
  4. The subject land is not located within the Environmental and Food Production Area.
  5. The 30-Year Plan for Greater Adelaide (2017 Update) includes the subject land in the identified "Planned Urban Land to 2045".
  6. Whilst the subject land is located in a Rural Zone, it is only 1.3736 hectares in area and, as such, has limited (if any) potential for any future primary production use on an economically viable basis.
  7. The subject land has not been utilised for any form of primary production for many years.
  8. The subject land is already connected to all available utility services.
  9. It is unlikely that the future use/occupation of the proposed allotments will have any significant impact upon the safe and/or efficient movement vehicles throughout the local road network.
  10. The proposed allotments (and the future use thereof) will complement the context and pattern of development within the immediate locality.

I trust the information provided herein will be of assistance to the Commission when considering my requests for a review of the relevant SCAP decision. and the opportunity to make a verbal representation supporting the review.

Should you require any additional information or wish to discuss the subject matter, please do not hesitate to contact the undersigned on telephone 0430 348 377.

Yours faithfully



Craig Rowe MPIA

**C L ROWE AND ASSOCIATES PTY LTD**



File No: DA 23005920

5 June 2023

CL Rowe & Associates  
PO Box 573  
Goolwa SA 5214

Dear Craig

**Re: DA 23005920 – Proposed land division, 4619 Victor Harbor Road, Hindmarsh Valley**

Further to your email and phone conversations concerning the land division at 4619 Victor Harbor Road and my opinion on the proposed land division.

As background land division 453/D014/14 was lodged in June 2016, by a different landowner, seeking to divide the subject land into three allotments with access via a right of way from Strawberry Hill Road. This application was lodged under the Development Act 1993 and assessed against the City of Victor Harbor Development Plan dated 10 January 2013, the land was situated in the General Farming Zone and the South Mount Lofty Ranges Primary Production Area in which land division to create additional allotments was a non-complying form of development. The officers report recommended approval of the land division and to seek the concurrence of the Development Assessment Commission. The Council Assessment Panel refused the application at the December 2014 meeting.

In January 2018 surveyors acting for new property owners sort feedback on the potential for sub-division of the property, at this time the zoning remained the same however the Environment and Food Production Areas, EFPA had been legislated. The advice was again that the land division was non-complying and would require public notification and be determined by the CAP. However, given the surrounding land uses the potential for sub-division was supportable and further it was noted that the subject land was not located in the EFPA which would indicate that the area was not identified as suitable for food production activities.

Further discussions have occurred since 2018 and the Planning and Design Code has subsequently replaced the Council Development Plan which has altered the assessment pathway for the land division from a non-complying to Restricted Development. Being a restricted development the application, current land division 23005920, does not get referred to the Assessment Manager and/or the Council Assessment Panel until such time as the State Planning Commission determines to proceed to assessment.

As such the position of Council is untested regarding assessment against the Planning and Design Code and the following comments are provided as consideration of the proposed land division but not the official position of council.

I have viewed the report of the recommending officer to the State Planning Commission and concur with the report and rationale. The subject land is not utilised for primary production and has already been fragmented from primary production land with no prospect of being connected with any land that could be used for primary production.

Since the initial land division in 2014 the adjoining property to the east has been subject of a land division, boundary adjustment, in which all of the land extending to Waterport Road now forms one allotment which is owned by the Encounter Lutheran College. Approval has recently been granted for some outdoor studies orientated learning spaces which together with the watercourse and low-lying land that runs through the property from north to south limits the potential for this land to be utilised for primary production.

A proposed land division to create additional allotments will fail the Limited Land Division Overlay Performance Outcome PO 1.1 due to the narrow focus of the overlay however the broader intent of the Desired Outcome could be argued as being achieved as the creation of additional allotments in this particular scenario does not fragment or impede the long-term use of land used for primary production. Further the Desired Outcome speaks to minimising fragmentation which would tend to suggest that some level of fragmentation may be acceptable.

In addition, a proposed land division on the subject land would be able to achieve Performance Outcomes PO 11.1, 11.2 and 11.3 of the of the Rural Zone which relate to division of land.

In my opinion the division of the subject land due to the unique circumstances of existing size, adjoining land uses and physical separation from primary production land is sufficient to warrant an assessment.

Please contact me on 8551 0532 if you require further assistance.

Yours sincerely



**Ben Coventry**  
Assessment Manager

Development No.  
 City of Victor Harbor  
 Plan of Division for Development Approval  
**HUNDRED OF GOOLWA**  
 ALLOTMENT 200 IN D69290  
 OF PT SEC 91  
 in the area named  
**HINDMARSH VALLEY**



C.T. 5961/535

SUBJECT TO SURVEY

EXISTING STRUCTURES TO REMAIN

Registered Proprietor : JC FOWLER

Applicant : G MULVIHILL

- ACCESS POINT FOR ALLOTMENT 101 TO BE DETERMINED & WILL ENSURE MINIMAL VEGETATION DISTURBANCE

**ANDREW  
 & ASSOCIATES**

SURVEYORS &  
 DEVELOPMENT CONSULTANTS

311 Angas Street Adelaide SA 5000  
 Telephone: 8232 1954

34 Victoria Street Victor Harbor SA 5211

Reference : 221232-2A



**Graham Mulvihill**

**Proposed land division,  
4619 Victor Harbor Road, Hindmarsh Valley**

Prepared by  
**C L Rowe & Associates Pty Ltd**  
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November 2022

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## 1. INTRODUCTION

This preliminary report has been prepared for Mr Graham Mulvihill and relates to the proposed division of the land at number 4619 Victor Harbor Road, Hindmarsh Valley, into three (3) allotments.

According to the Planning and Design Code (the Code), the Limited Land Division Overlay relates to the subject land. This being the case, the division of land is a "Restricted" form of development.

This report provides a description of the proposed development; details pertaining to the subject site and the locality; and a preliminary assessment of the proposed development against the relevant provisions of the Code

## 2. SUBJECT LAND AND LOCALITY

The subject land is described as number 4619 (allotment 200) Victor Harbor Road, Hindmarsh Valley, and is the land to which Certificate of Title Volume 5961 Folio 535 refers.

The site:

- is basically rectangular in shape;
- is approximately 1.3736 hectares in area;
- has frontages of approximately 152.64 metres to Victor Harbor Road (to the west) and 86.58 metres to Strawberry Hill Road (to the south);
- slopes gently from north to south;
- exhibits a long-existing masonry dwelling (refer Photograph 1), a number of associated outbuildings and a considerable established garden area; and
- has a reasonable cover of native vegetation.

The subject land exhibits no signs of any current or former farming activity (refer Aerial Photograph 1).

The immediate locality comprises:

- a "rural living" allotment (allotment 103 - 9,191m<sup>2</sup>) to the north;
- open rural land generally to the north and east which is owned by Encounter Lutheran College;
- open rural land to the west, across Victor Harbor Road, which is zoned Master Planned Neighbourhood Zone and, as such, will accommodate future residential development.
- an extension to the Encounter Lutheran College (i.e. a playing field) immediately to the east;
- the Encounter Lutheran College campus immediately to the south (across Strawberry Hill Road); and
- residential development (primarily in the form of detached dwellings on individual allotments) to the south, south-east and south-west (refer Aerial Photograph 2).

Given the aforementioned, it is considered that the locality exhibits a mixed urban/rural character which is consistent with its location at the periphery of the township of Victor Harbor.

Photograph 1: Existing dwelling and sheds



Aerial Photograph 1: Subject land.





Aerial Photograph 2: Subject site and the immediate and general localities.



### **3. PROPOSED DEVELOPMENT**

The proponent is seeking consent to divide the subject land into three (3) allotments.

Proposed allotment number 100, which is the southern most of the proposed allotments, is to be 4,686m<sup>2</sup> in area. This proposed allotment will have frontages to both the Victor Harbor Road (which is adjacent the existing access track) and Strawberry Hill Road; will incorporate the existing dwelling and all associated outbuildings; and will be accessed via Strawberry Hill Road.

Proposed allotments 101 and 102 are to be 4,525m<sup>2</sup> in area; will have frontage to Victor Harbor Road; and will be accessed via the existing access track to the west which runs parallel to the Victor Harbor Road. These proposed allotments currently only exhibit vegetation (i.e. no structures).

All of the proposed allotments will be connected to the available utility services (i.e. power, water and sewer).

Given the size and location of the proposed allotments, it is envisaged that all three of the proposed allotments will be utilised for rural living purposes.

### **4. PRELIMINARY PLANNING ASSESSMENT**

According to the Code, the subject land lies within the Rural Zone.

In addition, the following Code Overlays are deemed to be relevant.

- Hazards (Bushfire - Medium Risk)
- Hazards (Flooding - Evidence Required)
- Limited Land Division
- Major Urban Transport Routes
- Native Vegetation
- Traffic Generating Development

The General Development Policies, as they relate to "Land Division", are also considered to apply.

Brief comments and opinions, as they relate to the subject development proposal and key relevant primary provisions of the Code, are provided hereinafter.

#### **4.1 Rural Zone**

*Desired Outcome 1:*

*A zone supporting the economic prosperity of South Australia primarily through the production, processing, storage and distribution of primary produce, forestry and the generation of energy from renewable sources.*

*Desired Outcome 2:*

*A zone supporting diversification of existing businesses that promote value-adding such as industry, storage and warehousing activities, the sale and consumption of primary produce, tourist development and accommodation.*

*Performance Outcome 11.1:*

*Land division, including boundary realignments, promotes productive, efficient and sustainable primary production.*

*Performance Outcome 11.2:*

*Land division, including boundary realignments, which facilitates the more intensive use of the land should occur only where:*

- (a) the allotments are of a size and configuration to support the existing and proposed land uses*
- (b) water of sufficient quality and quantity is available to sustain the proposed use*
- (c) the use will be compatible with adjacent or nearby uses of land.*

The subject land is only 1.3736 hectares in area; exhibits a long-existing dwelling and a number of associated sheds and garden areas; has long been utilised for rural-living purposes; and shows no signs of having been utilised for any primary production purposes in recent years (if at all). As such, the proposed land division should have no detrimental impact upon agricultural productivity, whether it be in regard to the subject land, the locality or the region in general.

Further, the subject land is of insufficient size to be developed and/or utilised (on an economically viable basis) for most forms of primary production. It is also noted that:

- the neighbouring allotment to the north (i.e. allotment 103), which is only 9,191m<sup>2</sup> in area, has long been utilised for "rural living" purposes;
- the neighbouring land to the east (i.e. which is described as allotment 10 Adelaide Road, Hayborough), is being developed, in part, as a playing field and specialist learning facility complex associated with the Encounter Lutheran College; and
- the land to the west, across Victor Harbor Road, is zoned Master Planned Neighbourhood Zone and, as such, will accommodate future residential development.

These land use circumstances essentially prevent the subject land from being amalgamated with a larger land agricultural holding which could collectively be utilised for primary production purposes on an economically sustainable basis.

In addition, the existing use of the subject land (i.e. rural living) will essentially not change as a consequence of the proposed land division, although it may intensify marginally. Regardless, the size and future use of the proposed allotments will be smaller than the existing rural living allotment to the immediate north, and will complement the context and pattern of the existing residential development to the south, south-east and south-west.

Given the aforementioned, it is considered that the provisions and intent of the Rural Zone do not benefit the capabilities of the subject land and, as such, the desired outcomes of the zone realistically cannot be achieved. On the other hand, the size of the subject land and the restrictive impacts of the neighbouring land uses seemingly render the subject land suitable for "rural living". In addition, such an alternative land use will not completely alter the existing mixed rural/residential character of the locality.

I am also aware that the subject land lies at the interface with the Suburban Neighbourhood Zone wherein minimum allotments sizes of 500m<sup>2</sup> (detached dwelling) and 300m<sup>2</sup> (semi-detached dwelling) are envisaged. Further, as previously stated, the Encounter Lutheran College campus is located directly to the south of the subject land. Proximity to urban development can hinder rural land uses and farming activities, and serves to create a mixed character. The creation of "rural living" allotments, as proposed, is considered to be appropriate in the area of transition between rural to urban land uses (and vice versa).

A further consideration is the fact that land located elsewhere in the Rural Zone (i.e. Stirling Court, Hindmarsh Valley, being the land off Welch Road to the north-west of the subject land), which is within reasonable proximity to the subject land, has previously been permitted to be divided into rural living allotments ranging in size from 4,535m<sup>2</sup> to 6,512m<sup>2</sup>. I believe that the existence of these allotments demonstrates that "rural living" type allotments have been determined to be an appropriate form of development (and land use) within both the Rural Zone and the general/wider locality.

Finally, the 30-Year Plan for Greater Adelaide (2017 Update) includes the subject land in the identified "Planned Urban Land to 2045". It is also noted that the subject land does not lie within a designated Environment and Food Production Area. Given these circumstances, it can only be concluded that the subject land is not considered to constitute valuable rural, landscape, environmental and/or food production area which warrants protection from urban encroachment.

I believe that all of the aforementioned collectively serve to justify and support the proposed land division and likely future rural living use of the proposed allotments.

#### **4.2 Hazards (Bushfire - Medium Risk)**

*Desired Outcome 1:*

*Development, including land division responds to the medium level of bushfire risk and potential for ember attack and radiant heat by siting and designing buildings in a manner that mitigates the threat and impact of bushfires on life and property taking into account the increased frequency and intensity of bushfires as a result of climate change.*

*Desired Outcome 2:*

*To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger.*

*Performance Outcome 4.1:*

*Land division is designed and incorporates measures to minimise the danger of fire hazard to residents and occupants of buildings, and to protect buildings and property from physical damage in the event of a bushfire.*

*Performance Outcome 4.2:*

*Land division is designed to provide a continuous street pattern to facilitate the safe movement and evacuation of emergency vehicles, residents, occupants and visitors.*

The proposed land division will not exacerbate the potential risk of impact by bushfires. No additional building works are proposed at this time, and any future dwellings and/or outbuildings can be specifically designed and located so as to mitigate impact by bushfires.

It is also noted that the subject land:

- lies at the periphery of the township of Victor Harbor and, as such, is already readily accessed (by emergency vehicles, where necessary) via the existing local road network;
- will be surrounded by urban and/or rural living type land uses rather than open rural land, which may diminish the potential for direct or immediate threat by bushfire events;
- slopes gently from south to north, thereby affording easy access to all parts of the land by emergency services vehicles; and

- incorporates introduced vegetation that, in the main, can be removed by future landowners so as to reduce the potential fuel load for a future bushfire.

It is further noted that mains water is located directly adjacent the subject land (along both Victor Harbor and Strawberry Hill Roads) should a water supply be required for firefighting purposes.

### 4.3 Limited Land Division

*Desired Outcome 1:*

*The long term use of land for primary production is maintained by minimising fragmentation through division of land.*

It is noted that the Desired Outcome seeks to minimise, not prohibit, land division. This seemingly infers that land division may be appropriate if it does not detrimentally affect primary production.

The subject land is not utilised for any productive agricultural purpose; and this situation is unlikely to change given the small size of the subject land and the fact that any primary production use thereof will likely not be viable nor compatible with the neighbouring existing and future urban land uses.

The division or "fragmentation" of the subject land will have no detrimental impact on the agricultural productivity of the subject land, the locality or the region; and the future development and use of the proposed allotments for "rural living" purposes will be completely consistent and compatible with the existing land uses which surround the subject land.

*Performance Outcome 1.1:*

*Land division does not result in the creation of an additional allotment.*

I understand that:

- the Code is not a mandatory document which requires full compliance with the provisions therein, and the Code provisions should not be interpreted as a statute; and
- "Performance Outcomes" are policies designed to facilitate assessment of a development proposal.

The Code does not envisage nor address all land use circumstances and, as such, the blanket prohibition of additional allotments seems to be at odds with the longstanding fundamental proposition that land uses should be assessed on their individual merits (and circumstances).

Whilst the subject land division proposal will result in the creation of two (2) additional allotments, it is considered that there are clearly circumstances which prevent the subject land from being utilised for any productive agricultural purpose.

This being the case, it is considered that the proposed land division is a sound alternative which will enable some beneficial use of the subject land, as opposed to maintaining a significant portion of the subject land as unused private open space related to the current "rural living" land use.

I reiterate that the subject land is only 1.3736 hectares in area; has not been utilised for primary production purposes for many years; is not located within a designated Environment and Food Production Area; and is basically surrounded by urban land uses and/or "neighbourhood" zones. As such, the subject land has limited, if any, potential for use for any primary production purposes (especially on an economically viable basis). This being the case, it is considered that the creation of two additional allotments will have no detrimental impact upon the agricultural productivity, character and/or amenity of the locality.

#### **4.4 Major Urban Transport Routes**

*Desired Outcome 1:*

*Safe and efficient operation of Major Urban Transport Routes for all road users.*

*Desired Outcome 2:*

*Provision of safe and efficient access to and from Major Urban Transport Routes.*

*Performance Outcome 1.1:*

*Access is designed to allow safe entry and exit to and from a site to meet the needs of development and minimise traffic flow interference associated with access movements along adjacent State Maintained Roads.*

*Performance Outcome 2.1:*

*Sufficient accessible on-site queuing adjacent to access points is provided to meet the needs of development so that all vehicle queues can be contained fully within the boundaries of the development site, to minimise interruption of the functional performance of the road and maintain safe vehicle movements.*

*Performance Outcome 4.1:*

*New access points are spaced apart from any existing access point or public road junction to manage impediments to traffic flow and maintain safe and efficient operating conditions on the road.*

*Performance Outcome 5.1:*

*Access points are located and designed to accommodate sight lines that enable drivers and pedestrians to navigate potential conflict points with roads in a controlled and safe manner.*

The subject land has long been accessed from Victor Harbor Road (via a parallel access track) and Strawberry Hill Road, and these arrangements will continue under the subject land division proposal.

The two proposed additional allotments will have access/egress points on the existing "access track" which links to both the Victor Harbor Road and Strawberry Hill Road. Based on estimated 8 – 12 daily traffic movements per day per additional allotment, and allowing for appropriate/acceptable driver practices, it is considered unlikely that the future use/occupation of the proposed allotments will have any significant impact upon the safe and/or efficient movement of vehicle throughout the local road network. Indeed, the additional traffic movements will likely be insignificant, given that Victor Harbor Road (in the vicinity of the subject land) currently accommodates approximately 5,800 traffic movements per day (estimated average number of two-way vehicle movements).

#### **4.5 Native Vegetation**

*Desired Outcome 1:*

*Areas of native vegetation are protected, retained and restored in order to sustain biodiversity, threatened species and vegetation communities, fauna habitat, ecosystem services, carbon storage and amenity values.*

*Performance Outcome 2.1:*

*Land division does not result in the fragmentation of land containing native vegetation, or necessitate the clearance of native vegetation, unless such clearance is considered minor, taking into account the location of allotment boundaries, access ways, fire breaks, boundary fencing and potential building siting or the like.*

The subject land division neither purports nor requires the removal of any existing vegetation, as the proposed allotment boundaries (and future fencing) either align with existing fencing or will run in areas which exhibit no significant vegetation (native or otherwise).

#### **4.6 Traffic Generating Development**

*Desired Outcome 1:*

*Safe and efficient operation of Urban Transportation Routes and Major Urban Transport Routes for all road users.*

*Desired Outcome 2:*

*Provision of safe and efficient access to and from urban transport routes and Major Urban Transport Routes.*

*Performance Outcome 1.1:*

*Development designed to minimise its potential impact on the safety, efficiency and functional performance of the State Maintained Road network.*

*Performance Outcome 1.2:*

*Access points sited and designed to accommodate the type and volume of traffic likely to be generated by development.*

*Performance Outcome 1.3:*

*Sufficient accessible on-site queuing provided to meet the needs of development so that queues do not impact on the State Maintained Road network.*

It is considered that the issue of potential impact upon the local road network and/or the safe and efficient movement of vehicles has been previously addressed (refer 4.4 Major Urban Transport Routes).

#### **4.7 General Provisions - Land Division**

*Desired Outcome 1:*

*Land division:*

- (a) creates allotments with the appropriate dimensions and shape for their intended use*
- (b) allows efficient provision of new infrastructure and the optimum use of underutilised infrastructure*
- (c) integrates and allocates adequate and suitable land for the preservation of site features of value, including significant vegetation, watercourses, water bodies and other environmental features*
- (d) facilitates solar access through allotment orientation*
- (e) creates a compact urban form that supports active travel, walkability and the use of public transport*
- (f) avoids areas of high natural hazard risk.*

*Performance Outcome 1.1:*

*Land division creates allotments suitable for their intended use.*

*Performance Outcome 1.2:*

*Land division considers the physical characteristics of the land, preservation of environmental and cultural features of value and the prevailing context of the locality.*

*Performance Outcome 2.1:*

*Land division results in a pattern of development that minimises the likelihood of future earthworks and retaining walls.*

The proposed allotments are to be rectangular in shape and either 4,686m<sup>2</sup> or 4,525m<sup>2</sup> in area. Given that the likely use of the proposed allotments will be "rural living" or low-density residential, the configuration and size of each of the proposed allotment will be more than sufficient to accommodate the future use and development thereof, including the siting of buildings, preservation of existing vegetation (if required), solar access, and/or the provision of ample private open space.

It is also considered that the proposed allotments (and the future use thereof) will complement the context and pattern of development within the immediate locality.



*Performance Outcome 2.2:*

*Land division enables the appropriate management of interface impacts between potentially conflicting land uses and/or zones.*

Land uses adjoining the subject land include a rural living allotment to the north; the Encounter Lutheran College and associated play fields (and future additional school facilities) to the east and south; and land earmarked/zoned for future residential development to the west. It is considered that the proposed allotments, and the likely future use thereof, will be compatible with the neighbouring "urban" land uses.

*Performance Outcome 2.4:*

*Land division is integrated with site features, adjacent land uses, the existing transport network and available infrastructure.*

As indicated earlier, the proposed allotments will ultimately exhibit more of a "rural living" or low-density residential appearance which will be in keeping with, and will complement, the existing neighbouring "urban" land uses.

*Performance Outcome 3.1:*

*Land division provides allotments with access to an all-weather public road.*

The subject land has long been accessed via the local road network, including Victor Harbor Road (and the associated access track) and Strawberry Hill Road.

*Performance Outcome 4.2:*

*Waste water, sewage and other effluent is capable of being disposed of from each allotment without risk to public health or the environment.*

The development of proposed allotments numbers 101 and 102, including individual waste water systems or connection to the existing sewer main which runs adjacent the subject land, will require approval by relevant authorities at the appropriate time.

*Performance Outcome 6.1:*

*Land division for residential purposes facilitates solar access through allotment orientation.*

The proposed allotments are of a size, configuration and orientation which should provide solar access for any future dwellings and land uses.

## **5. STATE PLANNING COMMISSION PRACTICE DIRECTION**

The State Planning Commission Practice Direction (Restricted and Impact Assessed Development) 2019 (Practice Direction 4) enables the State Commission Assessment Panel to resolve to proceed to assess an application for restricted development where all of the following matters are demonstrated to the satisfaction of the Panel.

- The proposal provides a social, economic or environmental benefit to the current or future community.
- The development responds to a demonstrated need or demand for the proposed land use in the locality.

The subject land is only 1.3736 hectares in area and is surrounded by urban development. This being the case, the proposed land division will have no significant benefits, other than some financial gain by the applicant through the sale of two of the proposed allotments and the potential for less conflict with the neighbouring urban land uses. Further, the proposed land division will not place any excessive additional demands upon social or community services and/or facilities; and should have no social or environmental impacts.

As for the issue of demand/need, the subject land division proposal will create two additional allotments which will, in a small way, assist in the provision of housing opportunities in Victor Harbor. Interestingly, it is noted that the "Land Supply Report for Greater Adelaide" (Plan SA, June 2021) identified the subject land as being located within the Victor Harbor township boundary and the "Future Urban Growth Area". The report indicated that it was envisaged that the "Future Urban Growth Area" could yield an additional 2,600 allotments. This being the case, it is considered that there is an expectation that there is, or will be, a demand for additional allotments within and about Victor Harbor, and that specific land (including the subject land) has been "earmarked" to meet this future demand.

## **6. CONCLUSION**

The proposed land division seeks to divide the land at 4619 Victor Harbor Road, Hayborough, into three (3) allotments. The proposed allotments are to be either 4,686m<sup>2</sup> or 4,525m<sup>2</sup> in area, and will likely be used for "rural living" or low-density residential purposes.

According to the Code, the Limited Land Division Overlay applies to the subject land and, as such, the division of land is a "Restricted" form of development.

Having duly considered all aspects of the land division proposal and the relevant provisions of the Code, I have formed the opinion that the proposal exhibits sufficient merit to warrant the granting of consent. In forming this opinion I was mindful of the following.

- Whilst the subject land is located in a Rural Zone, it is only 1.3736 hectares in area and, as such, has limited (if any) potential for any future primary production use on an economically viable basis.
- It would appear that the subject land has not been utilised for primary production purposes for many years.

- The subject land is apparently not considered to be valuable rural, landscape, environmental and food production land which warrants protection from urban encroachment, given that it is not located in a designated Environment and Food Production Area.
- The 30-Year Plan for Greater Adelaide (2017 Update) includes the subject land in the identified "Planned Urban Land to 2045".
- The "Land Supply Report for Greater Adelaide" (Plan SA, June 2021) indicates that the subject land is located within a "Future Urban Growth Area" which is envisaged to ultimately yield an additional 2,600 allotments.
- The proposed land division should have no detrimental impact upon agricultural productivity of the subject land, the locality or the region.
- The size and likely future use of the proposed allotments is consistent with allotments which are located elsewhere in the Rural Zone (e.g. Stirling Court, Hindmarsh Valley), within reasonable proximity of the subject land.
- The proposed land division should not exacerbate the potential risk of impact by bushfires.
- The use of the subject land for any primary production or agricultural purposes may not be compatible with the neighbouring existing and future "urban" land uses.
- The subject land has long been readily accessed from Victor Harbor Road (via a parallel access track) and Strawberry Hill Road.
- The subject land is already connected to all available utility services.
- It is unlikely that the future use/occupation of the proposed allotments will have any significant impact upon the safe and/or efficient movement vehicles throughout the local road network.
- The subject land division neither purports nor requires the removal of any existing vegetation (native or otherwise).
- The configuration and size of each of the proposed allotment will be more than sufficient to accommodate the likely future use and development thereof (i.e. "rural living"/low-density residential development), including the siting of buildings, preservation of existing vegetation (if required), solar access, and/or the provision of ample private open space.
- The proposed allotments (and the future use thereof) will complement the context and pattern of development within the immediate locality.

Given the aforementioned, it is considered that the proposed land division has a rational basis and should have no significant impacts.

I trust the comments and opinions presented herein will be of assistance in the assessment of the subject land division proposal. However, should you require any additional information or wish to discuss the subject proposal, please do not hesitate to contact the undersigned on 0430 348377.



Craig Rowe MPlA

**C L ROWE AND ASSOCIATES PTY LTD**

REAL PROPERTY ACT, 1886



South Australia

The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



## Certificate of Title - Volume 5961 Folio 535

**Parent Title(s)** CT 5090/726  
**Creating Dealing(s)** RTC 10367071  
**Title Issued** 05/04/2006      **Edition** 3      **Edition Issued** 20/08/2015

### Estate Type

FEE SIMPLE

### Registered Proprietor

JANEY CHRISTINE FOWLER  
OF 7 HIGH STREET VICTOR HARBOR SA 5211

### Description of Land

ALLOTMENT 200 DEPOSITED PLAN 69290  
IN THE AREA NAMED HINDMARSH VALLEY  
HUNDRED OF GOOLWA

### Easements

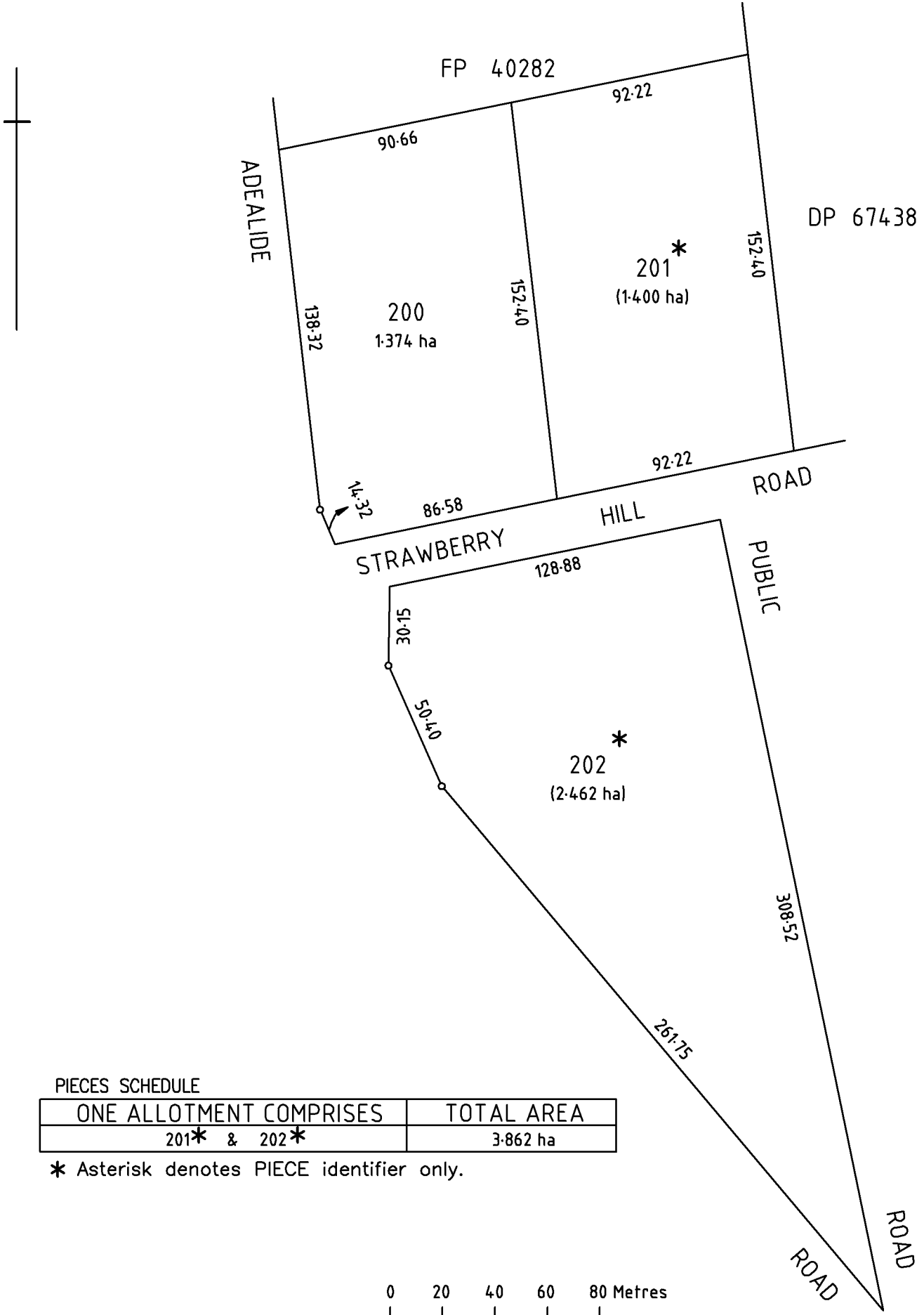
NIL

### Schedule of Dealings

Dealing Number	Description
12370277	MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA (ACN: 123 123 124)

### Notations

<b>Dealings Affecting Title</b>	NIL
<b>Priority Notices</b>	NIL
<b>Notations on Plan</b>	NIL
<b>Registrar-General's Notes</b>	NIL
<b>Administrative Interests</b>	NIL



PIECES SCHEDULE

ONE ALLOTMENT COMPRISES	TOTAL AREA
201* & 202*	3.862 ha

\* Asterisk denotes PIECE identifier only.



## Graham Mulvihill

Restricted Development – Land Division (1 allotment into 3) for Rural Living purposes

4619 Victor Harbor Road, Hindmarsh Valley

Development Application 23005920



### CONTENTS:

**APPENDIX 1** – Relevant Planning and Design Code Policies

**ATTACHMENT 1A** – Land Division Plan by Andrew & Associates

**ATTACHMENT 1B** – Planning Statement by C L Rowe & Associates

**ATTACHMENT 1C** – Certificate of Title

**ATTACHMENT 1D** – Refusal of Application No. 453/D014/14

**ATTACHMENT 1E** – Subject Land Map

**ATTACHMENT 1F** – Subject Land Zoning Map

**RESTRICTED DEVELOPMENT – TO PROCEED WITH ASSESSMENT**

<b>DEVELOPMENT NO.:</b>	23005920
<b>APPLICANT:</b>	Graham Mulvihill
<b>NATURE OF DEVELOPMENT:</b>	Land division (1 allotment into 3) for Rural Living purposes
<b>ZONE / SUBZONE:</b>	<ul style="list-style-type: none"> <li>• Rural Zone</li> </ul>
<b>OVERLAYS:</b>	<ul style="list-style-type: none"> <li>• Hazards (Bushfire - Medium Risk)</li> <li>• Hazards (Flooding - Evidence Required)</li> <li>• Limited Land Division</li> <li>• Major Urban Transport Routes</li> <li>• Native Vegetation</li> <li>• Prescribed Water Resources Area</li> <li>• Traffic Generating Development</li> </ul>
<b>TNVs:</b>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
<b>LODGEMENT DATE:</b>	21 March 2023
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	2023.4 (dated 16 March 2023)
<b>RELEVANT AUTHORITY:</b>	State Planning Commission – Section 94(1)(b) of the <i>Planning, Development and Infrastructure Act 2016</i>
<b>DELEGATION:</b>	State Commission Assessment Panel Delegations Policy – Delegation 5.2.8
<b>RECOMMENDING OFFICER &amp; DATE:</b>	Ben Scholes, 10 May 2023

**BACKGROUND**

On 21 March 2023, the application was lodged with the State Planning Commission (Commission) via the SA Planning Portal for division of an existing allotment into 3 allotments, intended to be used for rural living purposes.

A recommendation to proceed to assess the proposal was subsequently presented to the delegate of the Commission, who did not accept the recommendation on the basis the delegate considered there would be no reasonable prospect of a favourable assessment in accordance with the procedures established in the [Commission's Practice Direction 4 – Restricted Development](#).

The recommendation is now presented to the Commission for a resolution on whether the application is to proceed to assessment.

**Refused Application**

On 9 December 2014, the City of Victor Harbor (Council) refused to grant Development Plan consent and Land Division consent for application no. 435/D014/14 for division of the subject land (1 allotment into 3 allotments).

The proposal was classified as a non-complying form of development and would include vehicle access via Strawberry Hill Road in a 'battle-axe' configuration as shown overleaf in Figure 1. Ownership of the subject land is understood to have changed over the intervening period.





**Figure 1 – Configuration of Refused Land Division (DA 453/D014/14)**

The Council refused the land division application as it considered the proposal would be contrary to the following provisions of the former Victor Harbor Development Plan (consolidated 10 January 2013):

**COUNCIL WIDE - Rural Development**

**Objective 74:** The retention of rural areas primarily for agricultural, pastoral and forestry purposes, and the maintenance of the natural character and beauty of such areas.

**COUNCIL WIDE - GENERAL**

**PDC 2:** Development should be undertaken in accordance with the relevant provisions of the zone and/or policy area and having regard to the location and condition of that land concerned.

**COUNCIL WIDE – GENERAL FARMING ZONE**

**Objective 1:** Continuation of a variety of farming activities ranging from extensive grazing to intensive animal keeping, with scope for development to take place in accordance with improvements in agricultural practice.

**PDC 1:** Development should primarily be for agriculture appropriate to the physical capabilities of the land and the locality.

**PDC 5:** Development should take place in a manner which will enable agriculture to continue.

**DESCRIPTION OF PROPOSAL**

The applicant seeks planning and land division consent for division of 1 allotment into 3 allotments (as shown in **Attachment 1A**), with the resulting allotments expected to be used for rural living purposes.

- proposed Lot 100 would encompass 4,686m<sup>2</sup>
- proposed Lots 101 and 102 would each encompass 4,525m<sup>2</sup>

Proposed Lot 100 would have frontages to Victor Harbor Road (adjacent the existing access track) of roughly 58 metres and Strawberry Hill Road of 86.5 metres and would retain an existing single-level masonry dwelling, associated outbuildings and a section of fence separating the proposed allotment from the balance of the subject land. This portion of the land would be accessible via an existing vehicle entry from Strawberry Hill Road.

Proposed Lots 101 and 102 would have frontages to Victor Harbor Road of approximately 47 metres and would be accessed via the existing access track situated to the west, running parallel to Victor Harbor Road. These portions of the subject land are vegetated and do not include building structures.

All proposed allotments would be capable of making connections to available utility services (power, water and sewerage).

**LOCATION OF DEVELOPMENT**

<b>Location reference:</b>	4619 Victor Harbor Road Hindmarsh Valley				
<b>Title ref:</b>	CT 5961/535	<b>Plan Parcel:</b>	AL200 D69290	<b>Council:</b>	City of Victor Harbor



**Figure 2 – Subject Land**

The subject land is an irregular (roughly parallelogram) shaped allotment encompassing approximately 1.4 hectares, with frontages of approximately 152.5 metres to Victor Harbor Road (to the west) and 86.5 metres to Strawberry Hill Road (to the south). The topography of the land is steep, falling approximately 14 metres from the southeast to the northwest corners.

A single-level masonry dwelling exists on the southern portion of the land with several associated outbuildings and a considerable established garden area. The land features substantial coverage of native vegetation in the form of grasses, shrubs / bushes and trees.

The applicant indicates the subject land has generally been used for rural living purposes with no associated farming activity. The immediate locality exhibits a mixed urban/rural character consistent with its location at the periphery of the Victor Harbor township, and consists of:

- a rural living allotment (allotment 103 encompassing 9,191m<sup>2</sup>) to the north accommodating a single storey dwelling and associated outbuildings;
- open rural land to the north and east, under the ownership of Encounter Lutheran College;
- open rural land to the west (across Victor Harbor Road) within the Planning and Design Code (Code)'s Master Planned Neighbourhood Zone, expected to accommodate residential development in future;
- an extension to the Encounter Lutheran College (a playing field) to the east;
- the Encounter Lutheran College campus to the south (across Strawberry Hill Road); and
- residential development (in the form of detached dwellings on individual allotments) to the south, south-east and south-west.

## **RESTRICTED DEVELOPMENT PRINCIPLE**

### Limited Land Division Overlay

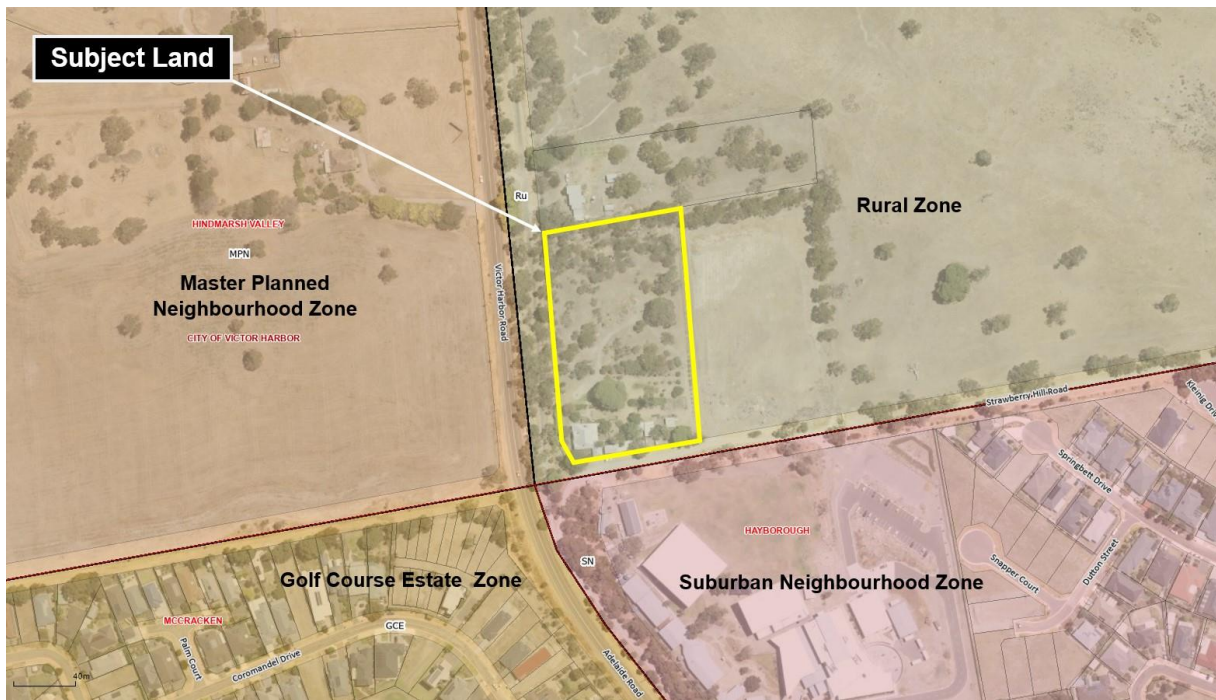
The site is in the Code's Limited Land Division Overlay. The Overlay's DO 1 seeks that the long-term use of land for primary production be maintained by minimising fragmentation through division of land, whereas PO 1.1 advocates for land division that would not result in the creation of an additional allotment.

The development would not achieve the Overlay's PO 1.1 as the division would result in the creation of two additional allotments, and the land division for rural living (residential) purposes would also fragment land intended for primary production, which would not achieve DO 1 of the Overlay.

The following overview of the key planning matters is provided:

- the applicant considers the subject land to be of insufficient size to be developed and/or utilised (on an economically viable basis) for most forms of primary production, and that the proposal would not be expected to have a detrimental impact upon agricultural productivity of agricultural / farming land in the broader locality or the region, meeting the intent of the Code's Limited Land Division Overlay policy;
- surrounding land uses may impede the subject land from being amalgamated with a larger agricultural land holding which could collectively be utilised for effective primary production purposes on an economically sustainable basis;
- patterns of development in the immediate locality suggest a trend preferencing rural living and community uses (associated with the operation of the adjacent Encounter Lutheran College) with Code policy introducing future potential for mixed-use, medium density development occurring within the adjacent Master Planned Neighbourhood Zone (as shown in the subject land zoning map included in Figure 3);
- the size and future use of the proposed allotments would be smaller than the existing rural living allotment located to the subject land's immediate north, and may complement the context and pattern of existing residential development elsewhere in the locality;
- rural living allotments (ranging between 4,535m<sup>2</sup> to 6,512m<sup>2</sup> in area) created in the Rural Zone roughly 750 metres to the northwest suggest that allotments accommodating this form of land

use have been determined (by the City of Victor Harbor) to be an appropriate form of development within the Rural Zone;



**Figure 3 – Subject Land Zoning Map**

- the 30-Year Plan for Greater Adelaide (2017 Update) includes the subject land in the identified “Planned Urban Land to 2045” and the land is not located in a designated Environment and Food Production Area. On this basis, the applicant considers the subject land does not constitute valuable rural, landscape, environmental and/or food production area which would warrant particular or special protection from urban encroachment;
- the proposed land division (and anticipated future rural living use) may constitute a sound alternative to what would potentially be an unproductive agricultural / farming use, which would enable some beneficial use of the subject land as opposed to the existing circumstance of maintaining a significant portion of the site as unused private open space associated with the current rural living land use;
- the subject land lies at the periphery of the Victor Harbor township and is readily accessed by vehicles (including emergency vehicles, where necessary) via the existing local road network which may diminish the potential for threat by bushfire events; and
- the 2 proposed allotments would have access/egress points on the existing access track linked to Victor Harbor Road and Strawberry Hill Road, such that detrimental impacts on safety or efficiency of vehicle movements in the local road network would not be likely.

**DISCUSSION**

Section 110 (1) of the *Planning, Development and Infrastructure Act 2016* (the Act) sets out that the Commission is the relevant authority for the assessment of a development proposal that is categorised as a restricted development. The Commission must first decide whether to proceed with an assessment of the proposed development or refuse the application without proceeding with an assessment pursuant to section 110 (14) of the Act.

Section 5 of the Commission's Practice Direction 4 (Restricted Development) prescribes the circumstances under which the Commission may resolve to proceed with an assessment as follows:

**The Commission, acting through its delegate, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.**

#### Discussion

- the land in question is not considered to be particularly valuable rural, landscape, environmental and food production land that ought to be subject to protection from urban encroachment, such that land division should constitute a viable pathway to potentially achieving a more beneficial land use which would have no detrimental impact on the productivity of agricultural uses in the locality and region;
- use of the subject land for any primary production or agricultural purposes may not be compatible with the neighbouring existing and future urban-type land uses;
- The "Land Supply Report for Greater Adelaide" (Plan SA, June 2021) indicates that the subject land is located within a "Future Urban Growth Area" which is envisaged to ultimately yield an additional 2,600 allotments;
- the creation of 2 additional allotments would marginally assist in the provision of housing opportunities in Victor Harbor;
- the proposed land division would not place any excessive additional demands upon social or community services and/or facilities; and should have negligible social or environmental impacts; and
- the configuration and size of each of the proposed allotments would be sufficient to accommodate the anticipated future rural living use and development thereof including the siting of buildings, preservation of existing vegetation (if required), solar access, and/or the provision of private open space.

#### Summary

For the above reasons, it is considered that the proposal does not demonstrate 'fatal' flaws or unacceptable shortcomings in terms of potential planning merit and accordingly, the proposal is considered worthy of proceeding to assessment.

The Manager, Commission Assessment has disagreed with this conclusion and the Panel is asked to make a resolution in this respect.

### **MATTERS IF THE DEVELOPMENT PROCEEDS TO ASSESSMENT**

#### Agency Referrals Required

##### **SA Water**

##### **State Planning Commission (Planning Services)**

##### **City of Victor Harbor**

Restricted development must be publicly notified pursuant to Section 110 (2) of the Act.

The proposal would be assessed against the Code's Limited Land Division Overlay, the Rural Zone and the General Development (Land Division) Policy of relevance to the intended land division.

**OFFICERS RECOMMENDATION**

It is recommended that in respect of DA 22043291, which is classified as Restricted development pursuant to the operation of the Planning and Design Code, the Commission PROCEED with an assessment of the application.



# STATE COMMISSION ASSESSMENT PANEL

**A COMMITTEE OF THE STATE PLANNING COMMISSION**

Minutes of the 158<sup>th</sup> Meeting of the  
State Commission Assessment Panel  
held on Wednesday 10<sup>th</sup> May 2023 commencing at 9.30am  
Level 9, 83 Pirie Street Adelaide / Microsoft Teams video conferencing

## 1. OPENING

### 1.1. ACKNOWLEDGEMENT OF COUNTRY

The Presiding Member acknowledged the traditional custodians of the land on which the State Commission Assessment Panel meets, and paid respect to Elders past, present and emerging.

### 1.2. PRESENT

Presiding Member	Rebecca Thomas
Members	Rebecca Rutschack (Deputy Presiding Member) John Eckert Emma Herriman Paul Leadbeter David Altmann
Secretary	Jaclyn Symons, Governance Officer
DTI Staff	Margaret Smith Brett Miller Jeremy Wood (2.2.2) Ben Scholes (2.2.1) Damon Huntley (2.2.2) Maria Klimenchuk

### 1.3. APOLOGIES

Grant Pember

## 2. SCAP APPLICATIONS

### 2.1. DEFERRED APPLICATIONS

### 2.2. NEW APPLICATIONS

#### 2.2.1 Graham Mulvihill

23005920

#### **4619 Victor Harbor Road, Hindmarsh Valley**

Restricted Development – Land Division (1 allotment into 3) for Rural Living purposes.

The State Commission Assessment Panel discussed the application.

#### **RESOLVED**

- 1) Pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016*, to REFUSE TO PROCEED TO ASSESS development application 23005920 by Graham Mulvihill for land division (1 allotment into 3) for Rural Living purposes within the Limited Land Division Overlay at 4619 Victor Harbor Road, Hindmarsh Valley, for the following reasons:
  - a) The proposed development does not meet the intent of the State Planning Policies or desired outcomes for the Rural Zone.
  - b) The size of the additional allotments may create a context for future land division proposals of a similar nature in the Rural Zone, contrary to primary production objectives.

#### **ADVISORY NOTES**

If you are aggrieved by this decision, you have a right to seek a review of this decision by the State Planning Commission. An application for review must be made in a manner and form determined by the State Planning Commission and must be made within one month of this notice.

The prescribed form is contained in Attachment 1 of [Practice Direction 4 – Restricted Development](#). Further information can be found on the PlanSA website on the 'Decisions and appeals' webpage.

#### 2.2.2 Clements Architecture C/- Masterplan

22038446

#### **39 Emmett Road, Crafers West**

Two storey detached dwelling incorporating a deck (maximum height 4.5 metres), carport, roof-mounted solar panels, retaining walls (maximum height 3.2 metres), and associated earthworks and landscaping.

The Presiding Member welcomed all in attendance to the State Commission Assessment Panel hearing:

#### **Applicant**

- Ben Clements (Clements Architecture)
- Lucia Clements (Clements Architecture)
- Greg Vincent (Masterplan)
- Charlie Dubois (Masterplan)

#### **Representation**

- Helen Alexander and Guillaume Backé

#### **Agency**

- Annie Pomeroy (CFS)



The State Commission Assessment Panel discussed the application.

**RESOLVED**

- 1) Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
- 2) Development Application Number 22038446, by Clements Architecture C/- Masterplan is granted Planning Consent subject to the following conditions and reserved matters:

**RESERVED MATTERS**

**Planning Consent**

Pursuant to section 102(3) of the *Planning, Development and Infrastructure Act 2016*, the following matters shall be reserved for further assessment prior to the granting of Development Approval:

**Reserved Matter 1**

A final detailed Stormwater Management Plan shall be prepared in consultation with the Adelaide Hills Council and submitted to the satisfaction of the State Planning Commission.

**Reserved Matter 2**

An updated Landscaping Plan shall be prepared in accordance with CFS requirements and submitted to the satisfaction of the State Planning Commission.

**CONDITIONS**

**Planning Consent**

**Condition 1**

The development authorisation granted herein shall be undertaken in accordance with the stamped approved plans, drawings, specifications and other documents submitted to the State Planning Commission, except where varied by conditions below (if any).

**Conditions imposed by South Australian Country Fire Service under Section 122 of the Act**

**Condition 2**

The 'Planning and Design Code' Hazards (Bushfire – High Risk) Overlay (Performance Outcome 3.2) details the mandatory requirements for extensions to buildings, outbuildings and other ancillary structures are sited and constructed using materials to minimise the threat of fire spread to residential and tourist accommodation (including boarding houses, hostels, dormitory style accommodation, student accommodation and workers' accommodation) in the event of bushfire.

- Outbuildings and other ancillary structures shall be sited no closer than 6m from the habitable building, unless built to relevant building standards for associated structures in Bushfire Prone Areas.

**Condition 3**

**ACCESS TO HABITABLE BUILDING**

The 'Planning and Design Code' Hazards (Bushfire – High Risk) Overlay (Performance Outcome 6.2) details the mandatory requirements for 'Private' roads and driveways to facilitate safe and effective use, operation and evacuation for firefighting and emergency personnel and evacuation of residents,

occupants and visitors where required. These requirements apply when the furthest point of the building is more than 60m from the nearest public road.

### **Turn Using Public Road**

SA CFS has no objection to utilising the driveway and the public road for a 'T' shaped turnaround with the following conditions:

- Access to the building site shall be of all-weather construction, with a minimum formed road surface width of 3 metres.
- The 'T' shaped turning area, (utilising the public road) shall be a minimum formed length of 11 metres (for each 'leg') with a minimum internal radii of 9.5 metres on bends, including bends connecting private access to public roads.
- Vegetation overhanging the access road shall be pruned to achieve a minimum vehicular clearance of not less than 4 metres in width and a vertical height clearance of 4 metres.

### **Condition 4**

WATER SUPPLY & ACCESS (to dedicated water supply)

Ministerial Building Standard MBS008 "Designated bushfire prone areas - additional requirements" 2020, as published under the Planning, Development and Infrastructure Act 2016, provides the technical details of the dedicated water supply for bushfire fighting for the bushfire zone. The dedicated bushfire fighting water supply shall also incorporate the installation of a pumping system, pipe-work and fire-fighting hose(s) in accordance with MBS008.

Please note that where the water supply is an above-ground water tank, the tank (including any support structure) should be constructed of non-combustible material, such as concrete or metal.

The 'Planning and Design Code' Hazards (Bushfire – High Risk) Overlay (Performance Outcome 4.3) details the mandatory requirements for the site to provide a dedicated hardstand area in a location that allows fire fighting vehicles to safely access the dedicated water supply.

**SA CFS has no objection to the proposed location for the dedicated water supply as detailed on drawing named SITE PLAN dated at last revision 21/10/2022, providing the outlet is positioned to comply with the following conditions:**

- The water supply outlet shall be easily accessible and clearly identifiable from the access way and is no greater than 60m path of travel to the furthestmost point of the building, to enable fire services to reach all parts of the building with no more than two lengths of hose from the hardstand area.
- The dedicated water supply and its location should be identified with suitable signage (i.e. blue sign with white lettering "FIRE WATER").
- A gravity fed water supply outlet may be remotely located from the above ground tank to provide adequate access.
- Provision shall be made adjacent the water supply outlet for a nominally level hardstand area (capable of supporting fire-fighting vehicles with a gross vehicle mass (GVM) of 21 tonnes) that is a distance equal to or less than 6 metres from the water supply outlet.
- Access to the dedicated water supply shall:
  1. be of all-weather construction, with a minimum formed road surface width of 3 metres; and
  2. have a gradient of not more than 16 degrees (1-in-3.5) at any point; and
  3. the transition area between the road and the driveway shall have a gradient of not more than 7 degrees (1-in-8); and
  4. provide overhead clearance of not less than 4.0m horizontally and vertically between the driveway surface and overhanging branches or other obstructions, including building and/or structures.
- SA CFS appliance's inlet is rear mounted; therefore the outlet shall be positioned so that the SA CFS appliance can easily connect to it rear facing.

- All non-metal water supply pipes for bushfire fighting purposes (other than flexible connections and hoses for fire-fighting) shall be buried below ground to a minimum depth of 300mm with no non-metal parts above ground level.
- All water supply pipes for draughting purposes shall be capable of withstanding the required pressure for draughting.

### Condition 5

#### MAINTAIN AN ASSET PROTECTION ZONE (APZ) - VEGETATION MANAGEMENT

The 'Planning and Design Code' Hazards (Bushfire – High Risk) Overlay (Performance Outcome 4.2) details the mandatory requirements to establish and maintain an asset protection zone. As such, landscaping shall include bushfire protection features that will prevent or inhibit the spread of bushfires and minimise the risk to life and/or damage to buildings and property and maintain a fuel reduced zone for safe movement of occupants and fire fighters.

#### **An APZ shall be implemented and maintained in line with the vegetation management conditions below:**

- Vegetation management shall be established and maintained within 20 metres of the habitable building (or to the property boundaries – whichever comes first) as follows:
  1. The number of trees and understorey plants existing and to be established within the APZ shall be reduced and maintained such that when considered overall a maximum coverage of 30% is attained, and so that the leaf area of shrubs is not continuous. Careful selection of the vegetation will permit the 'clumping' of shrubs where desirable, for diversity, and privacy and yet achieve the 'overall maximum coverage of 30%'.
  2. Reduction of vegetation shall be in accordance with SA Native Vegetation Act 1991 and SA Native Vegetation Regulations 2017.
  3. Trees and shrubs shall not be planted closer to the building(s) than the distance equivalent to their mature height.
  4. Trees and shrubs must not overhang the roofline of the building, touch walls, windows or other elements of the building.
  5. Shrubs must not be planted under trees and must be separated by at least 1.5 times their mature height from the trees' lowest branches.
  6. Grasses within the zone shall be reduced to a maximum height of 10 cm during the Fire Danger Season.
  7. No understorey vegetation shall be established within 2 metres of the habitable building (understorey is defined as plants and bushes up to 2 metres in height).
  8. Flammable objects such as plants, mulches and fences must not be located adjacent to vulnerable parts of the building such as windows, decks and eaves
  9. The APZ shall be maintained to be free of accumulated dead vegetation.

### ADVISORY NOTES

#### Planning Consent

##### Advisory Note 1

The applicant has a right of appeal against the conditions which have been imposed on this Planning Consent or Development Approval. Such an appeal must be lodged at the Environment, Resources and Development Court within two months from the day of receiving this notice or such longer time as the Court may allow. The applicant is asked to contact the ERD Court if wishing to appeal. The ERC Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

##### Advisory Note 2

This consent or approval will lapse at the expiration of 24 months from its operative date (unless this period has been extended by the State Planning Commission).

### **Advisory Note 3**

The approved development must be substantially commenced within 24 months of the date of Development Approval, and completed within 3 years from the operative date of the approval, unless this period has been extended by the relevant authority.

### **Advisory Note 4**

The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

### **Advisory Note 5**

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, which may include the provision of a Significant Environmental Benefit. Note that 'clearance' means any activity that could cause any substantial damage to native plants, including cutting down and removing plants, burning, poisoning, slashing of understorey, removal or trimming of branches, severing roots, drainage and reclamation of wetlands, and in some circumstances grazing by animals. For further information contact the Native Vegetation Council on telephone 8303 9777 or visit: <http://www.nvc.sa.gov.au>.

### **Advisory Note 6**

All Council, utility or state-agency maintained infrastructure (i.e. roads, kerbs, drains, crossovers, footpaths etc) that is demolished, altered, removed or damaged during the construction of the development shall be reinstated to Council, utility or state agency specifications. All costs associated with these works shall be met by the proponent.

### **Advisory Note 7**

The applicant is reminded of their obligations under the Local Nuisance and Litter Control Act 2016 and the Environment Protection Act 1993, in regard to the appropriate management of environmental impacts and matters of local nuisance. For further information about appropriate management of construction site, please contact the relevant Local Government Authority.

### **Advisory Note 8**

The approved development must be substantially commenced within 24 months of the date of Development Approval, and completed within 3 years from the operative date of the approval, unless this period has been extended by the relevant authority.

### **Advisory Note 9**

A person who has made a representation on a development classified as restricted development may appeal the decision. Such an appeal must be lodged at the Environment Resource and Development Court within 15 business days after the date of the decision.

### **Advisory Note 10**

The applicant is reminded of the requirements of the Fences Act 1975. Should the proposed works require the removal, alteration or repair of an existing boundary fence or the erection of a new boundary fence, a 'Notice of Intention' shall be served to adjoining owners. Please contact the Legal Services Commission for further advice on 1300 366 424 or refer to their web site at [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au).

### **Advisory Note 11**

It is recommended that as the applicant is undertaking work on or near the boundary, the applicant should ensure that the boundaries are clearly defined, by a Licensed Surveyor, prior to the commencement of any building work.

**Advisory Notes imposed by South Australian Country Fire Service under Section 122 of the Act**

**Advisory Note 12**

**BUILDING CONSIDERATIONS**

Ministerial Building Standard MBS008 “Designated bushfire prone areas - additional requirements” 2020, as published under the Planning, Development and Infrastructure Act 2016 applies to this site.

Please refer to the National Construction Code (NCC), relevant standards and state provisions for construction requirements and performance provisions.

A site Bushfire Attack Level (BAL) assessment was conducted in accordance with the NCC and Australian Standard™3959 (AS3959) “Construction of Buildings in Bushfire Prone Areas”.

Category of Bushfire Attack Level: **BAL Flame Zone**

This BAL rating is conditional upon the establishment and maintenance of a 20 metre Asset Protection Zone, in accordance with the Asset Protection Zone – Vegetation Management condition of consent placed on the planning consent with the same application reference.

SA CFS notes that achieving a lower Bushfire Attack Level is restricted by the proximity of the habitable building to the allotment boundaries.

This result is considered relevant at the date of assessment with respect to the elevations detailed on proposed Site Plan, dated 21/10/2022 and shall not be considered as SA CFS endorsement of any subsequent development.

2.3. **RESERVED MATTERS**

3. **CROWN DEVELOPMENTS (ADVISORY ITEMS)**

3.1. **DEFERRED APPLICATIONS**

3.2. **NEW APPLICATIONS**

4. **MAJOR DEVELOPMENTS – VARIATIONS**

5. **REPORTING**

6. **COURT COMPROMISE**

7. **BRIEFINGS**

8. **PROCEDURAL MATTERS**

9. **OTHER BUSINESS**

10. **NEXT MEETING**

- 10.1. Wednesday 24 May 2023 at Level 9, 83 Pirie Street, Adelaide SA 5000/ Via Microsoft Teams video conferencing.

11. **REVIEW OF SCAP INSTRUCTIONS TO STAFF AND UPCOMING AGENDA ITEMS**

12. **CONFIRMATION OF THE MINUTES OF THE MEETING**

13. **MEETING CLOSE**

- 13.1. The Presiding Member thanked all in attendance and closed the meeting at 11.02am.

Confirmed 10/05/2023



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Rebecca Thomas  
PRESIDING MEMBER

