#13187709

I E Smith
Caravan shelter (retrospective)
Lot F, Q12 in DP55064, Hundred of Kevin (CT 6127/543)

TABLE OF CONTENTS

	PAGE NO
AGENDA REPORT	2-14
ATTACHMENTS	
1: PLANS and DETAILS	15-31
2: APPLICANTS PLANNING DOCUMENTS	32-92
3: AGENCY COMMENTS	93-101
4: LEASE DOCUMENT	102-113
5: DEVELOPMENT PLAN PROVISIONS	114-122

OVERVIEW

Application No	010/U025/13
Unique ID/KNET ID	2013/05561/01 #13187709
Applicant	Ian Edgar Smith
Proposal	Caravan Shelter
Subject Land	Lot F, Q12 in DP55064, Hundred of Kevin (CT 6127/543)
Zone/Policy Area	Coastal Conservation Zone
Relevant Authority	State Commission Assessment Panel (SCAP) Section 33(2) of the *Development Act 1993*
Lodgement Date	6 March 2013
Council	Out of Council
Development Plan	Land Not Within a Council Area (Eyre, Far North, Riverland and Whyalla)
Type of Development	Merit
Public Notification	Category 1
Representations	n/a
Referral Agencies	Coastal Protection Board, Outback Communities Authority, Native Vegetation Council
Report Author	Mark Adcock
RECOMMENDATION	Defer

EXECUTIVE SUMMARY

This application is seeking retrospective approval for the construction of a caravan shelter and storeroom at Cactus Beach. The shelter also contains an area of decking and a rain water tank is connected to the roof and gutters. The area is situated in the Out of Council Areas part of the State, and accordingly the State Commission Assessment Panel (SCAP) is the relevant authority.

The structures are situated in the Coastal Conservation Zone. The locality comprises a sensitive and undeveloped coastal landscape of high scenic, environmental, biodiversity and amenity value. Very little built form is envisaged in the zone and any development proposed should complement the natural landscape in form and scale, and in building materials, textures, colours and tones, so that the natural elements of the locality remain dominant to any introduced elements, and the scenic quality of the coast and its dune systems are protected.

The locality has a history of bush camping related primarily to the world class surf breaks at Cactus Beach. Originally Crown land, the land was sold and a private camp ground was established. Another area used more exclusively by regular campers to the north of the formal camp ground was subsequently established with some ten lease sites, of which this application is one of. The development of structures generally in the form of caravan shelters subsequently occurred without having first obtained approval under the Development Act, this application is for retrospective approval of one of these sites.

The application has been assessed against the relevant provisions of the Development Plan and is still considered to be at variance with these provisions. However, given the potential for further work to be undertaken, a deferral is recommended for a period of one month.

ASSESSMENT REPORT

1. BACKGROUND

The history of the Cactus Beach area is important to help understand what existing use rights may exist in relation to camping on the subject land. DEWNR and Coast Protection Board (CPB) records and staff have assisted in providing information and the following descriptions are drawn primarily from that information, as well as from interviews with the land owner and information provided with the applications. (Investigations have been undertaken to assist in understanding the historical context of the application are not purported to be a comprehensive historical account of the area and the accuracy of the information in this respect cannot be guaranteed).

Cactus Beach comprises a number of nationally recognised surfing breaks and in 2013 the area was declared a National Surfing Reserve. Records of camping in the area commence from the early 1960's, although it is likely camping occurred prior to that date.

The Coast Protection Board (CPB) Department of Environment Water and Natural Resources (DEWNR) became particularly interested in the management of the area from the 1970's after the environment became heavily impacted from visitation and the establishment of ad-hoc shacks.

Originally crown land, the land was leased to a Mr Witzig in the mid-seventies. Mr Witzig managed the land and permitted camping to continue, but removed a number of what records describe as "illegal structures", ramshackle shacks around 1976. It is understood there have been two periods of removal of shack structures from the land.

The land was subsequently purchased by the current owner, Mr Gates, and granted freehold title in 2001.

Over this time, two types of camping areas were established. A formal camping ground was been established on piece 13, and developed over time into a well laid out, structured camp ground with a basic level of amenities, owned and managed by Mr Gates. A caretaker's residence and shop were constructed further to the south west of the camp ground.

A second camping area established on Piece 12 (which contains the subject land along with another 10 lease sites with all but one containing a similar development) where a number of specific sites were allocated to a small number of the long term regular visitors to the area. It is understood these "allocated" camping sites formed the basis of the current leasehold arrangement for this and the other ten sites.

Over 2006/2007 a number of leasehold sites were created including the site the subject of this application. It is presumed the grant of tenure precipitated the construction of the current improvements on the land that are now the subject of this retrospective development application.

It appears that with the development of the caravan shelters came the desire for a more comfortable and permanent occupation of the land and led to the development of various other improvements including wind breaks and screens, enclosures and lockable stores, decks, waste disposal facilities, rain water tanks, and the like.

This is considered to be a vast progression from an occasional but regular camping activity. The Coast Protection Board has provided funding and assistance in the past to assist the landowners in the management and conservation of the land. The formalisation of camping into the two current areas has been instrumental in the improved management of the land and no doubt assisted in rehabilitation of areas previously badly impacted.

The proposed structure, along with the other nine, has been constructed without approval. The remoteness of the area, ignorance to the State's development laws in remote areas, and the previous shack development of the land could be mitigating factors as to why the applicant, and the other land owners, did not seek approval.

The unauthorised development came to the attention of the then Development Assessment Commission (DAC), now superseded by the State Commission Assessment Panel (SCAP) being the relevant authority, following correspondence from DEWNR in February 2012.

In the initial contact with landowners, DAC's former Enforcement Officer Mr John Paynter wrote to the owner Mr Gates requesting that all building work cease immediately and that he make good the breaches of the Development Act by submitting a Development Application for the works. Following this, further investigations, and discussions with Mr Gates, revealed that the alleged unauthorised works were being undertaken by the lease holders.

In August 2012, letters were subsequently sent to the separate lease holders requesting development applications be lodged to make good the breaches of the Act. This has resulted in the subject and nine other applications for caravan shelters currently before SCAP.

This application is seeking retrospective approval for the construction of the structure on the subject land.

This application is one of 10 separate applications that share the background and history as described. Throughout this process the applicants have all been represented by one planning consultant, and communications have generally been on basis of representing the applicants as a group.

Department staff on behalf of SCAP and the former DAC members have inspected the subject land and met with the applicants' representative on several occasions over a number of years in order to gain a better understanding of the development, the circumstances leading to the development being undertaken without approval, and the locality.

A number of without prejudice discussions have been held with the applicant's representative concerning potential design responses that might better align the structures with the provisions of the zone. In good faith SCAP has deferred any determination of the application for several years to facilitate discussions and enable the applicants to consider their options.

Most recently SCAP wrote to the applicant indicating its concerns with the lack of progress and time taken and indicated it would be concluding the matter at its November meeting, and therefore advised that any further amendments should be received in time for that consideration.

The applicant's town planning representative has responded on behalf of all applicants and advised of any final amendments proposed, which are now incorporated in the description of the proposal (Section 2 of this report).

2. DESCRIPTION OF PROPOSAL

Application details are contained in the ATTACHMENTS.

In summary the application as originally submitted comprises the following:

- A timber framed structure comprising an open area for caravan storage. The area of the structure measures 11.8m x 7.9m, and a height to gutter of 3m from ground level. The roof consists of colorbond corrugated iron
- A timber decked area under the main roof on the north side of the structure with a floor height of 600mm above ground level
- An enclosed area that comprises plastic sheet cladding
- A large rainwater tank connected to roof gutters for collection
- Parking of two caravans within the designated caravan storage areas

In accordance with advice contained in the applicants planning consultant Mr Baade's letter of 5 October 2018, the following amendments are proposed to the original proposal:

> *As per the May 2018 advice, the structure on Lot F has a roof of suitable pitch and colour (based on DPTI advice).*
>
> *Whilst the applicant believes the gable ends should be permitted to stay to assist with weather protection, he is agreeable to painting them another colour if SCAP so desires. Notwithstanding that, I am of the view the current colour and finish and tidy and appropriate.*
>
> *No other amendments are proposed.*

3. SITE AND LOCALITY

3.1 Site Description

The subject land comprises Lot E, Q12 in DP55064, Hundred of Kevin (CT 6127/543) as shown below. This site is leased to Ian Edgar Smith from 1 January 2006 and expires on 31 December 2027.

3.2 Locality

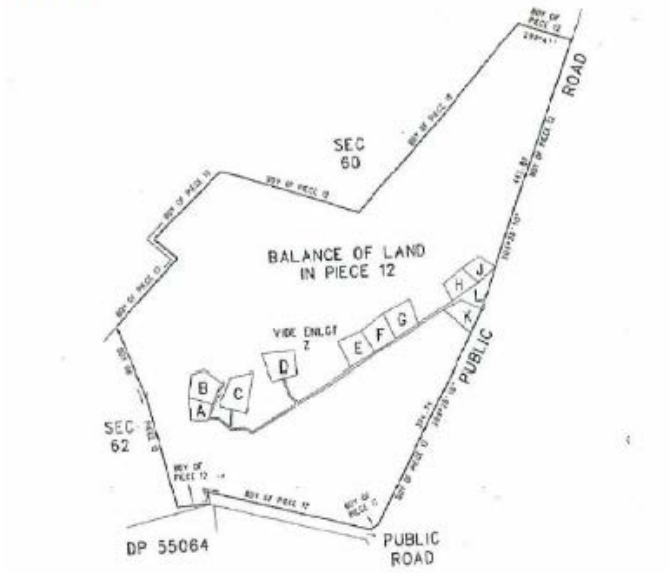
The locality comprises the Cactus Beach area situated on the lower tip of Point Sinclair, a small peninsula on the coast of the Great Australian Bight. The subject land is approximately 94km by road to the west of Ceduna (via Penong).

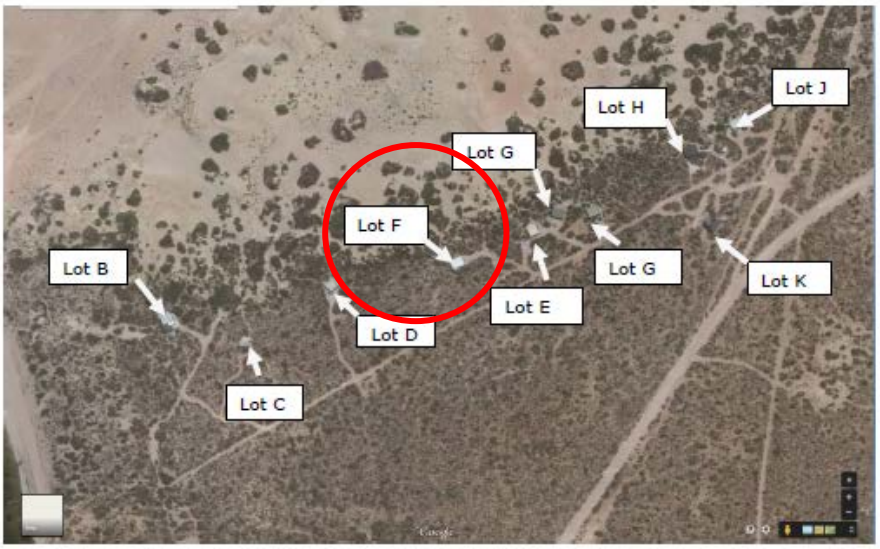
The area can be typically described as being of high landscape, scenic and amenity value consisting of the beach, sand dunes, cliff tops and large areas of low lying coastal vegetation. To the north is a field of large dunes situated between the subject land and sea. The dunes are readily visible from, and form a back drop to, the subject land. The coastline comprises a series of headlands and bays, sandy beaches and reef platforms.

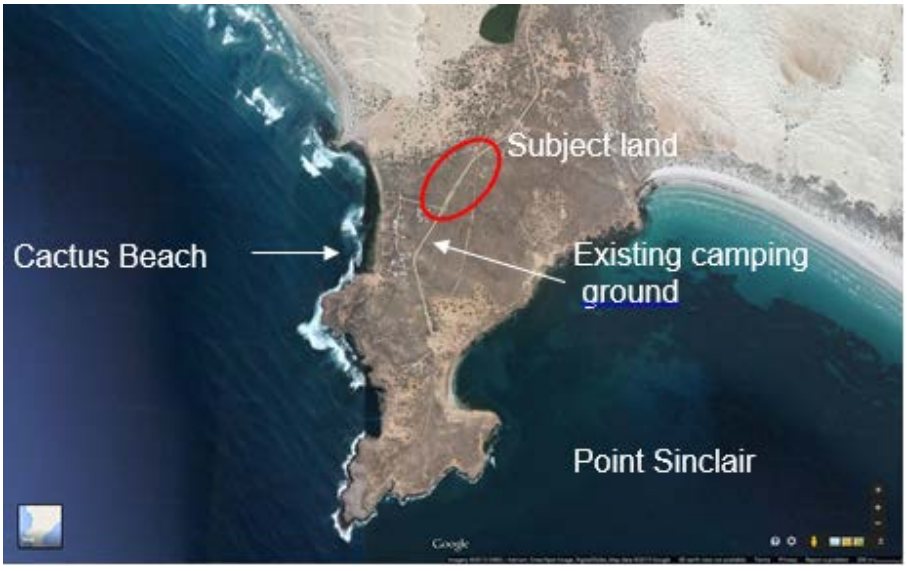
An unsealed public road (Point Sinclair Road) is the only access into the area and runs from the Highway 1, and generally bisects the Peninsula north to south. Point Sinclair Road is to the east of the subject land, and provides access to a number of other similar leasehold sites in the locality via internal tracks. This road continues to pass the subject land and terminates at the seaward end of the Peninsula providing access to a number of facilities including the Point Sinclair Jetty, a formal camp ground and a number of car parks at various surfing locations.

The Cactus Beach area is a national and world class surfing area and has hosted local, national and world surfing titles. Because of its high natural, scenic and tourist value it supports a range of other recreational pursuits including a formal bush camp ground, fishing, bush walking and nature experiences.

Site Plan


SEC 60
ROAD
BALANCE OF LAND IN PIECE 12
PUBLIC
SEC 62
DP 55064
PUBLIC ROAD


Lot J
Lot H
Lot G
Lot F
Lot B
Lot G
Lot K
Lot E
Lot D
Lot C


Subject land
Cactus Beach
Existing camping ground
Point Sinclair

4. STATUTORY REFERRAL BODY COMMENTS

Referral responses are contained in the ATTACHMENTS.

4.1 Coast Protection Board

The Coast Protection Board (CPB) responded to the subject application together with a number of other similar applications. In summary the CPB does not support the application for the following reasons;

- It does not represent orderly development
- It comprises scattered coastal development which is contrary to effective coastal management,
- It impacts on the conservation of the coastal areas of high landscape and scenic amenity value
- It impacts on the conservation and biodiversity values off this area.

The Coast Protection Board does not have the power of "direction", but recommends the application be refused.

4.2 Native Vegetation Council

The Native Vegetation Council (NVC) responded to the subject application together with a number of other similar applications. The NVC notes that under the *Native Vegetation Act 1991*, retrospective approval for clearance of native vegetation cannot be provided. Compliance action cannot be taken under the Act because it must be instituted within one year of the alleged offence, which had passed before lodgement of the applications.

The NVC also advised that further development of the site would not be supported given the identification of intact native vegetation in this location. The NVC would ideally like to see some of the access tracks closed and rehabilitated.

4.3 Outback Communities Authority

The Outback Communities Authority (OCA) advised it was in support of the proposal, but did not provide any specific reasons or clarification.

4.4 SA Country Fire Service

The subject land is not within a Bushfire Protection Area. As the caravan structures are not dwellings and not permanently occupied, the SACFS have recommended that each leaseholder develop a robust Bushfire Survival Plan as a contingency, and consider increased separation distances between vegetation and structures to reduce bushfire hazard and potential impacts. A nominal BAL rating of 19 was determined (which nominally seeks a 13-19m clearance distance).

5. PUBLIC NOTIFICATION

The specific land use "caravan shelter" is an undefined use in the Coastal Conservation Zone. The development is not listed as either comply or non-complying in the Zone, and must therefore be regarded as a "merit" form of development.

Having regard to the remoteness of the locality, the presence of like development, and the lack of neighbouring development, the applications was determine to be Category 1 for the purposes of public notification in accordance with Schedule 9, Part 1, Clause 2(g) of the Development Regulations 2008, development "of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality..."

6. POLICY OVERVIEW

The relevant Development Plan for assessment of the application is the Land Not Within a Council Area (Eyre, Far North, Riverland, and Whyalla) Development Plan consolidated on 15 March 2012. The subject land is situated within the Coastal Conservation Zone as identified in the Plan.

A summary of the general intent of the relevant policies follows (a complete copy of the relevant policies is re-produced in the ATTACHMENTS).

7. PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Development Plan.

In accordance with current Court determinations and practice, a retrospective development application must be assessed as if the development did not exist and no weight can be given to the fact that the structure for which consent is being sought has already been constructed. Any concern that may arise as to the consequences of the application being refused, including any hardship this may place on the applicant, is not a matter that should influence the decision-making process.

That is not to say that the information provided by the applicant concerning the previous and purported existing use of the land, and the circumstances surrounding the development is not relevant, and has been taken into regard.

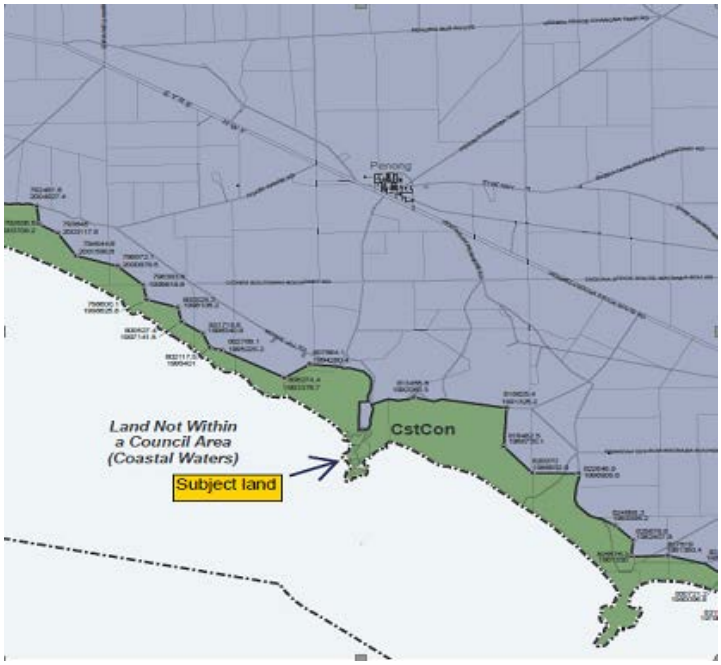


Figure 1 - zoning map

7.1 Existing Use rights

The applicant has provided argument concerning the prior use of the land and purported existing use rights.

Government files and documents provided by DEWNR Coast Protection contain reference to and acknowledge the use of the land for camping over a long time period. It is apparent the area was used variously for free camping prior to the introduction of formal planning controls over the land.

Government records include a draft "Point Sinclair Planning Report" prepared by the then Coastal Management Branch in January 1984. It appears the report was never formally adopted, however it effectively set out a management plan for the area, incorporating two camping areas. Section 3.3 of the report notes as follows:

> *"Camping is generally restricted to the camping ground established by Mr Witzig in the mid-sixties in between Castles and Cactus. The most popular camping sites are those closest to the beach. Several camping sites have also been developed in between the costal sites and the main road and are used during periods of peak usage.*
>
> *The triangular piece of land north of Castles is used by long term campers obviously preferring the seclusion that this area offers. Unfortunately this area is probably not supervised as closely as the others and this may explain the extensive removal of the larger trees evidenced in this area over the last ten years."*

The latter reference is understood to include the subject land.

Sufficient evidence exists to conclude that the two camping areas can be regarded to have existing use rights for camping, on the basis that the land was Crown Land, the Crown was aware of the activity, and took no apparent steps to stop it. This existing use right could not however be extended to include any permanent occupation of the land for residential purposes, nor the construction of any structures currently on the land.

7.2 Land Use

The proposed development and land use has been defined by the relevant authority as "Caravan Shelter and storage". The site also contains decking and a rainwater tank. The structure takes the form of a large carport with gable roof, enclosed storeroom under main roof, and timber deck.

The Coastal Conservation Zone (CCV) policies do not support the development of such permanent structures of the nature proposed.

The Desired Character statement for the Zone states:

> *Within this zone coastal features and scenic quality are conserved; appropriate public access is maintained; and development is not subject to coastal hazards and is subservient to the conservation of the coastal environment. The Zone includes Point Bell Conservation Park, Chadinga Conservation Reserve, Fowlers Bay Conservation Park, Wahgunyah Conservation Park and Nullarbor National Park.*
>
> *Development borrows from, and complements, the natural landscape in form and scale, and in building materials, textures, colours and tones, so that the natural elements of the site/locality remain dominant to any introduced elements, and the scenic quality of the coast is protected.*
>
> *… only a limited number of 'iconic', nature-based/eco tourism development, located a minimum of 25 kilometres apart.*

The principles for the Zone in relation to land use and built form state:

1. *The following forms of development are envisaged in the zone:*
   - *Conservation works*
   - *Interpretive signage and facilities*
   - *Nature based/eco-tourist accommodation.*

3 *Buildings and structures should mainly be for essential purposes, such as shelters and toilet facilities associated with public recreation, navigation purposes or necessary minor public works.*

The structure is proposed for personal use and is not associated with any of the activities listed above. As a structure for personal use, it would not strictly fit the definition of a structure in a camping ground or area, as such structures would be for communal use, and for temporary hire. In this context the application is quite unique in that it is a permanent structure associated with a private and historic use of land.

Furthermore, the structure, and the use of land generally, cannot be regarded as tourist accommodation due to the exclusivity of ownership and use. Tourist accommodation typically involves accommodation options such as motels, hotels, guest houses, serviced apartments, hostels, holiday flats/units, caravan parks, and camping grounds available for short term hire to the general public.

The land use policies for the Region envisage residential development in defined settlements only and provide for a specific “Coastal Settlement Zone” for this purpose. The subject land is not within a defined settlement zone identified in the Development Plan.

The proposed structure could be regarded as supporting the historic use of the land for camping, although it is not essential for that historic activity to continue. It will be important therefore to determine if the physical nature and impact of the structure sufficiently meets the relevant provisions of the Development Plan to determine on balance its acceptability.

7.3 Design and Appearance

The Coastal Conservation Zone and Coastal Areas provisions of the Development Plan are mainly concerned with the conservation, protection and enhancement of the natural features of the coast. The Desired Character and Objectives for the Zone include the following:

> *Desired Character: The zone continues to be a predominately natural landscape containing coastal features and habitats such as wetlands, samphire flats, beaches, sand dunes and cliff tops. A wide variety of plant communities occur within these habitats.*
>
> *The topography varies from low-lying samphire flats near Fowlers Bay to high cliff formations such as those along the Nullarbor. A variety of vegetated and un-vegetated dune systems are found, including extensive sand drifts such as those at the Head of the Bight. The variety of land forms reflects major geological differences and variation in the influence of wind and waves along the coast.*
>
> *The area is abundant in native wildlife, including the Osprey, White-bellied Sea-Eagle and Australian Sea Lion, all of which depend on the natural coastline for survival.*

Development borrows from, and complements, the natural landscape in form and scale, and in building materials, textures, colours and tones, so that the natural elements of the site/locality remain dominant to any introduced elements, and the scenic quality of the coast is protected.

Objective 1: To enhance and conserve the natural features of the coast including visual amenity, landforms, fauna and flora.

Objective 4: Development that contributes to the desired character of the zone.

In relation to the appearance of structures in particular the principles include the following:

Principle 7: Development should not be undertaken unless it is consistent with the desired character for the zone.
Principle 8: Development should be designed and sited to be compatible with conservation and enhancement of the coastal environment and scenic beauty of the zone.
Principle 11: Development should:
(a) be self-sufficient in terms of infrastructure and services, such as water, sewerage, electricity and waste disposal, unless existing infrastructure is available that can accommodate the projected demand from the development
(b) minimise impacts on the natural surrounding environment by containing construction within a tightly defined site boundary, accepting that wind farms and ancillary development may require an extended and/or dispersed development pattern
(c) not obscure existing views to coastal features or be visibly prominent from key public vantage points, including public roads or car parking areas, accepting that wind farms and ancillary development need to be located in areas where they can take advantage of the natural resource upon which they rely and, as a consequence, may be located in visually prominent locations
(d) avoid areas that may endanger or threaten important nesting or breeding areas or the movement/migration patterns of fauna.

The proposed development is consistent with some of the above provisions in that it can be self-sufficient and does not require additional public infrastructure, and the development is generally confined within a tight area within its lease site.

The proposal is however contrary to other provisions as follows:

- Does not enhance or complement the natural landscape as it includes solid walls and pitched roof such that it appears as a substantial structure in the landscape.
- Does not enhance or conserve the natural features of the coast including visual amenity, landforms, fauna and flora.
- Is not compatible with the coastal environment or scenic beauty of the area
- Is visible from the adjoining public road
- Is not consistent with the Desired Character of the Zone.

7.4 Visibility

The above provisions refer to the visibility of development with the natural landscape.

The planning consultant has made a general observation on behalf of a number of similar applications, that the proposed development is not visible from the beach. Whilst this is so, the coastal conservation zone is not confined to its beachside aspect, but comprises in this locality a much broader strip of coastal land including the costal dune system and adjacent land.

The proposed development is visible from the public road and other areas within this landscape and detracts from its natural character. The Development Plan identifies some areas and circumstances where this may be appropriate, but these do not include the subject land.

The visual impact of the structure could be reduced substantially if the pitched roof and gable ends, and enclosed secure storeroom, were removed. Such modifications could potentially result in a structure that would appear as an open shelter thereby reducing its apparent bulk such that it would more comfortably sit within the landscape and minimise its visual impact in terms of the relevant policies for the zone.

7.5 Coastal Environment

The above policies include reference to the impact of development on coastal areas, landforms and processes. In addition the zone and general Coastal Areas policies in the Development Plan include the following:

> *CCZ Principles*
> *8: Development should:*
> *(a) not adversely impact on the ability to maintain the coastal frontage in a stable and natural condition*
> *(b) minimise vehicle access points to the area that is the subject of the development*
> *(c) be landscaped with locally indigenous plant species to enhance the amenity of the area and to*
> *screen buildings from public view*
> *(d) utilise external low reflective materials and finishes that will minimise glare and blend in with the features of the landscape.*
>
> *Coastal Areas Objectives:*
>
> *1 The protection and enhancement of the natural coastal environment, including environmentally important features of coastal areas such as mangroves, wetlands, sand dunes, cliff-tops, native vegetation, wildlife habitat shore and estuarine areas.*
> *2 Protection of the physical and economic resources of the coast from inappropriate development.*
> *3 Preservation of areas of high landscape and amenity value including stands of vegetation, shores, exposed cliffs, headlands, islands and hill tops, and areas which form an attractive background to urban and tourist areas.*
> *5 Development that maintains and/or enhances public access to coastal areas with minimal impact on the environment and amenity.*
> *6 Development only undertaken on land which is not subject to or that can be protected from coastal hazards including inundation by storm tides or combined storm tides and stormwater, coastal erosion or sand drift, and probable sea level rise.*

It is considered the development will not in itself threaten coastal processes or the economic resources of the coast or will be at risk from coastal hazards.

Nor is it located in a critically fragile or sensitive part of the coastal landscape (ie it is not on a samphire flat or directly on the coastal dune formation). As a man-made structure it has some impact, however if the pitched roof were removed and the solid walls removed (in lieu of screen walls providing weather protection, its impact would be further minimised.

It is acknowledged the former activities in the locality and the camping use of the land has impacted on native vegetation both in terms of clearance of camping sites, the creation of access tracks, and removal of vegetation for firewood, and the current leaseholder may have been pro-active in repairing some of that damage. However the proposed structure continues to make use of cleared areas and access tracks. If the area was vacated and allowed to regenerate, and was appropriately managed, it is likely the natural vegetation would return to a state where it resembled its pre-human impact state.

8. CONCLUSION

This application seeks retrospective planning approval for a caravan shelter on a lease site in the Point Sinclair/Cactus Beach locality, and situated in the Coastal Conservation Zone. The proposed structure, in association with a caravan, would enable a form of permanent occupation of the land over and above a pure camping use.

The proposal is a substantial structure, constructed to be a permanent feature on the land, and is not an envisaged structure in the zone.

Given the structure may support a more residential use of the land over and above a camping use, it is relevant to note that the Development Plan does not envisage the development of any new private residential dwellings or settlements in the zone. Nor does it support the construction of ad-hoc shacks along the coast. A dwelling is a non-complying use in the zone.

The structure is of a form, nature and appearance (size, shape and mass) that is not envisaged in the zone. The impacts of the structure in terms of visibility, and impact on the natural coastal landscape, are undesirable aspects of development in the zone.

The structure is not essential to the continued existing use of the land for camping or as a camp ground. A camp ground/camping is for occasional occupation utilising transient and portable types of accommodation. Permanent structures in a camping ground would be for the general use of all visitors, and most likely comprise various amenities for cooking and ablutions.

The CPB strongly oppose un-planned and scattered development along the coast. Such development negatively impacts on the high scenic, landscape, environmental, amenity and biodiversity values of the coast, the very factors designed to be protected by the Coastal Conservation zoning.

The proposal is considered to be a considerable extension of what was previously an allowed use of the land.

This assessment is undertaken in the context of a number of specific historic circumstances unique to this, and a number of other, similar applications in the locality.

Given there are in total ten such applications currently before SCAP, and there remains one other lease site presently vacant and understood to be owned by the current caretaker for future development, the application forms part of a larger development of the area – the kind of development opposed by the CPB and not supported by the Development Plan – being a cluster of “dwellings/structures” that collectively forms a small settlement.

However, this development has been precipitated by two main factors. These are discussed not in the sense that they form part of the planning assessment, but that they provide relevant context when evaluating the development and weighting the various factors required to be considered in the assessment.

The first is the previous use of the site(s) for regular camping over a long period of time, and the subsequent creation of leases over those sites which has presumably laid the foundation for the construction of the present structures on the land. In a sense the current leaseholders would believe they have retained a right to occupy and use the land (noting that some of these rights have since been on-sold).

The second factor is the nature of the lease document, which implies the right, if not requirement, that the lessee develop the land for a residence. Without casting any opinion on the appropriateness or validity of the leases, it remains a compelling argument that the leases convey a right to develop. Couple this with the remoteness of the area from any population settlement, and the remoteness of any governance framework, there is a level of understanding as to how the development came into being without the necessary approvals being sought.

It is understood the SCAP's approach to allow time for the applicants to obtain private advice, and advice from the department, and explore their options and opportunities as to how they might proceed with their applications, is an acknowledgement to the above unique circumstances.

The subsequent amendments to the application recently suggested do not transform the original application into a form that sufficiently accords with the Development Plan to warrant planning consent. It is noted that further modifications could be made to the structure without affecting its basic structural integrity that could reduce its bulk and appearance. For example removal of the pitched roof in favour of a flat roof to reduce its bulk and scale would assist. Slatted or similar enclosures on two sides to offer wind protection may be acceptable subject to their design.

A minimalist structure that more satisfactorily blended with the coastal landscape and character of the locality may be deemed on balance with the context of the historic use rights on the land, sufficient to warrant support. Accordingly it is recommended the application be again deferred to give the applicant one further opportunity to consider amending the application.

9. RECOMMENDATION

It is recommended that the State Commission Assessment Panel:

1) RESOLVE to defer the application for a period of one month to enable the applicant to consider amendments that would reduce the bulk and scale and solid nature of the structure such that it more resembles an open shelter (carport).

Mark Adcock
CONSULTANT PLANNER
PLANNING AND DEVELOPMENT (DPTI)

DEVELOPMENT APPLICATION FORM

PLEASE USE BLOCK LETTERS

COUNCIL: Out of council area

APPLICANT: Jan Edgar Smith

Postal Address: PO Box 810

Port Lincoln SA 5606.

Owner: Jan Edgar Smith

Postal Address: as above

BUILDER: Owner builder

Postal Address: _____

Licence No: _____

CONTACT PERSON FOR FURTHER INFORMATION

Name: Jan Smith

Telephone: 0428 489 489 [work] _____ [Ah]

Fax: _____ [work] _____ [Ah]

EXISTING USE: Recreational visits

FOR OFFICE USE

Development No: 010/0025/13

Previous Development No: _____

Assessment No: _____

RECEIVED
- 6 MAR 2013
DPTI
PLANNING DIVISION

☐ Complying	Application forwarded to DA
☐ Non Complying	Commission/Council on
☐ Notification Cat 2	/ /
☐ Notification Cat 3	Decision: _____
☐ Referrals/Concurrences	Type: _____
☐ DA Commission	Date: / /

	Decision required	Fees	Receipt No	Date
Planning:				
Building:				
Land Division:				
Additional:				
Development Approval				

DESCRIPTION OF PROPOSED DEVELOPMENT: Caravan shelter & deck

LOCATION OF PROPOSED DEVELOPMENT: Allotment F, DP 55064 [CT 5851/504]

House No: _____ Lot No: F Street: _____ Town/Suburb: _____

Section No [full/part] _____ Hundred: _____ Volume: _____ Folio: _____

Section No [full/part] _____ Hundred: _____ Volume: _____ Folio: _____

LAND DIVISION:

Site Area [m²] 2337 Reserve Area [m²] _____ No of existing allotments 10

Number of additional allotments [excluding road and reserve]: _____ Lease: YES ☐ NO ☐

BUILDING RULES CLASSIFICATION SOUGHT: _____ Present classification: _____

If Class 5,6,78 or 9 classification is sought, state the proposed number of employees: Male: _____ Female: _____

If Class 9a classification is sought, state the number o persons for whom accommodation is provided: _____

If Class 9b classification is sought, state the proposed number of occupants of the various spaces at the premises: _____

DOES EITHER SCHEDULE 21 OR 22 OF THE DEVELOPMENT REGULATIONS 2008 APPLY? YES ☐ NO ☑

HAS THE CONSTRUCTION INDUSTRY TRAINING FUND ACT 2008 LEVY BEEN PAID? YES ☐ NO ☑

DEVELOPMENT COST [do not include any fit-out costs]: $ 12000

I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Development Regulations 2008.

SIGNATURE: _____ Dated: 26/2/13

DEVELOPMENT REGULATIONS 2008
Form of Declaration
(Schedule 5 clause 2A)

To:

From:

Date of Application: 14 / 2 / 13.

Location of Proposed Development: Allotment F, DP 55064 (CT 5851/504)

House No: ..... Lot No: F... Street: .....Town/Suburb..... ....

Section No (full/part): .....Hundred: .....

Volume: ..... Folio: .....

Nature of Proposed Development:

Caravan Shelter & deck

Please note: there is no mains electricity available in this area. Electricity to be supplied by portable generator.

I ..... Ian Edgar Smith .....**being the applicant/ a person acting on behalf of the applicant (delete the inapplicable statement) for the development described above declare that the proposed development will involve the construction of a building which would, if constructed in accordance with the plans submitted, not be contrary to the regulations prescribed for the purposes of section 86 of the *Electricity Act 1996*. I make this declaration under clause 2A(1) of Schedule 5 of the *Development Regulations 2008*.**

Date: 14 / 2 / 13

Signed: .....

Note 1
This declaration is only relevant to those development applications seeking authorisation for a form of development that involves the construction of a building (there is a definition of 'building' contained in section 4(1) of the *Development Act 1993*), other than where the development is limited to –

a) an internal alteration of a building; or
b) an alteration to the walls of a building but not so as to alter the shape of the building.

Note 2
The requirements of section 86 of the *Electricity Act 1996* do not apply in relation to:

a) a fence that is less than 2.0 m in height; or
b) a service line installed specifically to supply electricity to the building or structure by the operator of the transmission or distribution network from which the electricity is being supplied.

Note 3
Section 86 of the *Electricity Act 1996* refers to the erection of buildings in proximity to powerlines. The regulations under this Act prescribe minimum safe clearance distances that must be complied with.

Note 4
The majority of applications will not have any powerline issues, as normal residential setbacks often cause the building to comply with the prescribed powerline clearance distances. Buildings/renovations located far away from powerlines, for example towards the back of properties, will usually also comply.

Particular care needs to be taken where high voltage powerlines exist; where the development:

- is on a major road;
- commercial/industrial in nature; or
- built to the property boundary.

Note 5
Information brochures 'Powerline Clearance Declaration Guide' and 'Building Safely Near Powerlines' have been prepared by the Technical Regulator to assist applicants and other interested persons. Copies of these brochures are available from council and the Office of the Technical Regulator. The brochures and other relevant information can also be found at www.technicalregulator.sa.gov.au

Note 6
In cases where applicants have obtained a written approval from the Technical Regulator to build the development specified above in its current form within the prescribed clearance distances, the applicant is able to sign the form.

PLN/06/0024

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 6127 Folio 543

Parent Title(s) CT 5851/904

Creating Dealing(s) DDA 12041339

Title Issued 19/12/2013 **Edition** 3 **Edition Issued** 20/11/2017

Estate Type

FEE SIMPLE

Registered Proprietor

RONALD PAUL GATES
OF PENONG SA 5690

Description of Land

ALLOTMENT COMPRISING PIECES 10, 11, 12, 13 AND 14 DEPOSITED PLAN 55064
IN THE AREA NAMED PENONG
HUNDRED OF KEVIN

Easements

NIL

Schedule of Dealings

Dealing Number	Description
9341120	MORTGAGE TO AUSTRALIA & NEW ZEALAND BANKING GROUP LTD.
10653403	LEASE TO PETER ROBERT REEVES AND LYNETTE SHARON HUTCHENS COMMENCING ON 1/1/2006 AND EXPIRING ON 31/12/2057 OF PORTION (B IN GP 87/2002) AS JOINT TENANTS
10653404	LEASE TO SCOTT BRIAN CANE COMMENCING ON 01/01/2006 AND EXPIRING ON 31/12/2052 OF PORTION (C IN GP 87/2002)
10653405	LEASE TO TERRY ROBERT HUSSEY AND BEN HUSSEY COMMENCING ON 1/1/2006 AND EXPIRING ON 31/12/2027 OF PORTION (D IN GP 87/2002) AS TO THE SHARES SPECIFIED THEREIN
10653406	LEASE TO ROBERT ANDREW OFFORD AND PETA LYNN OFFORD COMMENCING ON 1/1/2006 AND EXPIRING ON 31/12/2025 OF PORTION (E IN GP 87/2002) WITH NO SURVIVORSHIP
10653407	LEASE TO JOHN CHARLES HINKS, REECE GYNELL AND IAN EDGAR SMITH COMMENCING ON 1/1/2006 AND EXPIRING ON 31/12/2027 OF PORTION (F IN GP 87/2002) AS TO THE SHARES SPECIFIED THEREIN
10653408	LEASE TO THERIOU PTY. LTD. (ACN: 125 790 230), MICHAEL SCHOEMAN AND SCOTT ANTHONY LOMBE COMMENCING ON 01/01/2006 AND EXPIRING ON 31/12/2037 OF PORTION (G IN GP 87/2002) AS TO THE SHARES SPECIFIED THEREIN
10653409	LEASE TO NEIL JOHN MCARTHUR AND SUSAN MARGARET MCARTHUR COMMENCING ON 1/1/2006 AND EXPIRING ON 31/12/2032 OF PORTION (H IN GP 87/2002) AS JOINT TENANTS
10653410	LEASE TO WESTON MEDICAL DEVICES PTY. LTD. COMMENCING ON 1/5/2006 AND EXPIRING ON 30/4/2028 OF PORTION (J IN GP 87/2002)

Copyright Privacy Disclaimer: www.sailis.sa.gov.au/home/showCopyright www.sailis.sa.gov.au/home/showPrivacyStatement www.sailis.sa.gov.au/home/showDisclaimer

10653411 LEASE TO JUNE MARY GRIFFIN AND JULE FLORINDA MCCARTHY COMMENCING ON 1/1/2006 AND EXPIRING ON 31/12/2037 OF PORTION (K IN GP 87/2002) AS TO THE SHARES SPECIFIED THEREIN

Notations

Dealings Affecting Title NIL

Priority Notices NIL

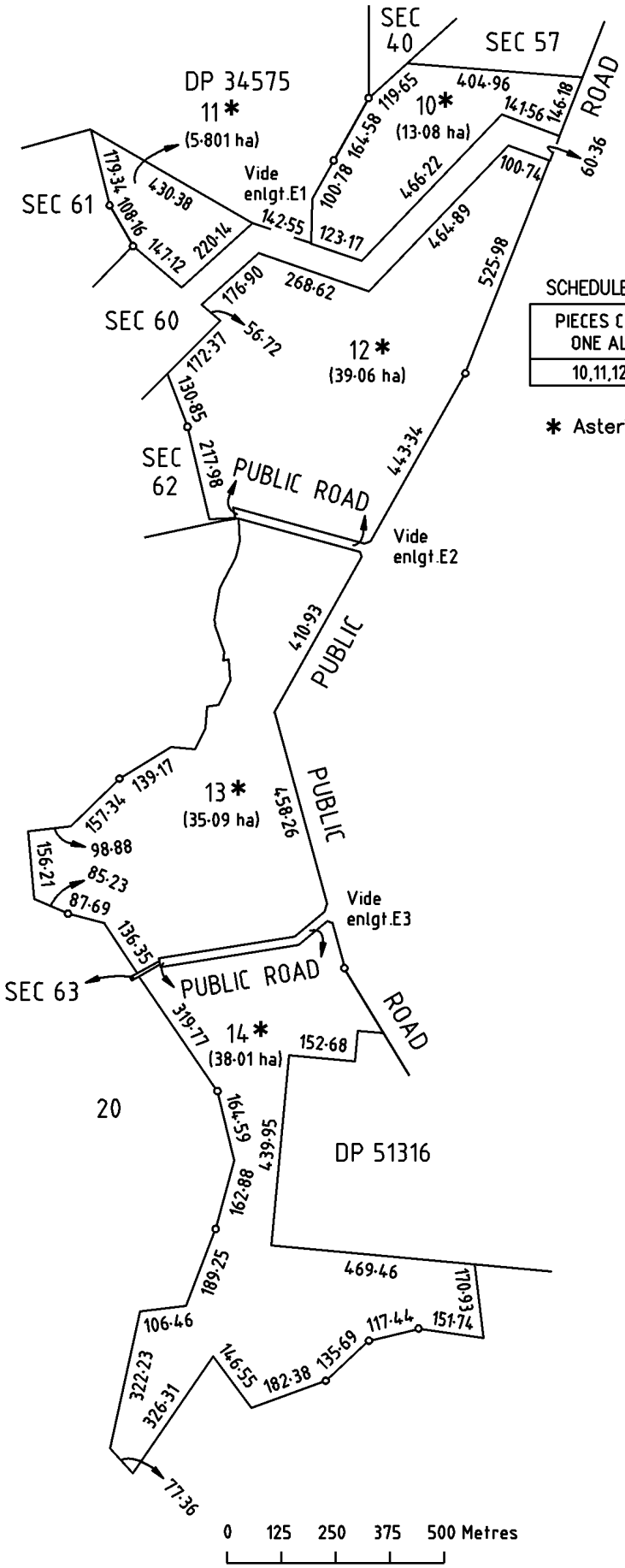
Notations on Plan NIL

Registrar-General's Notes

PLAN FOR LEASE PURPOSES VIDE G87/2002

Administrative Interests NIL

Copyright Privacy Disclaimer: www.sailis.sa.gov.au/home/showCopyright www.sailis.sa.gov.au/home/showPrivacyStatement www.sailis.sa.gov.au/home/showDisclaimer

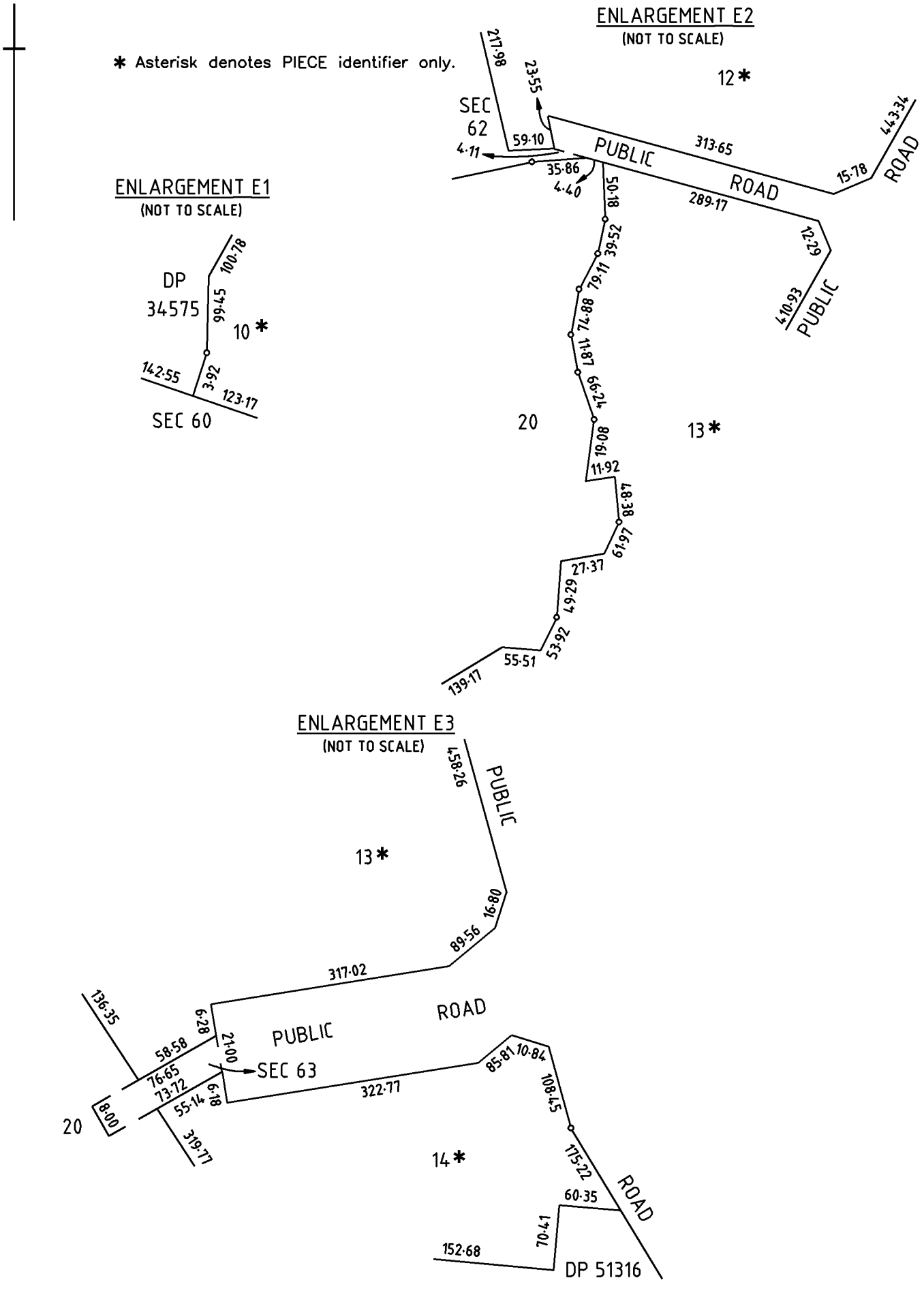


SCHEDULE OF PIECES COMPRISED IN ONE ALLOTMENT

PIECES COMPRISED IN ONE ALLOTMENT	TOTAL AREA
10,11,12,13 and 14	131·0 ha

* Asterisk denotes PIECE identifier only.

Copyright Privacy Disclaimer: www.sailis.sa.gov.au/home/showCopyright www.sailis.sa.gov.au/home/showPrivacyStatement www.sailis.sa.gov.au/home/showDisclaimer



Copyright Privacy Disclaimer: www.sailis.sa.gov.au/home/showCopyright www.sailis.sa.gov.au/home/showPrivacyStatement www.sailis.sa.gov.au/home/showDisclaimer

REFERENCE MARKS

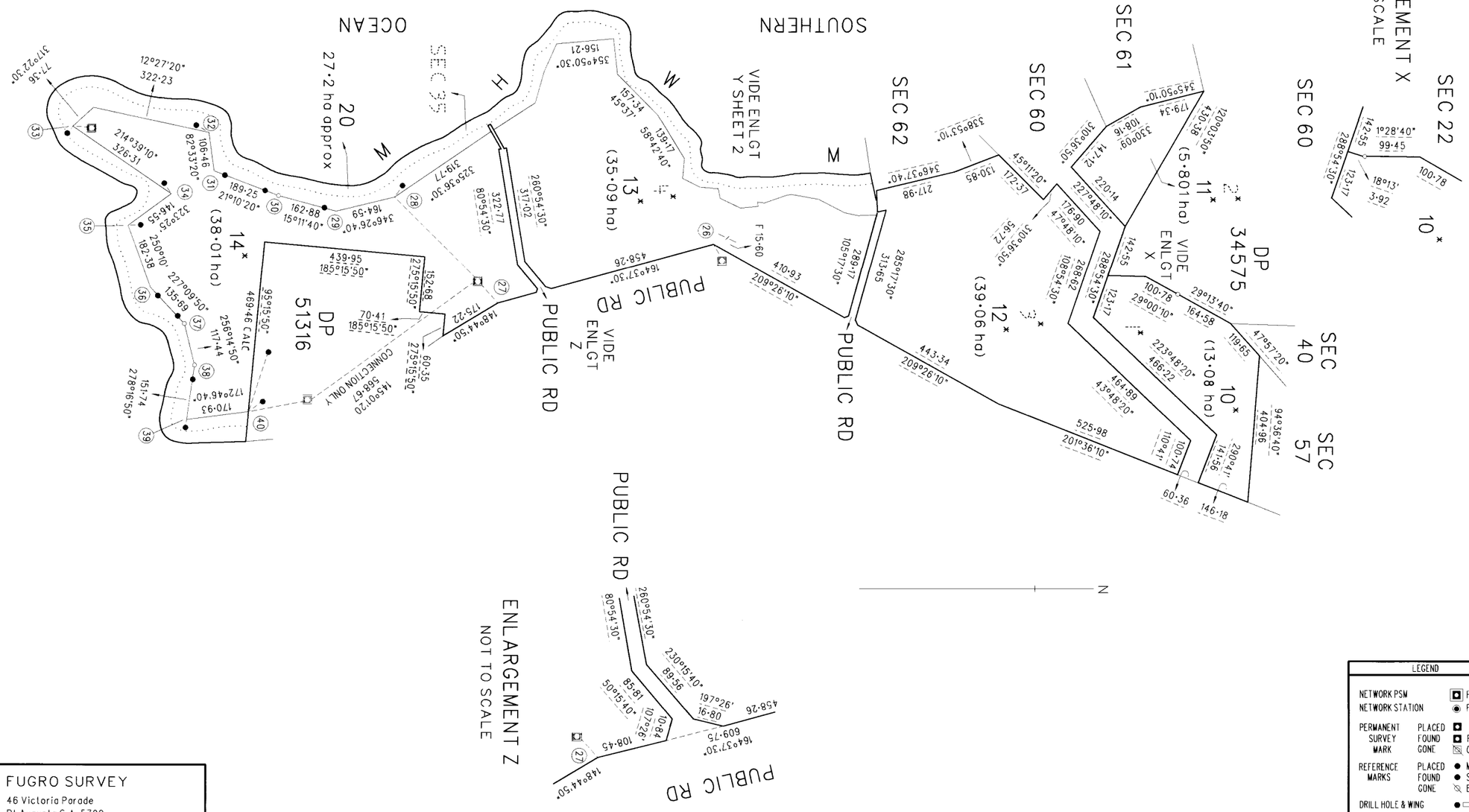
CNR	BEARING	FROM	DIST	PSM No
26	223°28'	PM	FD 1·03	5433/1005
27	47°29'40"	PM	FD 80·82	5433/1001
28	142°30'	MP	30·81	
29	225°30'40"	PM	FD 325·93	5433/1001
30	15°11'	MP	1·31	
31	21°10'	MP	1·88	
32	201°10'	MP	2·62	
33	12°47'	MP	1·88	
34	317°22'	MP	1·90	
35	185°01'40"	PM	51·14	5433/1034
36	45°32'	MP	6·81	
37	143°26'	MP	2·54	
38	227°10'	MP	1·86	
39	47°10'	MP	2·39	
40	278°17'	MP	2·02	
40	278°24'10"	MP	22·18	
40	168°24'10"	PM	FD 164·32	5433/1032
40	132°07'	G I P	FD 184·48	
40	165°53'	MP	2·13	

UNREGISTERED

SCHEDULE OF PIECES COMPRISED IN ONE ALLOTMENT

PIECES COMPRISED IN ONE ALLOTMENT	TOTAL AREA
10, 11, 12, 13, 14	131·0 ha

* Asterisk denotes PIECE identifier only.
NOTE : All remaining parcels are each an Allotment.



FUGRO SURVEY

46 Victoria Parade
Pt Augusta S.A. 5700
Ph (08)86423044
Fax (08)86426348
REF 15777 - 1471

LEGEND

NETWORK PSM		FD
NETWORK STATION		FD
PERMANENT SURVEY MARK	PLACED	
	FOUND	FD
	GONE	GONE
REFERENCE MARKS	PLACED	MP OR RM
	FOUND	SPK FD
	GONE	BT GONE
DRILL HOLE & WING		
DIRECTION CHANGE		
PART DISTANCES		(20.32)
CALCULATED DATA		20.85 CALC
COPIED DATA		100·85

PLAN NUMBER
DP 55064

THIS IS SHEET 1 OF 2 SHEETS

DEPOSITED 3/5/2001
~~ACCEPTED FOR FILING~~
PRO REGISTRAR GENERAL

MAP REF. 5433 - 1 | DEV. No.
TITLE SYSTEM CROWN LAND
TITLE REFERENCE CL 1613/37
PT CL 1625/21
O.B./LAST PLAN REF. | TOTAL AREA
DOCKET No.
FIELD BOOK No.

CLOSURE CHECKED	PLAN EXAMINED	PLAN APPROVED	P.M.S. APPROVED
A.J.	B.F.	B. Faber 26/6/00	26/6/00

IRRIGATION AREA DIVISION
HUNDRED KEVIN
AREA
COUNCIL OUT OF DISTRICTS

PLAN OF DIVISION OF
SEC 35 AND ALLOTMENT COMPRISING PIECES 1 TO 4 INCL IN DP 25946 OF SEC's 29, 41, 58 AND 59 AND CLOSED ROAD

SCALE 0 75 150 300 450 600 METRES 750

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS & AMENDMENTS

ALLOTMENT 20 IS TO BE A COASTAL RESERVE
PURSUANT TO THE CROWN LANDS ACT
MHWM PLOTTED FROM ILTM

NO OCCUPATION UNLESS SHOWN OTHERWISE

ALL DISTANCES ARE GROUND DISTANCES

COMBINED SCALE FACTOR ZONE AMG
BEARING DATUM: 26 - 27 164°37'30" DISTANCE
DERIVED FROM DP 51316 (ADOPTED)

I, Peter Jeffrey WATT
Licensed Surveyor of South Australia do hereby certify

1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992

2) That the field work was completed on the 10th day of APRIL 2000
~~excepting for the final placement of survey marks~~
(strike out if not applicable)

Date 26·5·2000

Licensed Surveyor

PLAN NUMBER
DP 55064

DEPOSITED 3/5/2001 ~~ACCEPTED FOR FILING~~ PRO REGISTRAR GENERAL

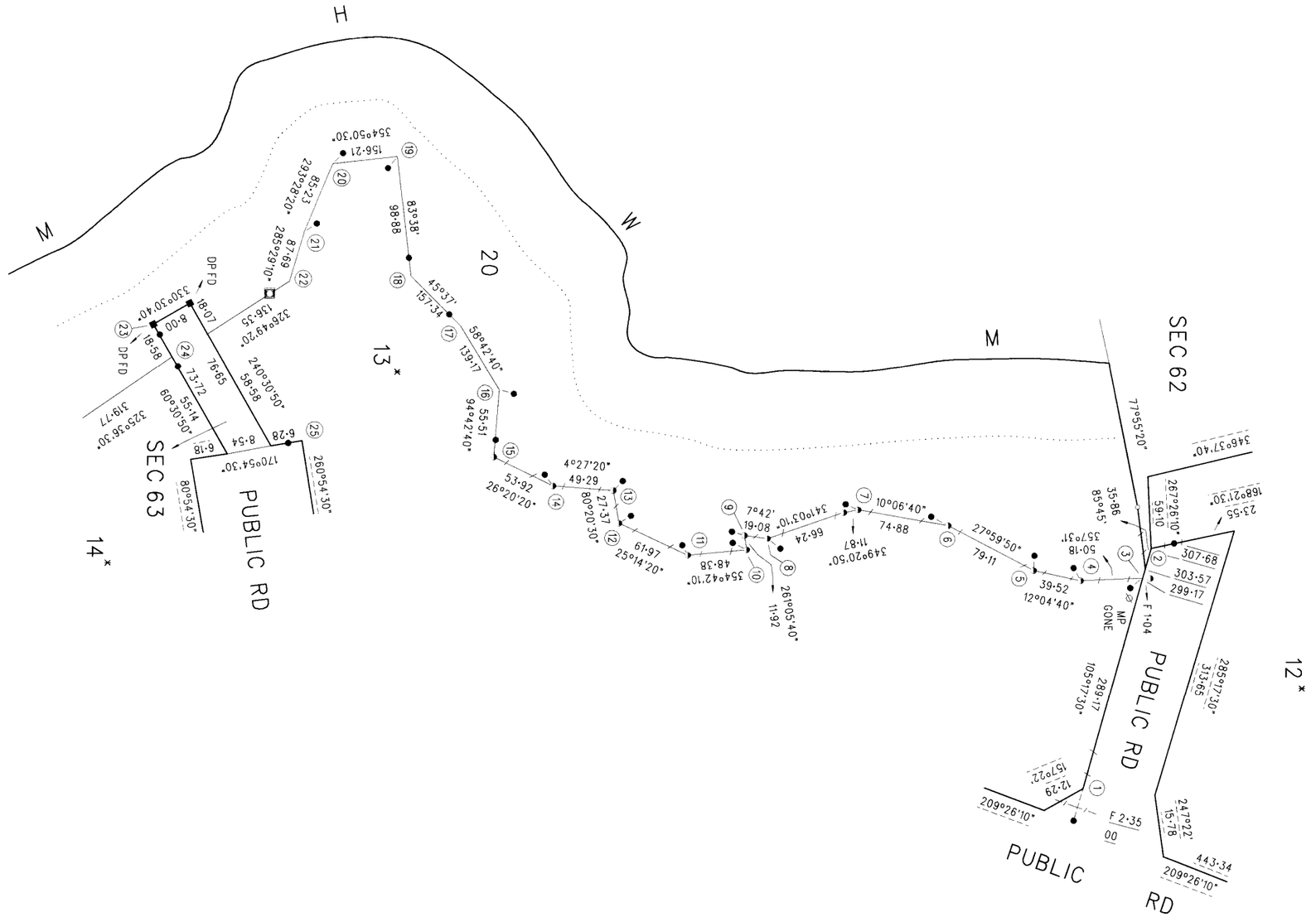
THIS IS SHEET 2 OF MY PLAN IN 2 SHEETS
DATED 26/5/2000

LICENSED SURVEYOR

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS

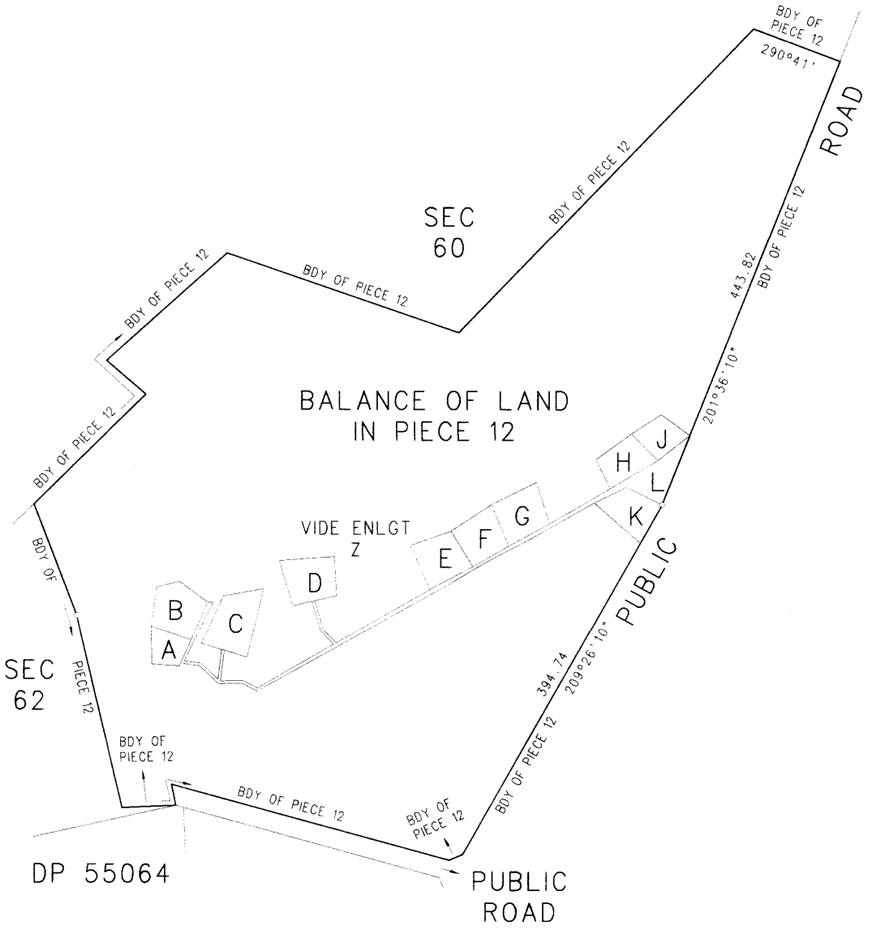
REFERENCE MARKS

CNR	BEARING	FROM	DIST	PSM No
1	285°17'	MP FD	10·00	
2	168°21'	MP FD	3·00	
3	320°14'	MP	1·50	
4	67°40'	MP	3·46	
5	94°09'	MP	1·37	
6	22°33'	MP	4·39	
7	29°16'	MP	1·25	
8	253°09'	MP	0·65	
9	5°04'	MP	0·91	
10	35°13'	MP	1·87	
11	45°26'	MP	1·95	
12	141°39'	MP	1·06	
13	166°02'	MP	1·01	
14	35°59'	MP	0·67	
15	94°43'	MP	1·51	
16	199°00'	MP	0·61	
17	45°37'	MP	2·76	
18	83°38'	MP	1·62	
19	276°13'	MP	2·14	
20	174°50'	MP	2·00	
21	139°36'	MP	2·69	
22	326°49'	PM	1·62	5433/1033
23	240°31'	MP FD	1·06	
24	240°31'	MP	0·89	
25	350°54'	MP FD	2·00	

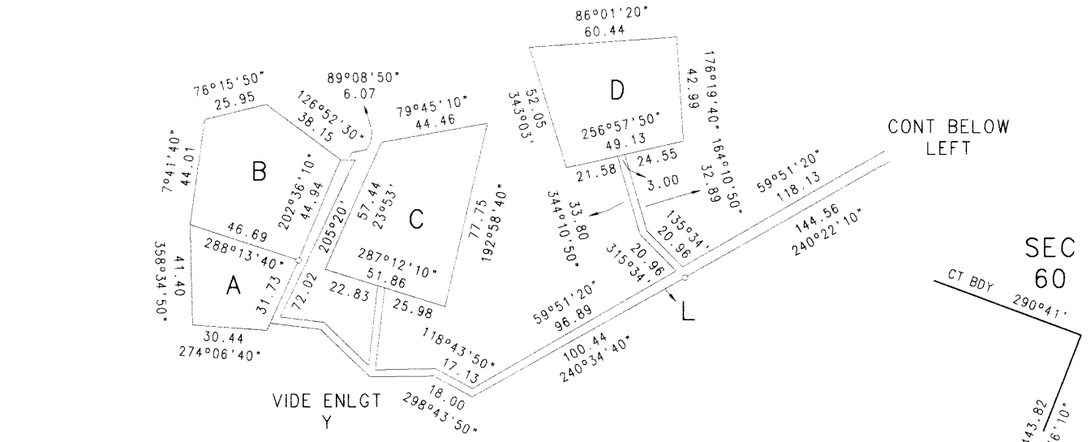


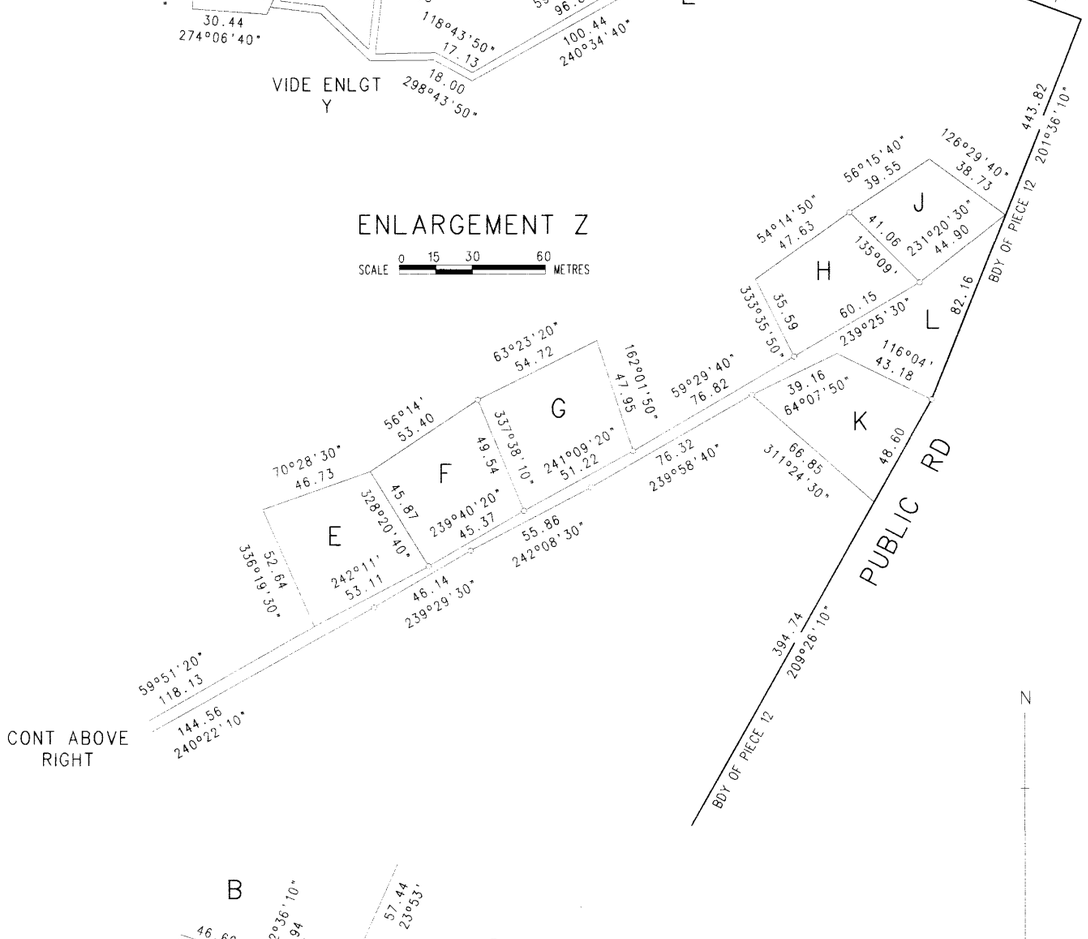
ENLARGEMENT Y
NOT TO SCALE

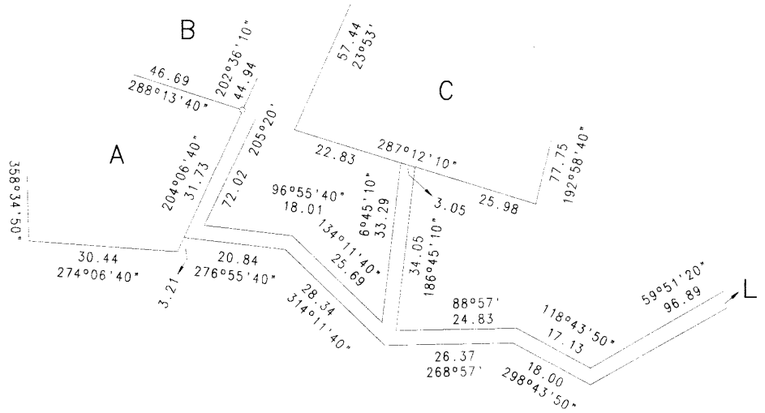
FUGRO SURVEY
46 Victoria Parade
Pt. Augusta S.A. 5700
Ph (08)86423044
Fax (08)86426348
REF 15777 - 1471



SITE AND GROUND FLOOR PLAN







ENLARGEMENT Y
NOT TO SCALE

FUGRO SURVEY
46 Victoria Parade
Pt Augusta S.A. 5700
Ph (08)86423044
Fax (08)86426348
REF 16742 - 1615 REV - 1

27 FEB 2002

PLAN NUMBER
GP 87/2002

DEPOSITED / /20
ACCEPTED FOR FILING PRO REGISTRAR GENERAL
MAP REF. 5433 - 1 DEV. No.
TITLE SYSTEM RPA
TITLE REFERENCE PT CT 5851 / 904
O.B./LAST PLAN REF. TOTAL AREA
DOCKET No.
FIELD BOOK No.

CLOSURE CHECKED	PLAN EXAMINED JMJ & RRB 20.2.2002	PLAN APPROVED 26.2.2002	P.M.S. APPROVED

IRRIGATION AREA DIVISION
HUNDRED KEVIN
AREA
COUNCIL OUT OF DISTRICTS

PLAN FOR LEASE PURPOSES
PIECE 12 IN DP 55064 OF SEC's 29 , 59 AND CLOSED ROAD

SCALE 0 40 80 160 240 320 400 METRES

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS & AMENDMENTS

AREAS

A	1364m²
B	2693 m²
C	3068 m²
D	2576 m²
E	2442 m²
F	2337 m²
G	2558 m²
H	2033 m²
J	1637 m²
K	2255 m²
L	4862 m²

N

LEGEND

NETWORK PSM		FD
NETWORK STATION		FD
PERMANENT SURVEY MARK	PLACED	
	FOUND	FD
	GONE	GONE
REFERENCE MARKS	PLACED	MP OR RM
	FOUND	SPK FD
	GONE	BT GONE
DRILL HOLE & WING		
DIRECTION CHANGE		
PART DISTANCES		(20.32)
CALCULATED DATA		20.85 CALC
COPIED DATA		100·85

ALL DISTANCES ARE GROUND DISTANCES

COMBINED SCALE FACTOR ZONE MGA
BEARING DATUM: DISTANCE
DERIVED FROM

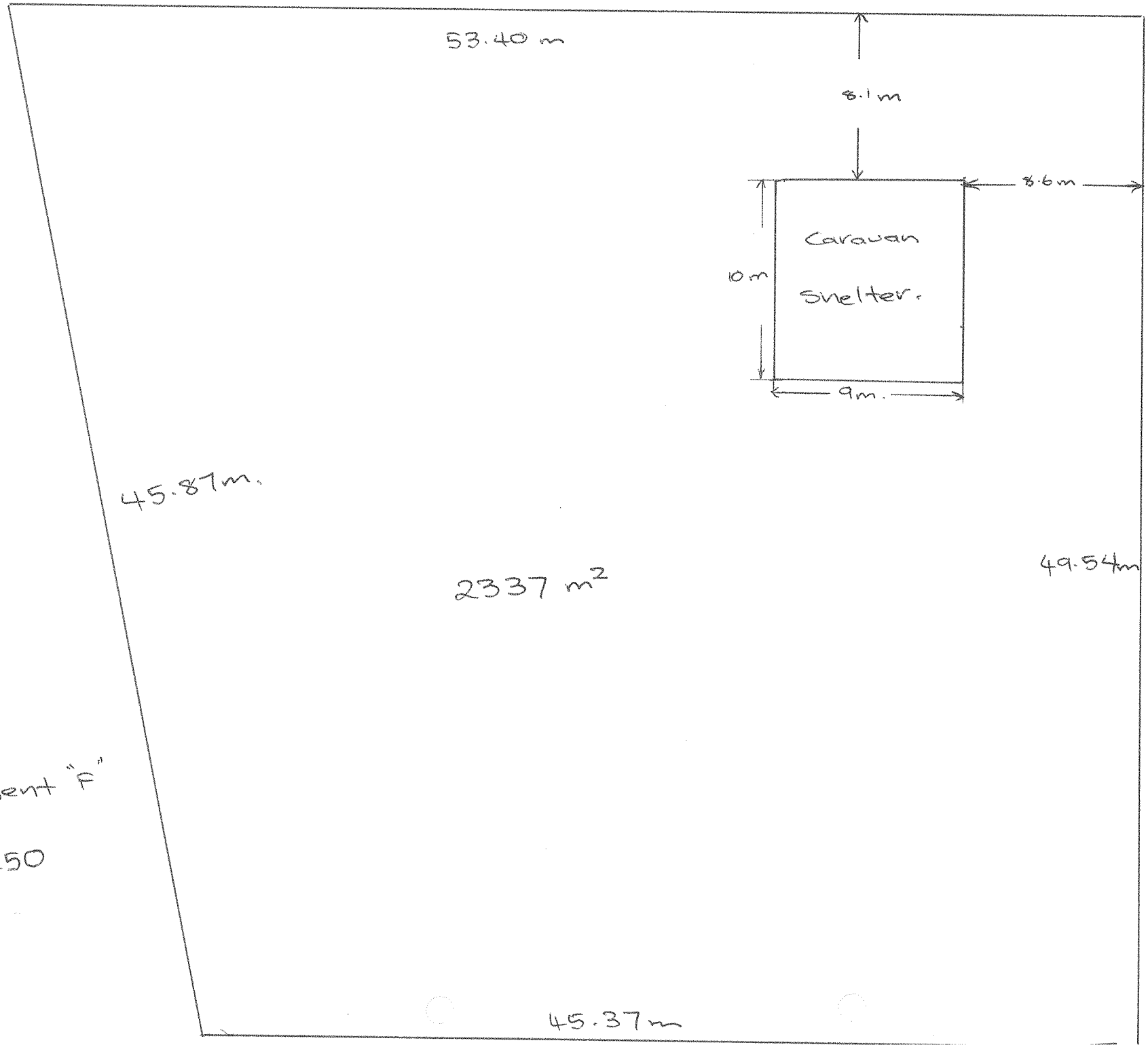
I,
Licensed Surveyor of South Australia do hereby certify

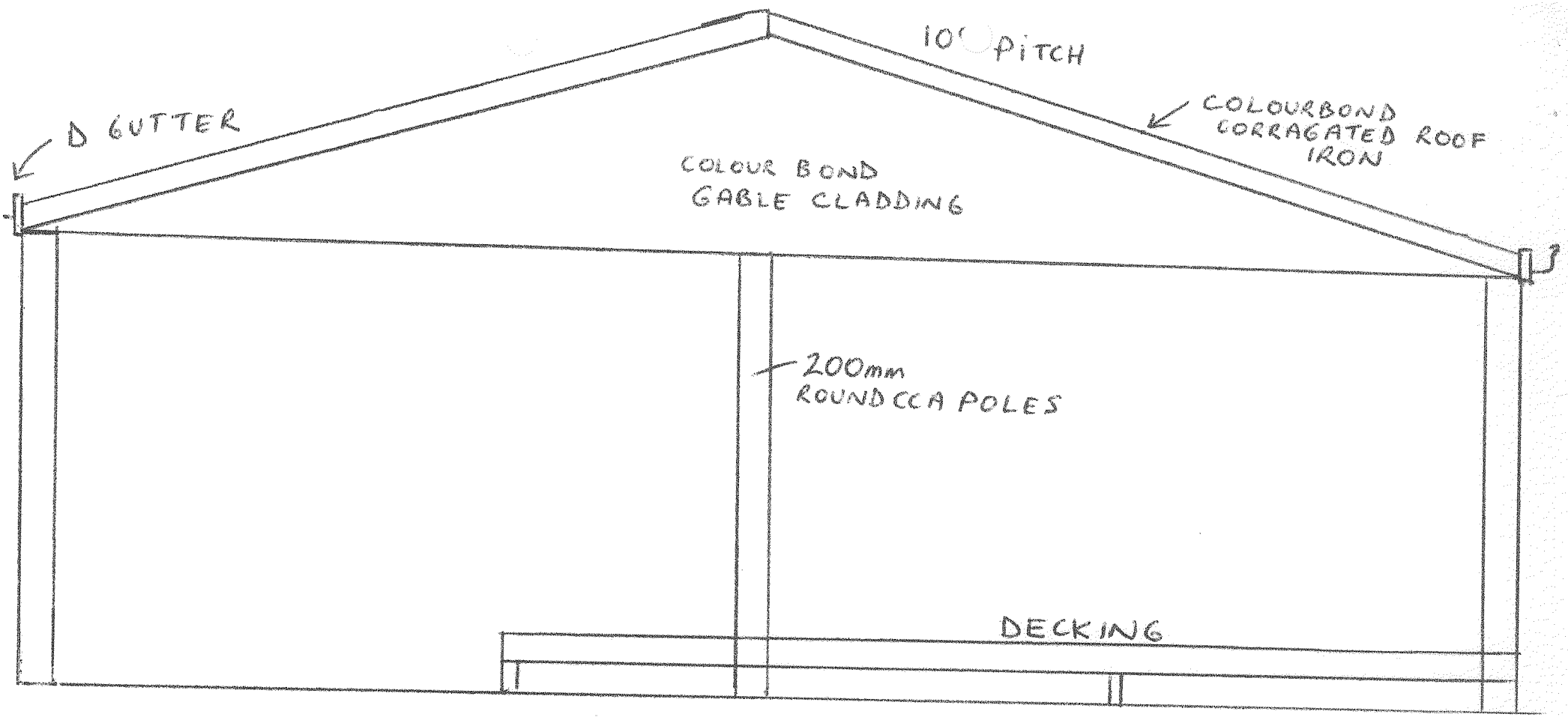
1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992

2) That the field work was completed on the day of
excepting for the final placement of survey marks
(strike out if not applicable)

Date

Licensed Surveyor

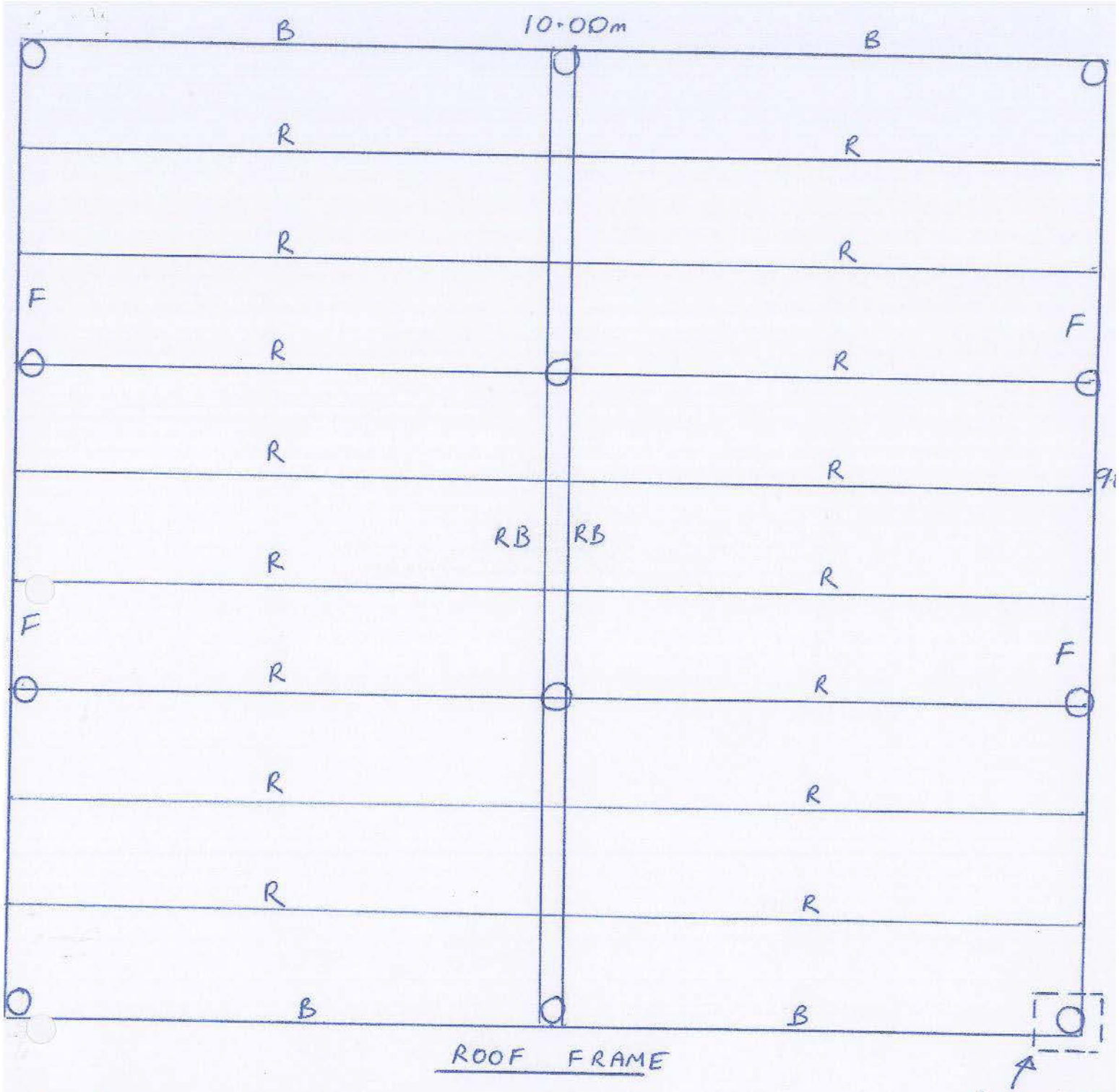

53.40 m
8.1 m
8.6m
Caravan
Shelter.
10m
9m.
45.87m.
2337 m²
49.54m
45.37m
Allotment "F"
1 : 250
N



SCALE 1:50

NORTH ELEVATION

PROPOSED NEW CARAVAN SHELTER AND DECKING FOR IAN SMITH



ROOF FRAME

600 x 600 x 900D Concrete Footings To all Poles.

O 200mm presision CCA poles

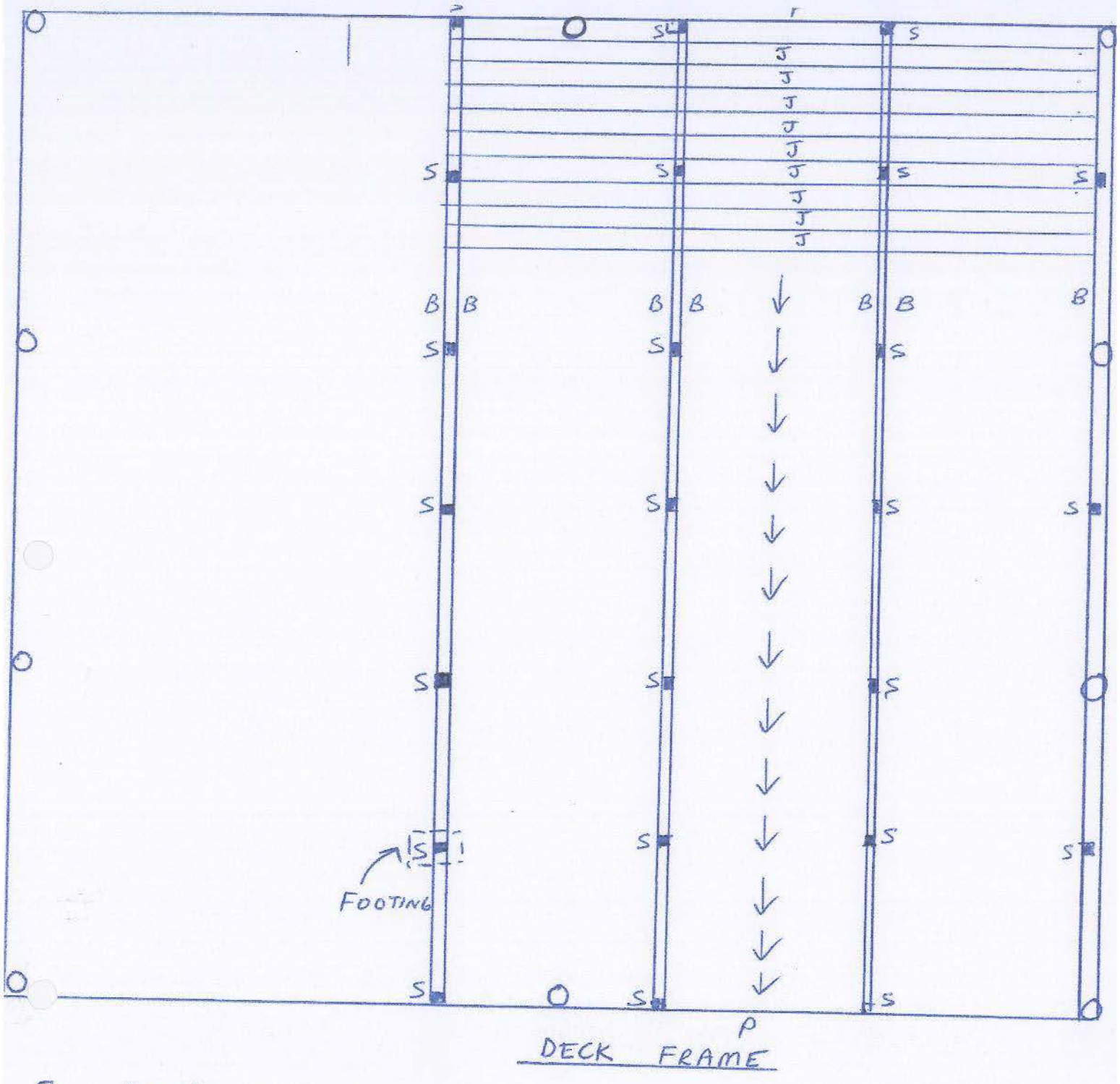
RB 240x45 Ridge Beam CCA

F 240 x 45 CCA FASCIA

R 190 x45 CCA RAFTERS

P 70x 45 CCA PURLINS @ 800 ¢

Ridge Beam to Poles	12mm GALV	BOLTS x 2
Fascia to Poles	12mm GALV	BOLTS x 2
Barge to Poles	12mm galv	Bolts x 2
PURLINS TO RAFTER	100mm galv	Battern Screws



DECK FRAME

S 90x90 CCA STUMPS

300x300 x 400 D FOOTING

B 190x45 CCA BEARER

P 240x45 CCA PLYNTH

J 140x45 CCA JOISTS @ 450 ¢

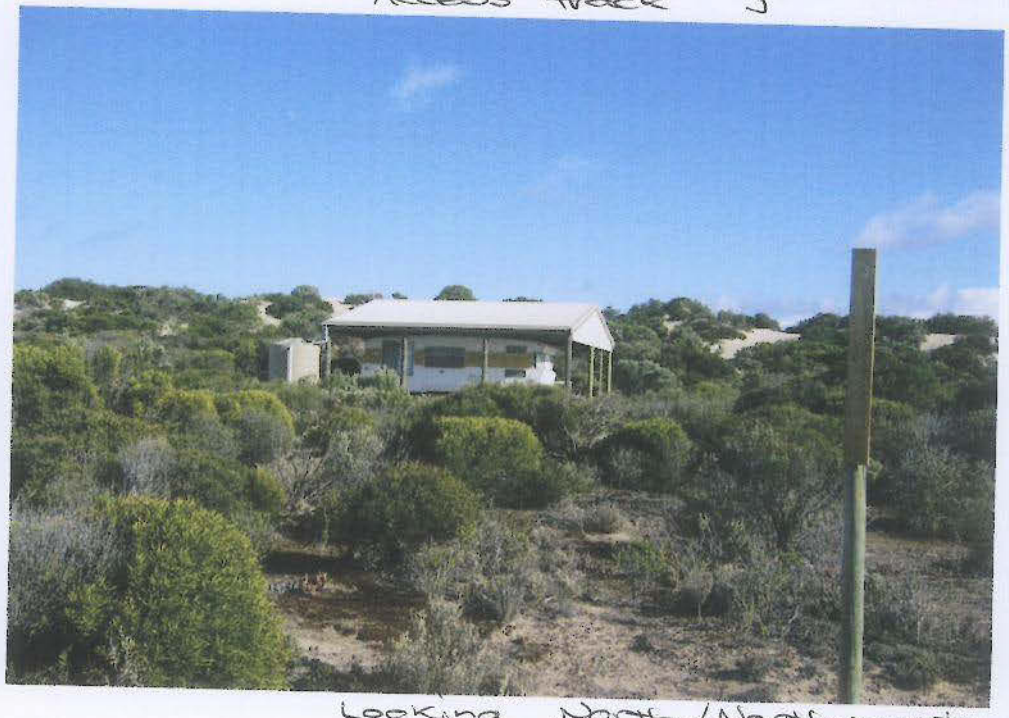
Decking 70x19 CCA Reeded pine

Fixing 2x twistshank galv nails

Beareres to Stumps 10mm Galv Bolts.

Looking West

Access track "J"



Looking North/Northwest.

Looking East/Northeast.

5 October 2018

S K Planning Pty Ltd
ABN 76 108 325 435

9 Camden Street
ALBION QLD 4010

m: 0417 088 000
e: markb@skplanning.com.au

Mr Simon Neldner
Team Leader – Development Assessment
Development Division
Department of Planning, Transport and Infrastructure
GPO Box 1815
ADELAIDE SA 5001

Dear Simon

CACTUS BEACH/POINT SINCLAIR RETROSPECTIVE DEVELOPMENT APPLICATIONS

As you are aware, S K Planning acts for the applicants of ten (10) retrospective development applications at Q12 in DP55064 (Hundred of Kevin CT 5851/904) Cactus Beach, Point Sinclair.

I am in receipt of a copy of the letter I understand was sent to all applicants on 30 August 2018 from the Presiding Member of SCAP. Essentially the letter invited the applicants to put their 'final position' on the applications so they might be considered further at SCAP's scheduled meeting on 8 November 2018.

After extensive discussions with the applicants, this letter contains all of the relevant information for the applications to be considered on 8 November. The only exception is the application on Lot K, which is to be placed on hold; the details for this decision and the next steps proposed are set out below.

All of the information contained in this letter must be read in conjunction with all previous correspondence, in particular:

- Letter to Mark Adcock dated 10 August 2015, which contained historical information about the use of the land and a detailed planning assessment against the Development Plan provisions; and
- Letter to Mark Adcock dated 10 December 2015, which followed the DAC's site visit in October 2015.

Background

SCAP's letter was in response to my correspondence on behalf of the applicants dated 10 May 2018, which was prepared and submitted after many months of further consideration of the applications and in particular a letter from Chris Kwong dated 20 October 2017, which set out SCAP's indicative 'basic shelter specifications.' However, Mr Kwong's letter was only part of the lead-up to the applicant's forming their position on the application.

The 10 May 2018 letter came after several years of site visits, numerous meeting and correspondence, including:

- a site visit in November 2014 by DPTI staff (Mark Adcock and David Storey)

- correspondence to Mark Adcock dated 10 August 2015 which set out a detailed history of the subject land and a detailed assessment of the applications against the Development Plan;
- a site visit by SCAP (then DAC) in October 2015 (which as I understand is comprised of the same members as is to consider the various matters on 8 November);
- a DAC meeting in Ceduna immediately following the October 2015 site visit, at which many of the issues were further explained and discussed;
- follow-up correspondence to Mark Adcock dated 10 December 2015, which touched on building compliance, land management and other tenure issues; and
- Mr Kwong's letter of October 2017, after which a spreadsheet and series of sketches was also provided to the applicants.

All of these events and various meetings resulted in the 10 May 2018 correspondence which, in my view, did exactly what SCAP had requested in Mr Kwong's letter. The 10 May 2018 correspondence also made it very plain that the 10 applications at hand were easily separated into the more straightforward applications (such as Lot D) and the more complex applications (such as Lot K).

As such, you can imagine the surprise of both myself and the applicants to, first of all, now receive identical letters from SCAP when clearly the key outstanding issues (which essentially relate to the extent of buildings and structures on each lot) are varied. We were also collectively surprised at SCAP expressing its disappointment in the content of the 10 May 2018 letter, given the extensive lead-up to it and that it tried to do exactly what SCAP had asked of the applicants in an effort to move the matter on.

However, I have been assured by DPTI that we are not 'back to square one' and as always, the applicants are proceeding in good faith and proceeding on the basis that DAC/SCAP's position conveyed to us over the last three years has not fundamentally changed. As such, it is all the more important that documentation already lodged will be properly considered along with any new information contained in this letter.

Building Rules Issues

Whilst this is a secondary issue to the planning consent sought, it remains nonetheless an important issue and one which DPTI also investigated at great length through its officer Ekramul Ahasan, including a site visit in late 2016. As I understood it, the building rules issue was important to understand the likely extent of re-work/re-construction which might need to occur if planning consent was granted.

As it turned out there were not significant Building Code issues, but those matters then appear to have become conflated with a possible 'acceptable' planning solution, which I think has unnecessarily confused matters.

In any event, it does not appear there will be significant building rules issues in the event any or all of the applications obtain planning consent.

The Subject Land and Historical Use

A comprehensive summary of the subject land and, very importantly, the history of the use of the land was set out in my correspondence dated 10 August 2015 – particularly at pages 5 and 6. Also referred to are some historical aerial photos which verify the use of the land over time (including the siting of the structures in areas already devoid of native vegetation).

It is important to appreciate that this part of the subject land – i.e. the landscape and the natural environment generally – has never been in better condition for at least 50-60 years. Sheep used to

graze the area in the 1950s and 1960s and permanent caravans were parked on the land in the late 1960s alongside uncontrolled free camping. Those caravans were so greatly affected by the climate they had to be broken up and removed and the fragile native vegetation and dune system were greatly impacted.

To that end, the area has not been pristine for many, many decades and the local environment has benefitted greatly from the closing off of the area and the planned and regulated approach to the lease holdings in question has allowed for a steady and successful recovery. Given one of the key objectives of the zone is the protection of flora and fauna and the amenity of the coast, the current situation has resulted in greater alignment with the Development Plan than would otherwise have been the case despite its unapproved nature.

Accordingly, I ask that SCAP re-familiarise itself with those details when considering these matters further.

Planning Assessment

As noted above, a planning assessment against the relevant provisions of the Development Plan has already been undertaken and submitted to DPTI on 10 August 2015.

As there have been no changes to the Development Plan since that time, that assessment is still current and as such does not need to be repeated here.

However, I would make the following key points:

- The *Coastal Conservation Zone (CCZ)* is a very large and extensive zone in this part of the State covering hundreds of kilometres and so it's likely there are many local variations across that area where application of the Development Plan is not as straightforward as it might otherwise be and numerous, sometimes unique, issues must be considered. I contend that is the case at Cactus Beach where the practical application of the Development Plan is required;
- The Desired Character statement is important as the way in which the land is able to be managed due to the existence of the unapproved structures and the desire of the leaseholders to protect and nurture the environment is quite consistent in this respect;
- The structures are not intended to be or function as dwellings and are intended for short-term stays only (primarily aligned with the peak surfing season);
- The structures are set behind the coastal dune and have no impact on views of the coast from the sea or beach; and
- The current use and management of the land allows compliance with many Zone PDCs including 8, 9, 10, 13 and 14.

The planning assessment also extended to number of the General Section modules of the Development Plan and comments on the Coast Protection Board's assessment at the time. All of these comments and observations remain current and relevant and I ask that SCAP re-familiarise itself with those details as part of the further consideration of these matters.

Other Important Considerations

When determining what a 'basic shelter specification' might be, it is unavoidable that some local conditions will influence how 'basic' a shelter might be to be of practical use. As DPTI and DAC have seen on site there is significant exposure to the elements (both for people and caravans) and as previously described the height of the summer and winter are very harsh.

To that end I have identified a number of considerations that are unique to the subject land and the shelters and the reasons why they are relevant. I am of the view the assessment and determination of the applications should have regard for these matters.

Setback Distance
One of the key parameters in reducing the visual impact and impact generally of the shelters is their setback from the main public road into the campground. Apart from lot K, all of the shelters are well set back from the road. With appropriate colouring, screening, roof pitches and the like, the siting of the shelters well back from the road and in low set locations with dunes behind help to minimise the impact, as can easily be seen on site.

Weather Protection
Protection from extremes of the local environment, particularly from wind but also heat and cold, is essentially the reason the shelters came into being in the first place – for both the caravans and people visiting the lots. As can been seen from the construction on site, protection from the southern and western sides is the most important and if this can be effectively achieved there is no need to have complete enclosure.

Given the strength of winds in the area, temporary walls/screens are impractical as 'hard' walls/screens need to be removed and stored when not in use and temporary blinds or similar are easily subject to damage.

Further, permanent walls, particularly if slatted and painted an appropriate colour, assist in screening the caravans from view as the southern side of the shelters in particular tend to face the main road. The caravans are predominantly white and are likely to be more noticeable in some instances that the shelters themselves. As such, providing screening for weather protection will also assist in minimising visual impact of the caravans in most instances.

Storage
Storage at the shelters is a necessary but complicated issue and is driven by the amount of equipment required to be stored. This varies from leaseholder to leaseholder. Some of the storage is informal and open-air, some is in the roof space (where the roofs are pitched but is generally not secure) and other types are locked rooms or similar. Obviously, a caravan can be locked up as well.

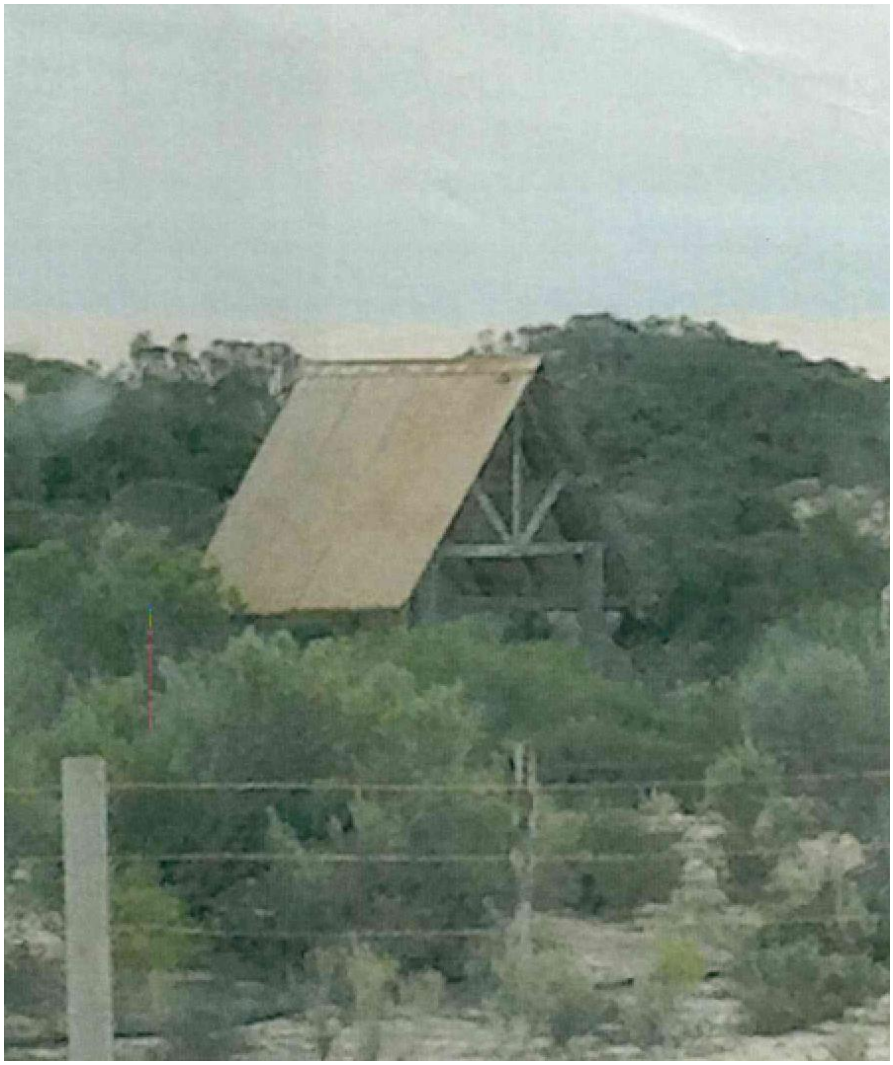
There will also be a personal preference for secure or non-secure storage and the distance away from Cactus Beach the leaseholder lives (some reside interstate) will also drive the desire for more or less storage. Given the site is used primarily for surfing, the storage of numerous surfboards and other water sports equipment (such as a windsurfer or kayak) is a key consideration.

The area also has a history of mouse plagues from time to time, making anything not securely stored appropriately a target, as mice can get into almost anything. Scott Cane (Lot C) has documented a 2016 infestation where he was trapping up to 120 mice a night and they had found their way into the roofing of the annex and the caravan itself, including bedding.

In my view, it is not unreasonable for there to be some secure and vermin-proof storage on each site (if the leaseholder so desires) but it should be fit for purpose, appropriately dimensioned and utilised for storage purposes only.

Roof Pitch
Although a flat or near-flat roof assists in minimising the profile of any structure, a flat roof is less effective at preventing the build-up of heat in the shelter area. As such, a modest roof pitch should be permitted and if the roof is appropriately finished and coloured (as many already are) – in combination

with a low set position in the landscape – this should be an acceptable outcome. As has been noted before, steep roof pitches are a feature of some of the original structures in the campground, one of which is located close to Lot J and shown below.



Screening
As noted above, the screening of caravans can also play an important role in reducing their visual impact, as they are predominantly white in colour.

Screening can also assist in ensuring open areas used for storage are screened from public view (although appropriately-sized storage rooms are more effective in this regard).

Colours
The selection of colours is very important in order to minimise any visual impact arising from the shelters. Although many of the structures are already appropriately coloured (including having weathered somewhat over time) there are some shelters where some more appropriate colouring would further assist. Proposed changes in this regard are set out below.

Planning Approach

As has always been the case and was reiterated in SCAP's most recent letter, the applications must be assessed as if the development does not exist. The first question that must then be answered is whether any shelters/structures should be on the subject land at all.

In my submission, there are a number of aspects of the applications and the context of them that weigh heavily in favour of a positive response to that question. These include:

- The historical use of the land for camping (including the permanent siting of caravans) and that continued use right;
- The obvious improvements to the landscape since the public has been excluded and access controlled (both vehicle and pedestrian), particularly to vegetation;
- The value of the on-going management, environmental consciousness and protective stewardship of the land (as was also identified in Mr Kwong's letter), which help to better achieve the conservation outcomes in this area as sought by the Development Plan;
- The siting of structures in areas already cleared/devoid of vegetation;
- The short-term nature of stays;
- The need to protect the caravans from the worst of the weather and prevailing conditions;
- The need to provide some level of protection to occupants, particularly from prevailing winds;
- The need to consider the impact of vermin;
- The generally low-profile nature of the structures;
- The distance of setbacks from the main road; and
- Minimal landscape impact, with no coastal landscape impact when viewed from the sea or coastline.

It has also been proposed on a number of occasions that a suitable Land Management Agreement (LMA) could be crafted to formalise the environmental protection and care that already occurs and ensure this stewardship continues, both for the leaseholders and their successors. This willingness to enter into an LMA remains on the table and the concept is supported by all the applicants.

Although the approach is to assess the applications as if the structures did not exist, the observations on site and the way in which the environment has benefitted and the structures and their occupants' function cannot be ignored. It is of significant practical assistance in understanding the impacts and therefore of significant assistance in determining the planning merits.

For all of these reasons and reasons I have stated previously, I am of the view that the key planning question of whether any structures should be permitted on the subject land to allow for the short-term stay use as intended can be answered in the affirmative.

The next question to be answered, which will be particular to each application, is whether the structures as they exist or as they are proposed to be amended sufficiently accord with the 'basic shelter specification' having regard to the practicalities of the environment and the context in which the structures have come to be. A determination of those questions will be assisted by the details for each lot set out below.

Proposed Amendments

In order for the applications to be properly considered by SCAP on 8 November 2018, the information set out below represents the form of each of the applications to be considered and, where possible determined. Where noted the existing plans submitted have been marked-up in red and attached to easily identify the changes. Should SCAP require these plans to be re-submitted in a final (ie. non-marked-up) form prior to a final decision this can be easily accommodated.

Lot B

As per the advice in May, the proposed changes to structure on Lot B are as follows:

- Entirely remove the small storage area at the western end of the deck (two walls, door and one window)
- Remove the glass sliding door (reclad to become part of the wall)
- Install a roller door at the eastern end of the storage room

The following additional changes are proposed:

- Remove the two high-level windows on the southern side of the storage room.

An error in the alignment of the existing storage room has been identified on the plans, which has now been corrected.

A marked-up set of the plans originally lodged with the Lot B application area attached, with the changes clearly marked in red.

Lot C

As per the May 2018 advice, there are some maintenance issues with the roof, which is flat, that need to be attended to and the applicant acknowledges this.

It is still proposed to remove the eastern wall of the solid annex to allow this structure to be more open in nature, less noticeable from the main road (although it is already some distance away) but still allow for some weather protection of the caravan in particular.

It is no longer proposed to construct a new storage area inside the annex footprint, but it is proposed that the small brown-coloured room adjacent the wall to be removed be painted a more neutral colour to further assist in minimising visual impact.

A set of marked-up plans are attached showing these details.

Lot D

As per the May 2018 advice, the structure on Lot D – one of the most basic – seems to comply with the 'basic shelter requirement' sought by SCAP.

To that end, no amendments are proposed.

Lot E

The structure on Lot E was described in the May 2018 advice of capable of approval with no real modifications necessary.

However, upon considering the matter further, the leaseholder is now proposing the following:

- Painting the two sides of the shelter enclosed with marine ply, which will assist in reducing the visual impact and make those additions more consistent with the rest of the structure's colouring;
- Removing the window on the southern elevation if deemed necessary; and
- Reducing the footprint of the enclosed storage area if deemed necessary.

A marked-up plan is attached to assist in understanding the location and extent of the proposed works.

Lot F
As per the May 2018 advice, the structure on Lot F has a roof of suitable pitch and colour (based on DPTI advice).

Whilst the applicant believes the gable ends should be permitted to stay to assist with weather protection, he is agreeable to painting them another colour if SCAP so desires. Notwithstanding that, I am of the view the current colour and finish and tidy and appropriate.

No other amendments are proposed.

Lot G (1)
The simple form, colour and finish of structure 1 on Lot G seems to be an appropriate outcome in this location and also hides the caravan from the main road (which would be much more visible if exposed).

To that end, no amendments are proposed to the structure.

Lot G (2)
As per the advice in May, it is still the intent to remove the entrance way 'arch' on the southern elevation (refer attached marked-up plans).

It is also proposed to paint the *entire* structure a more appropriate colour (i.e. not wood stained). It is suggested the colouring of structure 1 on Lot G would be suitable.

It is also proposed to remove the doorway into the storage room to make a permanent opening, while also widening it. The intended change is shown on the marked-up photo attached.

Lot H
The structure on Lot H is open-sided and the numerous roll-up blinds on the structure have been an attempt to provide some weather protection. This has had mixed success with strong winds often damaging blinds and in one instance a blind and its mountings were dislodged and impaled in the caravan.

The open structure also allows the long, white sides of the caravan (which face the main road) to be easily seen.

It is proposed to screen the western and southern elevations of the shelter in a similar way to the structure 1 on Lot G (i.e. slatted and painted, not fully enclosed). This would not only provide screening of the caravans but allow for the removal of the fixed sliding door and window as indicated by Mr Asahan's advice.

The proposed changes are shown on the set of marked-up plans attached.

Lot J

As per the May 2018 advice, no amendments are proposed at this lot. However, the freestanding deck adjacent the structure identified by DPTI can be removed if required.

Lot K

It has become obvious over time that the structure on Lot K is the most problematic of the ten applications due to its prominence by way of its built form and location next to the main road.

I am instructed this application is to be placed on hold forthwith and not considered by SCAP at the upcoming meeting, in either its original form or with the amendments proposed in the 10 May 2018 letter.

The leaseholders of Lot K, in discussion and cooperation with all other leaseholders, are considering relocating the lease area to an existing cleared location to the north-east (approximately 170 metres from Lot K and 80 metres from Lot J). The alternate location is also around three times further set back from the main road as the current location (120 metres compared with 40 metres - a similar distance back from the main road to most of the other structures) and is set down in the landscape. The Google Earth extract below shows some of these details.

The intent is that a new, lower-profile and simpler structure be proposed at the new location to take advantage of the natural clearing, topography and distance from the road. This would be the subject of new development application and would involve the demolition and removal of the existing structure on Lot K and site restoration.

All of these matters will take some time to arrange in a form to enable a fresh development application to be lodged for consideration by SCAP and as such the current application should not be considered further at this time.

Validity of Leases
I note your advice that this issue will not be pursued further by SCAP.

I trust the above information and the relevant attachments are adequate to allow this matter to be moved on with the potential for up to nine of the applications determined on 8 November.

I will be in attendance at the meeting to provide any further information or clarification required. I await your advice regarding the precise time I am required to attend.

In the meantime, please don't hesitate to contact me if you require further information.

Yours sincerely

MARK BAADE
B.Planning (Hons)
M: 0417 088 000
markb@skplanning.com.au

Attached:
Marked-up plans for Lots B, C, E, G(2) and H
Marked-up photo for Lot G(2)

#13046902

30 August 2018

State Commission
Assessment Panel

Level 5
50 Flinders Street
Adelaide SA 5000

GPO Box 1815
Adelaide SA 5001

08 7109 7061

Ian Edgar Smith
PO Box 810
PORT LINCOLN SA 5606

Dear Mr Smith

CACTUS BEACH – SHELTER STRUCTURES

The State Commission Assessment Panel (SCAP) has considered the correspondence forwarded by Mark Baade (on behalf of all lease holders) dated 10 May 2018. The Panel is disappointed that little effort seems to have been made to address the matter of the presence and extent of development in a location not intended for this type of development as set out in the Coastal Conservation Zone.

The issue of whether or not a building rules consent can be obtained for the existing or modified structures is of secondary importance, as the primary issue remains as to whether or not a planning consent for *any* structures, and structures specifically for private use, should be granted or refused in accordance with the Zone's provisions.

These policies place a premium on the natural coastal amenity, environmental values, landscape character and protection of flora and fauna (with any new development limited to those uses and activities of a more public or essential nature).

According to appropriate process, the SCAP will be required to consider your application as if the development does not exist. This means that each proposal will be assessed against the relevant objectives and principles of development control for the Coastal Conservation Zone.

The panel's continued concerns relate to the nature of the proposed use (essentially a private beach retreat in the form of a caravan shelter and improvements) and the potential intensification of such development in a location and environment where the Zone policy seeks to avoid such outcomes.

The specification previously outlined was a means by which the SCAP offered a potential pathway (without prejudice) to determine how a revised design response could be considered so as not to contravene the intent of the Zone's underlying provisions.

In order to resolve these matters, all current applications will be considered by SCAP at a meeting to be held on 8 November 2018. Any amendments to your current application should be lodged not later than 4 October 2018.

You will be invited to attend the meeting in Adelaide, with the agenda documentation and recommendations to be made available prior to the hearing date. If you wish to discuss this matter further, please contact Simon Neldner, A/Team Leader, Crown and Major Development, on (08) 7109 7058 or via email simon.neldner@sa.gov.au.

Kind Regards,

Simone Fogarty
PRESIDING MEMBER

Copy: Mark Baade – markb@skplanning.com.au

10 May 2018

S K Planning Pty Ltd
ABN 76 108 325 435

PO Box 138
Crafers SA 5152

m. 0417 088 000
f. 08 8339 1526
e. markb@skplanning.com.au

Mr Simon Neldner
Team Leader – Development Assessment
Development Division
Department of Planning, Transport and Infrastructure
GPO Box 1815
ADELAIDE SA 5001

Dear Simon

CACTUS BEACH/POINT SINCLAIR RETROSPECTIVE DEVELOPMENT APPLICATIONS

As you are aware, S K Planning acts for the applicants of ten (10) retrospective development applications at Q12 in DP55064 (Hundred of Kevin CT 5851/904) Cactus Beach, Point Sinclair.

I am in receipt of a copy of the letter I understand was sent to all applicants on 20 October 2017 by Chris Kwong, who I understand is no longer with the Department of Planning, Transport and Infrastructure ('the Department').

Since that time, I have attended several meetings involving you and received information prepared by the Department's Building and Compliance Officer Ekramul Ahasan, consisting of a table ('the comparison table') and some sketches, both of which I understand followed Mr Ahasan's visit to Cactus Beach in late 2016.

It has taken us some time to consider to all of that information and take other legal and expert advice, as well as consult a number of times with the applicants and take instruction. As a result of those investigations I am pleased to provide a response to the issues raised at various times by the Development Assessment Commission (DAC) and the State Commission Assessment Panel (SCAP) and propose what I hope will be a constructive way forward and enable this matter to be brought to a close.

To that end, I would like to thank you and the Department and the DAC/SCAP members for the patience and willingness shown to carefully work through the myriad issues, which should lead us to a sensible resolution.

Response to Letter (dated 20 October 2017)
The letter, which I understand was sent to all 10 applicants, is the first written advice I have seen from the Department which seeks to consolidate the key outstanding matters. This should allow for amendments to the applications to be made with a view to having them finalised and determined.

The applicants take no issue with the background set out in the letter (apart from the position SCAP takes on the validity of the leases, which is dealt with below). All of the applicants, who have a long involvement with the land and the area generally, seek only to ensure the environment is protected and

exist within it for short times during each year. All of the applicants have acted in good faith throughout this process and have been forthright with any information they have provided.

With respect to the section of the letter entitled 'Shelter Structures', the applicants would simply make the point that whilst some changes and alterations might be necessary to some of the existing structures, the function of the structures is simply to protect the on-site caravan and its occupants from the harsh conditions of the location – most particularly sun and wind. It is not their desire to turn the structures into dwellings, nor occupy them on a permanent basis. It is also their firm belief that the local environment, particularly the plight of native vegetation, has improved dramatically since the establishment of their structures in exclusive areas. From my on-site observations, the benefits to the environment are plain and are not at odds with the intent and aims of the *Coastal Conservation Zone.*

The 'Basic Shelter Specification' part of the letter is really the section that gets down to the 'nuts and bolts' of what might be acceptable and what might not be, but this is obviously not an exact science. However, in considering the various components of the ten existing structures and the most recent information to come to light from the Department (namely the documents prepared by Mr Ahasan), it is evident there are some differences in what is meant by the various components listed in the letter. I assume the comparison table and associated sketches have had at least some influence on the 'basic design parameters' contained in the letter.

To that end, the applicants have engaged a building rules expert to review the most recent information received from the Department and consider it in the context of the 20 October 2017 letter to the applicants. The details of the expert review into building rules issues is also set out below, but for the present purposes I note the following with respect to the 'basic design parameters':

- *'remain open-sided (with no enclosed rooms)'*
    - This is a somewhat ambiguous requirement, as most parts of most of the structures have areas that are open-sided on at least one side, but the sketches seem to show structures that are *entirely* open-sided (ie. open on all sides) in some instances. This is impractical in this location and screening and verandah-type areas are necessary.

- *'exhibit a low-roof form and pitch'*
    - There are no building code requirements for roof slope within the range of 5-35 degrees and all of the existing buildings comply. As such, the desire for a low-roof form and pitch are for planning purposes only and most structures, in my view, are sufficiently set down in the landscape and far enough away from the road and public areas that the roof pitches do not require any modification.

- *'Utilise natural materials, neutral colours and finishes'*
    - It seems to me from having visited the site and looked at the contents of the Department's comparison table, this parameter does not seem too problematic at all.

- *'Accommodate a single caravan which would be the principal habitable shelter for short-term recreational purposes'*
    - This already applies to all the applications except that on 'K', but as is the case with 'G' it would be possible for two shelters to be constructed on the same lease area. 'K' has simply decided to consolidate that requirement into one structure.

- *'For other improvements to be removed (such as rainwater tanks, solar panels etc)'*
    - This requirement is, with respect, nonsensical as there are no nearby supplies of potable water which is required for drinking and, if necessary fire-fighting and a modest amount of electricity is needed given there is no mains power. Further, there

are various exemptions contained in the Development Regulations for both rainwater tanks and solar panels that would render this requirement ineffective.

The shared vehicle access to each of the sites will continue.

Notwithstanding these comments, in the spirit of cooperation and bringing this matter to a sensible conclusion, my comments on each of the current structures is set out below, including how I believe each could be dealt with and have its application determined.

Validity of the Leases

With respect to validity of the existing leases, I understand you have written separately to Rino Zollo of Coates Lawyers on 7 November 2017 in respect of this matter. I am advised by Mr Zollo that he has taken senior Counsel's advice and responded to DPTI by letter dated 7 March 2018 setting out reasons as to why the leases are effective in law.

I'm not aware of any further correspondence between the Department and Mr Zollo on the matter and as such do not intend to discuss the matter further here. Any issue can in any event be overcome with the creation of new leases (upon Planning Consent) drawn subject to that consent, and therefore should not impact on the proper consideration and determination of the ten applications

Building Code Issues

As noted above we have also, fairly recently, been supplied with a comparison table and a set of sketches prepared by Mr Ahasan of the Department. I understand this information has been prepared as a result of Mr Ahasan's visit to Cactus Beach in 2016 and, it would seem, some discussion with the Commission.

Although there had been no formal advice previously following Mr Ahasan's site visit previously, the verbal advice I received seemed to indicate there were not (or were unlikely to be) any significant building rules issues at the site. I imagine if there had been the applicants would have been notified in writing much sooner. It is also my expectation that once planning consent has been granted, each structure would be able to meet the necessary building code requirements and subsequently have a building and development approval issued.

On my reading, the set of sketches appear to have been prepared after the table as an attempt to illustrate and visualise some of the changes that could be made to the existing structures to make them more acceptable and be more likely to be approved. I have assumed the sketches represent only one potential approach to a number of the structures and there does not seem to be any suggestion they are the final say. I have been advised that the structure shown on the cover page (Lot D), which is probably the simplest example on the land (and also owned by an applicant that lives quite close to the area and therefore does not spend extended amounts of time on the site, as opposed to some others who travel from interstate) is acceptable. The inference is all other structures are potentially problematic in one or more respects.

The comparison table did raise a number of issues that seemed to indicate the issues concerning building rules compliance and those matters affecting each of the application's ability to obtain a planning consent, may have crossed over and become somewhat confused. I say this having sought expert building rules advice on both Mr Ahasan's documents, who I understand is the Department's building and compliance officer and is not involved in determining the planning merits of the applications.

The advice, which was provided by Trento Fuller, revealed a number of general observations with respect to the Building Code being applied to the existing structures, including

- The caravans and associated shelters are not 'habitable' for purposes of the Building Code;
- Class 10a is an acceptable classification for areas that are not fully enclosed. This includes verandahs;
- Floor area is an irrelevant consideration and the 'acceptable' floor area set out in the comparison table is arbitrary in this respect;
- Enclosed spaces that are intended for (and used for) storage only do not impact the 10a classification;
- Enclosing the sub-floor is not a building code requirement for class 10a buildings, although it is recommended;
- Roof pitches above 5 degrees and up to 35 degrees are acceptable;
- Gable ends are not a building code issue;
- The existence of windows is not a building code issue in this location where they play no role in enabling the structure to be enclosed (such as at the end of a verandah);
- Reflectivity and colour of materials is not a building code issue; and
- Toilet/shower structures are class 10a.

This advice is important because it appears to allow outcomes that are at odds with the impression left by comparison table and sketches. It also goes to the heart of what is required by the Building Code, what is necessary for the proper functioning and use of the caravan shelters and what expectations the Commission might have when determining what constitutes an acceptable outcome in order to grant a planning consent.

Of particular concern is the suggested removal of walls (whether they entirely enclose a space or not) that would render the structures and their occupants very susceptible to the prevailing winds and harsh weather conditions, as can be clearly seen in the sketches. There is a suggestion in the comparison table that 'removable wall screens' on two sides would be acceptable, but this is neither practical nor materially different from a planning, building or visual perspective to having properly constructed walls in place (provided they do not entirely enclose the verandah/deck area).

The written advice received from Trento Fuller can be made available to the Department if needed.

Determining the Applications

Having regard for all the advice and information received from the Department, our own investigations, discussions with the applicants and the content of this letter (in particular the Building Code discussion above), it seems the most sensible approach from here is to list on a without prejudice basis the proposed changes to each of the applications in order for each to become acceptable and capable of being granted planning consent.

Once the proposed changes below have been agreed or otherwise, each affected application will be updated (where necessary) and submitted for final determination. I am of the view that a number of the applications can be determined immediately whilst others might require more discussion. I have highlighted those I believe can be determined immediately in the discussion below.

It is also the case that some of the simpler structures (such as on Lot D and Lot F) might require additional structures at a later date (such as a deck or one or two sides enclosed). Any such proposal might or might not require further approval but all applicants are proceeding on the basis that any future

applications will be considered at that time and any consents granted as a result of these applications are not necessarily 'the final word' and should not prejudice any future applications.

Lot B

Given this structure is the further from the public road and well set down in the landscape, there is no planning justification nor practical benefit in reducing the floor area by 4.22sqm or removing the gable ends. There is no building code requirement to enclose the underfloor.

It also appears from the comparison table that the roof material and colour is acceptable, as is the roof pitch.

In terms of the sketches provided, there is no planning reason (nor, given the location of this structure well away from the public road and public view) or building code reason to remove the enclosed (far) end of the verandah as shown on the north west view. However, the small storage room at the near end of the corresponding photo can be removed (provided a suitable alternative storage area is available – see discussion below). This outcome will leave an open verandah/deck in front of the caravan with two side walls, which is a similar outcome to some of the other lots.

In terms of the south west view (and given the proposed removal of the small storage room as set out above) it is necessary to make some changes to the existing enclosed room, which is used for secure storage of a vast array of equipment including a 11' dinghy, diving equipment (including tanks, regulators and wetsuits), surfing equipment (including over a dozen surfboards, windsurfers and paddleboards), back-up generator and numerous tools.

In order to maintain security of this area but remove the appearance of an enclosed living space outside the caravan, the applicant is prepared to clad with solid material the space containing the glass sliding door and replace it at the opposite end of the room with a roller door, which is more consistent with storage and provides more convenient access.

As such, with these changes (including the associated removal of the small storage room on the opposite side of the caravan) it can be confidently held this room is used for storage and any approval can be conditioned as such.

Lot C

It appears there are some existing roofing issues at this location and new roofing (in a less reflective colour) should be selected and installed. The applicant agrees this work needs to be carried out.

The sketch shows all of the existing walls between the caravan and the front of the verandah removed, but this is unnecessary and impractical, given some secure storage is needed.

Instead, it is proposed that the eastern wall be removed (leaving the northern and western walls intact for weather protection) and a new storage room be constructed adjoining the western wall. This would have the effect of opening this area up and removing the eastern solid wall, which is quite prominent on approach to the building.

This proposed arrangement would leave a deck/verandah area in front of the caravan with two side walls in a similar fashion to the other lots.

Lot D
No modifications required (consistent with the Department's comparison table).

I am of the view ***this application could be determined immediately*** but the owner may wish in the future to construct a deck or enclose one or two sides of the structure for weather protection, which might require further approval. However, this would not be inconsistent with a basic shelter requirement for the location and any determination now should not prejudice any future application.

Lot E
The location of this structure well away from the public road and set low in the landscape would suggest that no modification to the roof pitch is required. The removal of the gable ends is not a building code requirement and have no material impact when viewed from the public road and as such should be permitted to remain.

The enclosed room is used for storage only and as such remains class 10a. There is no building code requirement to remove the window/s.

No other modifications are necessary.

I am of the view ***this application could be determined immediately*** with a condition the enclosed room only be used for storage purposes.

Lot F
The removal of the gable ends is not a building code requirement and have no material impact when viewed from the public road and as such should be permitted to remain, particularly given this roof is already a low pitch and (according to the comparison table) of acceptable colour and finish.

No other modifications are necessary.

I am of the view ***this application could be determined immediately***.

Lot G (2 structures)
Lot G is the only lot which accommodates two structures for two occupants.

The suggestion in the comparison table that where a lot is shared should diminish the area available for coverage of structures to 130 sqm (compared with 100 sqm for lots where there is only one occupant) is entirely discretionary and in my view, given the large size of the lots, is not necessary.

As such, there is no planning or building requirement to reduce the footprints of either structure, the impacts of which would be negligible and imperceptible from the public road.

Lot G (structure 1)
The three enclosed sides (two completely, one in part) simply provide weather protection to the caravan and deck area. As the area is not completely enclosed the structure remains a class 10a building.

There do not appear to be any other issues associated with this existing structure and I am of the view ***this application could be determined immediately.***

Lot G (structure 2)
To reduce the sense of enclosure, it is proposed to remove the 'entrance way' on the south-western face, which would then present two-thirds of that frontage as open, which is consistent with the open nature of the north-eastern face.

The two smaller 'weathered' sections of the building are proposed to be painted/stained to match the rest of the building, which will assist in providing a more consistent appearance.

The enclosed room will only be able to be used for storage purposes and any approval can be conditioned as such. The window and door does not need to be removed but the size of the room could be reduced by approximately one-third if deemed necessary.

Lot H
The location of this structure well away from the public road and set low in the landscape would suggest that no modification to the roof pitch is required. The removal of the gable ends is not a building code requirement, has no material impact when viewed from the public road and as such should be permitted to remain.

As can be seen from the various photos taken on site, most of the existing room does not have solid sides, with roll-up blinds used to provide weather protection. It is also clear from photos the 'back' of the room is open to the area around the caravan, including into the gable space. As such, it is not an enclosed room.

To that end, the glass sliding door simply divides the deck but does not contribute to its enclosure and therefore does not need to be removed.

Lot J
The location of this structure well away from the public road would suggest that no modification to the roof pitch is required. The removal of the gable ends is not a building code requirement, has no material impact when viewed from the public road and as such should be permitted to remain.

The deck area and caravan are only enclosed on two sides for weather protection. There is no building code requirement to have these removed and the structure remains 10a.

As such, no modifications are required to this shelter and I am of the view ***this application could be determined immediately.***

Lot K
This lot K accommodates two leaseholders with two caravans located under a common structure. This structure is the most recently constructed of the ten applications.

The existing roof colour is 'deep grey' is considered an appropriate colour. The pitch of the roof is not inconsistent with that on other lots or the other historical structures on both this part of the property or in the main caravan park area.

The existing room is already only used for storage purposes but the applicants are prepared to reduce its size and remove the glass sliding door. Any approval should designate this area as being for storage only.

It is also proposed to extend the wooden palings, which currently screen the caravan nearest the public road, along the remainder of the building length. This would preserve light into the windows but completely obscure them from view. It would also present a more consistent and appropriate appearance to the public road.

The separate ablutions block (unfinished) is in itself a class 10a building and for the purposes of appropriate treatment of effluent it should be permitted to remain.

Land Management Agreement

As indicated previously, the applicants are open to the use of a Land Management Agreement (LMA) consistent with the greatly improved past and existing management of the local environment, which would bring greater certainty to the outcomes agreed and the future expectations.

At this time, it is premature to propose the terms or the matters to be dealt with in an LMA and we await further advice from SCAP and the Department in that regard.

I trust the above information goes a significant way to respond to the Department's letter to the applicants in October last year and the discussions that have occurred since.

I expect the next step is for this information to be sent back to SCAP for further consideration, which might result in the determination of several of the simpler applications.

I am available to attend either of the scheduled SCAP meetings in June to provide further assistance and enable me to communicate any potentially acceptable alternatives to the applicants.

I await your further advice. Please don't hesitate to contact me if you require further information.

Yours sincerely

MARK BAADE
B.Planning (Hons)
M: 0417 088 000
markb@skplanning.com.au

Government of South Australia
Department of Planning, Transport and Infrastructure

In reply please quote
Enquiries to Simon Neldner
Telephone (08) 7109 7058

DEVELOPMENT DIVISION

Level 5
50 Flinders Street
Adelaide SA 5000

GPO Box 1815
Adelaide SA 5001

Telephone: 08 7109 7061

www.dpti.sa.gov.au

Ian Edgar Smith
PO Box 810
PORT LINCOLN SA 5606

WITHOUT PREJUDICE

Dear Mr Smith

CACTUS BEACH – SHELTER STRUCTURES & LEASES

The Department of Planning, Transport and Infrastructure writes to you on behalf of the State Commission Assessment Panel (formerly the Development Assessment Commission) in relation to development undertaken at Cactus Beach without development approval.

To ensure a fair and consistent approach is adopted in the assessment of each application, the SCAP has determined that only an agreement to implement a basic shelter specification can be supported, which reflects the environmental sensitivity and longer-term conservation values of its coastal location.

Set out below, among other matters, is the SCAP's proposed design parameters as to what may constitute a basic shelter specification. Please consider these matters carefully and confirm in writing if they are agreeable on or before 19 January 2018.

Background

Your application is one of ten similar applications within the Coastal Conservation Zone which seeks to restrict most forms of development. Careful consideration has been given to your development application for the establishment of a caravan shelter and associated improvements.

The Coastal Conservation Zone anticipates development that enhances and conserves the natural features of the coast and seeks structures that borrow from, and complement, the natural landscape in form and scale, and in building materials, colours, textures and tones. This is to ensure that its unique coastal

features remain dominant to any introduced elements, and its landscape qualities are similarly protected.

The approach of the SCAP to the assessment of each application has been informed both by the types of development that is envisaged within the Coastal Conservation Zone, and by its understanding of the previous use of the land for informal bush camping.

From its previous discussions with applicants, it is the understanding of the SCAP that these development objectives are broadly reflected in the environmental consciousness and protective stewardship sought by each applicant (and by the current landowner) to ensure that Cactus Beach retains the special landscape qualities which attract both new and return visitors.

These qualities broadly comprise its relative remoteness, natural wildness and lack of commercialisation, which have attracted visitors to its world-renowned surf breaks since the 1950s. This protective philosophy has been maintained, through the efforts of local landowners and campers to promote and sustain environmental improvements that have regulated new development on the land since the 1980s.

The SCAP has also reviewed the status of how each lease was created, and whether there remains an outstanding requirement for a valid authorisation to be obtained under the *Development Act 1993.* Based on the documentation submitted to the Lands Titles Office, no development approval was obtained.

Shelter Structures

Since its inspection of the existing shelter structures and meeting with applicants at Ceduna in October 2015, the SCAP has undertaken a building inspection of each shelter structure, and discussed a range of matters with its staff and advisors. The latest site visit was undertaken in October 2017.

This has informed the position of the SCAP in respect to the relative acceptability of each structure and the validity of the leases (which provide a form of separate tenure for each development site for extended time-periods). The validity of the leases is discussed further below.

The SCAP is highly familiar with a range of situations where incremental development changes have led to outcomes that were not intended by the original occupants. It is of concern that such a situation is developing at Cactus Beach and that future occupiers could seek to continue the process of an incremental intensification of development on the land.

The SCAP now seeks to ensure that each shelter structure and associated infrastructure is consistent with the broad development objectives outlined in the Development Plan. In practice, this means that each development application will need to conform to a basic design specification, and in some cases modifications will be required to ‘pare back’ previous improvements. In particular structural elements which exhibit dwelling like qualities or where improvements have gradually been installed to extend the occupation and use of the land will need to be modified or removed if development authorisation is to be granted.

Basic Shelter Specification

The SCAP has accordingly determined the following parameters to assist in its formal consideration of whether a development authorisation ought to be granted. Each shelter structure will be considered against the following basic design parameters:

- remain open-sided (with no enclosed rooms)
- exhibit a low-roof form and pitch
- utilise natural materials, neutral colours and finishes
- accommodate a single caravan which would be the principal habitable shelter for short-term recreational purposes; and
- for other improvements to be removed (such as rainwater tanks, solar panels etc.).

Shared vehicle access to each site – currently available from an internal access road - will need to be maintained.

In forming these design parameters, the SCAP has sought to strike a balance between recognising the historical use of the land for informal bush camping purposes and giving effect to the key planning objectives that seek to preserve a sensitive coastal environment where new development is limited.

Accordingly, you should give careful consideration to the current configuration of your shelter, the extent of the necessary modifications that might be required to meet the basic design specification outlined above and the nature, scope and timing of any necessary modifications.

Validity of the Leases

It is necessary and appropriate to inform you of a related issue that has come to the attention of SCAP in the course of assessing these applications. Following a review of how the leases were granted in 2007, it is apparent that the supporting lease plan and documents (Form L1) lodged with the Lands Titles Office, were incorrectly certified as not requiring a development authorisation under s.32 of the *Development Act 1993*.

On this basis, the leases did not secure the required development authorisation for a division of land under Section 32 of the *Development Act 1993* (being a lease over a portion of an allotment for a period greater than six years).

Consequently, the SCAP has been informed that the leases are unlawful as they have not received the required development approval. This is of concern to the SCAP, which seeks to ensure the orderly and economic development of land, as the extended lease terms granted would not ordinarily have been supported without adequate and detailed justification.

Whilst the SCAP appreciates that various financial and other decisions have been made in respect to the issuing of each lease, it is also obliged to consider what action might be required in order to address this issue. Whilst the SCAP

would prefer to seek a resolution that is agreeable to all parties, in respect to the validity of the leases, the SCAP reserves all its rights in this regard.

In any event, it is recommended that any further dealing or transfer of your interest in a lease be placed on hold, pending the status of the leases being determined. Alternatively, this issue could be resolved through a re-negotiation of a lease (to a shorter term) or through the submission of a retrospective development application.

Further Processing of Development Applications

It is noted that each leaseholder is currently being represented by Mr Baade, an Adelaide based planning consultant.

To progress consideration of these matters it is proposed that the following intermediate actions be taken:

1. Adoption of a basic shelter design specification.
2. Amendment of your application in accordance with the specification.
3. Ensure any required modifications comply with the Building Code.

As indicated above, the design parameters specified by the SCAP (as detailed earlier in this letter) will form the reference point for consideration of any agreed resolution. Additional planning matters that cannot be dealt with through individual applications but would apply more generally to the land, may need to be resolved through a Land Management Agreement.

Planning staff have already discussed these matters with Mr Baade in order to initiate discussions to this end. It is envisaged that this matter will be reconsidered by SCAP in late February 2018. You will be invited to attend this meeting, with any written comments welcomed beforehand.

This proposal is made on a without prejudice basis, save as to costs.

If you have any enquiries in relation to this matter, please do not hesitate to contact Simon Neldner, Team Leader - Development Assessment of this office on (08) 7109 7058 or email simon.neldner@sa.gov.au

Yours faithfully

Chris Kwong
MANAGER, DEVELOPMENT POLICY AND ASSESSMENT
DEVELOPMENT DIVISION (DPTI)

20 October 2017

10 December 2015

S K Planning Pty Ltd
ABN 76 108 325 435

PO Box 138
Crafers SA 5152

m. 0417 088 000
f. 08 8339 1526
e. markb@skplanning.com.au

Mr Mark Adcock
Principal Planner
Development Division
Department of Planning, Transport and Infrastructure
GPO Box 1815
ADELAIDE SA 5001

Dear Mark

CACTUS BEACH/POINT SINCLAIR RETROSPECTIVE DEVELOPMENT APPLICATIONS

As you are aware, S K Planning acts for the applicants of ten (10) retrospective development applications at Q12 in DP55064 (Hundred of Kevin CT 5851/904) Cactus Beach, Point Sinclair.

Following the site inspection with members and staff of the Development Assessment Commission (DAC) on 15 October 2015 and the subsequent informal meeting at Ceduna, my clients have had some time to consider the various matters further as well as seek further advice from both myself and their legal counsel Michael Coates.

My understanding of the current status of the applications is that DAC requires more time to further consider the options open to it and is likely to further engage with the applicants before any final determination is reached. Having spoken with Simon Neldner (in your absence) a couple of weeks ago, he indicated that DAC has set aside an hour for further consideration of the matter at its 17 December 2015 meeting and I am hopeful the contents of this letter plus my availability to attend that meeting will further assist the Commission in that regard.

As we see it there are three key issues:

- the structures and, on an individual basis, their appropriateness in terms of their current extent, design and function;
- on-going land management; and
- tenure and in particular what happens when the current leases expire.

We have considered each of these issues with some details below and present them to DAC as a basis for further discussion. It is important to note that any discussion that we might have or conclusions we might reach will need to be put back to my clients for further consideration.

The Structures

As DAC is aware, the existing structures, which are the subject of the 10 separate applications currently before the Commission vary significantly in terms of their form, design and extent but all have essentially the same function - to provide protection from the harsh elements that are common to the area, in particular shade from the sun and shielding from the wind. This protection is generally provided to a caravan as well as the occupants of the site.

Although only planning consent has so far been applied for, in the event of an approval a building rules assessment and application will also become necessary. It might be the case that much of the existing built form complies with the necessary codes and regulations, but it is also possible that particular elements of the structures do not and either require some retrofitting or removal.

As such, it seems to me the most sensible approach would be for some further discussion building on the comments made during the informal hearing in Ceduna which were essentially *at what point do the existing structures cease becoming shelters and become shacks.* Once there is some guidance on what DAC would be prepared to consider giving approval for, a discussion can be held with each applicant to determine the extent of any changes (if any) which might need to be made to allow a favourable consideration of each application.

It would also be prudent at that point to have a building inspection completed to ensure that anything offered back to DAC for consideration is able to meet the necessary building codes and regulations (or is able to be readily be modified in order to do so).

Accordingly, we would welcome such a discussion to allow for the applications to be put to DAC in a final form for determination.

On-Going Land Management

It was clearly evident during the site visit the significant extent of land management that has occurred on both the subject land, in and around the public camping ground and along the coastal reserve (Crown land, but cared for by Ron Gates). This land management includes fencing, designated points to cross the dunes, defined pathways and areas for vehicle access and parking. This combined with the fixed positions of the existing structures has allowed for a great deal of regeneration and consolidation of the delicate coastal vegetation, which is easily disturbed or destroyed if care is not taken. As shown from the historical aerial photos included with the application the regeneration has been significant since the subject allotment was set aside for the 'long term' visitors and areas and access points defined.

It is critical that this level of care continues and it is the desire for both the landowner, Ron Gates, and all of the applicants for this to occur.

As such, a Land Management Agreement (LMA) has been discussed with the owner and applicants along the lines of formalising all of the activities and work that occurs now to ensure the environmental benefits are protected in the long term. Some work has already been completed on drafting such an agreement which is currently being circulated amongst the applicants.

The LMA could also include provisions to prevent residential dwellings (or other structures) being constructed on the allotment and/or individual lease areas or the land being used for other purposes with the appropriate land use approvals (for which DAC would likely be the relevant authority).

My understanding is such an agreement would need to be struck with the Minister and if DAC is of a mind that such an LMA would be advantageous it would be necessary to work through that LMA to the satisfaction of all the parties before DAC could be confident that an LMA would form part of any approval arrangement.

On-going and tenure in the long-term

At the hearing in Ceduna it was effectively acknowledged that the environmental works and care shown by the applicants was commendable, but some concern was raised about whether this could be

sustained in the long-term particularly when lessees die or the lease term expires (at which time the area or areas could revert back to uncontrolled/uncontrollable public camping).

This is certainly a real issue with those circumstances likely to present themselves in the next 20 years or so.

Having thought carefully about this, it seems to us that the best way to give the greatest amount of certainty in perpetuity (in the event structures are to be permitted on the lease areas) would be to undertake a land division and either create separate Torrens titles for each of the lease areas (subject to a satisfactory LMA) or a community title arrangement with a suitable scheme to encompass similar terms as an LMA would contain (assuming such a scheme could be constructed).

Although such an application would be non-complying and would be opposed by the Coast Protection Board, in reality it would change nothing on the ground today but allow the controls set down by the LMA to continue irrespective of who owns the allotment. The LMA would give certainty to the current and future owner of the allotment as to the extent of what is permitted and places an obligation on the owner to ensure the environmental enhancements continue.

Such a proposal also needs further discussion as there is obviously an issue around the order in which applications need to be processed.

Penfold v District Council of Robe [2015] SAERDC 31

A recent ERD Court case has been brought to my attention which deals with the 'non-permanent' occupation of a building in a rural area. Although the facts of the case are quite different, I simply raise the existence of the case because it may be useful for DAC to note conditions 2, 3 and 4 of the approval, which the Court saw fit to grant and clearly sees as acceptable conditions in such circumstances.

I trust the information above assists DAC in further considering these complex matters and we welcome further discussion on them in order to progress and finalise the current applications.

I am available to attend the DAC meeting on 17 December 2015 if that is of assistance to the Commission.

Please don't hesitate to contact me if you require further information.

Yours sincerely

MARK BAADE
B.Planning (Hons)
M: 0417 088 000
markb@skplanning.com.au

10 August 2015

Mr Mark Adcock
Principal Planner
Development Division
Department of Planning, Transport and Infrastructure
GPO Box 1815
ADELAIDE SA 5001

S K Planning Pty Ltd
ABN 76 108 325 435

PO Box 138
Crafers SA 5152

m. 0417 088 000
f. 08 8339 1526
e. markb@skplanning.com.au

Dear Mark

CACTUS BEACH/POINT SINCLAIR RETROSPECTIVE DEVELOPMENT APPLICATIONS

I advise S K Planning acts for the following applicants with respect to ten (10) retrospective development applications at Q12 in DP55064 (Hundred of Kevin CT 5851/904) Cactus Beach, Point Sinclair (based on the lot identifiers shown in *Figure 1* below):

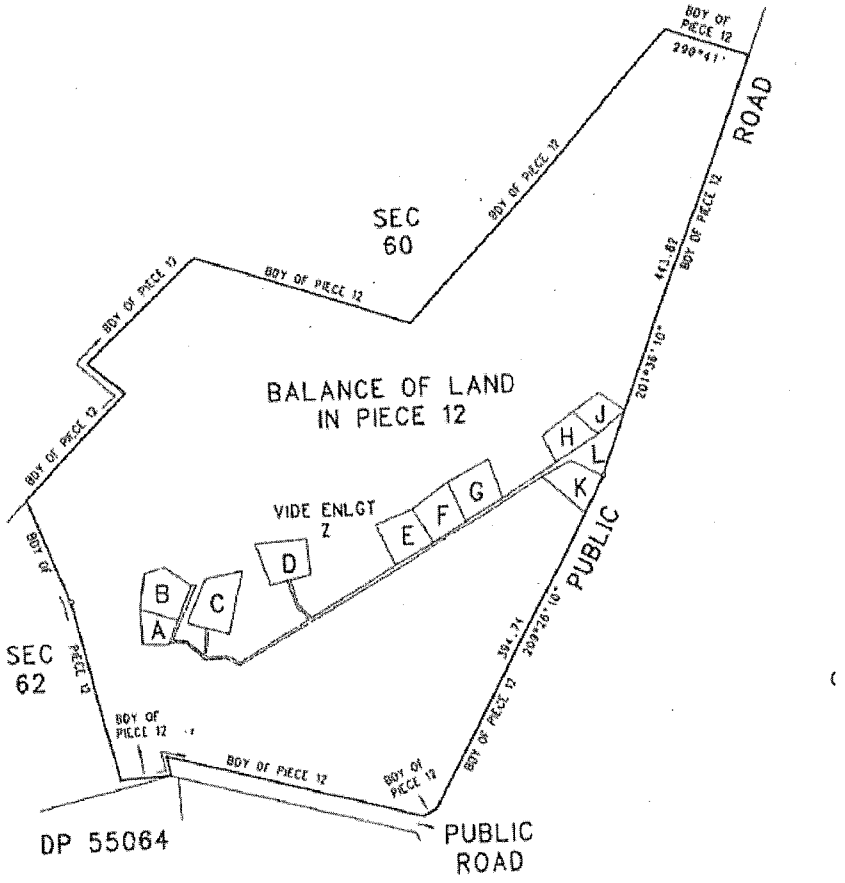


Figure 1 - Lot Identifiers on Piece 12

Lot ID	Name	DA Number
B	Peter Reeves	010/U097/12
C	Scott and Anne Cane	010/U060/12
D	Terry Hussey	010/U075/12
E	Offord	010/U022/14
F	Ian Edgar Smith	010/U025/13
G	Scott Lombe	010/U055/13
G	Robert Richardson	010/U079/12
H	Neil J McArthur	010/U033/13
J	Western Medical Devices	010/U034/13
K	Ken McCarthy	010/U001/13

All of the applications relate to structures built on land set up as long-term leases. The structures are, in the main, shelters for caravans, associated decking and other ancillary uses, although some of the structures include storage rooms or similar. There are no structures on Lots A or L.

The majority of the structures have been in place for some years and as I understand it, they were brought to the attention of the Development Assessment Commission (DAC) as being possibly unlawful structures.

The applications were all lodged in between 2012 and 2014, all required referral to the Coast Protection Board (CPB) and all (with the exception of DA 010/U022/14) were due to be presented to the DAC meeting on 27 March 2014. All applications were recommended for refusal, which was also the strong preference of the CPB.

At the request of the applicants, the applications were not considered at that time, with a view to additional information being provided to allow DAC to make a more informed determination.

A site visit, which both you and I attended, occurred on 25 November 2014 to inspect the site. A representative from CPB also attended, as did Mark Adcock of DAC and Michael Coates (lawyer for the applicants).

All of the land over which the applications are made is located in the *Coastal Conservation Zone* in part of the State which is unincorporated - ie. 'out of Council areas'. The relevant Development Plan is that entitled 'Land Not Within a Council Area Eyre, Far North, Riverland and Whyalla' with a consolidation date of 18 October 2012.

I also visited the site on 7 April 2014, during which I inspected the land, the structures and spoke to a number of the applicants. I also spoke with Ron Gates, who is the owner of the subject land (piece 12) and the adjoining land (piece 13), with both pieces used over the period since approximately 1970 as a camping ground.

It was very apparent to me by the end of my visit in April last year that these were a much more complex set of retrospective development applications than they appeared on their face. There is a rich, complex and highly relevant history associated with this land which, once understood, weighs heavily on the way in which the applications should be considered and treated.

To that end, this letter, as well as providing a planning analysis of the applications pursuant to the relevant Development Plan policy, seeks to fully explain the background and history of how the lots in question came into being, how the applicants came to be on the site, why the structures are necessary, how they are used and most importantly how the impact of the lease areas and the structures result in a

much better outcome for the land and the coastal environment than would be the case if they were not in place.

Also included is a review of the advice from the Coast Protection Board, which I believe has erred in both its assessment and conclusions on all of the applications and has failed to properly apply its own policy.

Subject Land

The land in question is located at Point Sinclair and consists of a number of pieces of land (10, 11, 12, 13 and 14 - shown below in *Figure 2*) between Point Sinclair Road and the coast at Cactus Beach, about 18 kilometres south of Penong. The particular piece of interest to this application is piece 12.

Pieces 12 and 13 have been the site of the Point Sinclair Camping Ground since approximately 1970 with toilets and other facilities built on both pieces in the early 1970s. The camping ground is privately operated with limited facilities. The operator of the camping ground, who is also the owner of the subject land, including piece 12, is Ron Gates. He resides in an existing dwelling to the south-west of the camping ground.

Access to and from the subject land is from Point Sinclair Road, which is unsealed and ends a short distance further to the south at the Point Sinclair Jetty. Access to piece 12 and all of the lease sites in question is from a single access point off Point Sinclair Road (between sites J and K). General public access is no longer permitted through this area.

There is no mains power to the area nor are any other public utilities available.

The subject land is typical of this part of South Australia - a windswept and at times inhospitable landscape with large sand dunes, scattered, low-level vegetation and relentless pounding from the Southern Ocean. The temperature ranges from very hot in the summer and very cold in the winter but the area is a stunning landscape nonetheless.

The real attraction of Cactus Beach is the surf and the undisputed brilliance of the location as one of the best surf beaches in the world due to its unique orientation to the prevailing winds. A visit to the site with someone passionate about surfing, as I have done, gives a deep understanding of the true nature of this location and the spiritual connection some people have to the area - which includes all of the applicants of the subject applications - that keeps them coming back year after year.

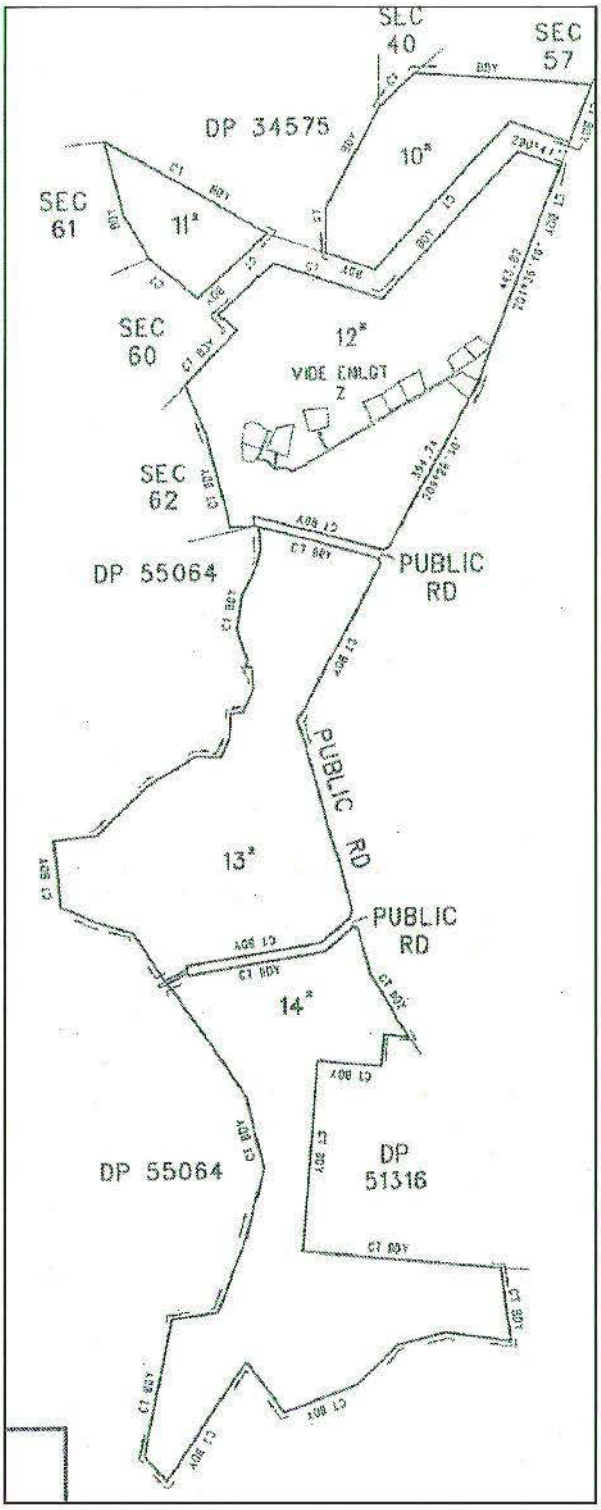


Figure 2 - The Subject Land
(piece 12 is the site of the applications)

History of the Land
The land was previously held as a crown lease but was freeholded in 2001 to the current landowner.

Prior to it being used as a camping ground, grazing occurred on the land which was overgrazed with sheep, resulting in the devegetation of much of the land. The establishment of the surf camp put an end to this, but as a campground the site was less segregated and controlled than it is today, with camping going relatively unchecked, including on piece 12. This resulted in destruction of vegetation for firewood, clearance of areas for camping and uncontrolled access to the beach across the dunes. This behaviour also had a devastating effect on the area and erosion started to take hold.

The current owner recognised this could not continue and decided to limit the area for temporary visitors to the camping ground to the northern part of piece 13 and allocate piece 12 for those with long term history (ie. those with regular visitation for extended periods each year, which are in this case the applicants). This included defining camping and amenities areas, access paths (throughout the site and to and from the beach), fencing off areas and replanting efforts which resulted in the re-establishment of vegetation and the halting of erosion.

Those who had been coming back to Cactus Beach for decades - ie. the applicants - talked about the merits of having more permanent structures on the land which they could use during their temporary visits throughout the year away from the camping ground.

In an arrangement with Mr Gates a series of long-term leases on piece 12 were entered into with the applicants. These allowed each of the parties to have a defined area on which to stay when visiting and resulted in financial assistance for Mr Gates, some of which was put back into improvements at the camping ground.

It was not intended that dwellings be built on the lease areas and it was not intended that the leaseholders would reside permanently on the sites, nor that the sites be occupied by anyone else apart from the leaseholder and their family. These intentions are evident following inspection of the lease areas, which accommodate mostly simple structures providing shelter for caravans, outdoor areas (such as decking), storage and toilet facilities. It is clear from any inspection of the site that none of the applications are for dwellings that could be resided in on a permanent basis.

Aerial Photo Evidence
The locations selected for the permanent structures, as well as vehicle access and parking, were those already devoid (or at least denuded) of vegetation, which is clearly evidenced by historical aerial photos of the area which have been obtained from the Department of Water and Natural Resources (DEWNR), which are contained in *Appendix A*. I note DEWNR is the State Government Department within which the Coast Protection Branch is contained.

The five aerial photos obtained from DEWNR were taken between 1968 and 2005 and, in general terms, shows the following:

- the areas of interest on piece 12 did not appear to be affected significantly by camping in the 1968 photo, however by 1976 there was a considerable amount of degradation evident with tracks and cleared areas throughout.

- By the time of the 1992 photo, the clearance had worsened in some areas (particularly those closer to Point Sinclair Road) and recovered somewhat in others.

- In the 1999 photo caravans can clearly be seen throughout the area and it appears further degradation of the area had slowed but the areas already affected had not been permitted to recover.

- In the 2005 photo, where five of the ten structures which now exist had already been built it is clearly evident that those structures were built in areas already affected by clearance of vegetation and some of the areas had started recovering, particularly along the interface with the dune.

An extract from each of the five photos showing the area of most interest is shown in *Appendix A*, along with the entire photo supplied by DEWNR. A digital copy of each of the photos will also be supplied to DAC to enable it to interrogate the photos independently.

In short, the aerial photos demonstrate the use of the land for camping almost as far back as 1968 (and certainly well underway by 1976), which is consistent with the recollections of both the applicants and the owner of the land. Further, the aerial photos also demonstrate there has no additional material damage to the coastal environment in siting the existing structures as the areas already cleared for access tracks and camping were well established by the mid-seventies and degraded further during the eighties and nineties.

Finally, although it is not possible to be entirely precise with the exact size of the areas affected by clearance from the aerial photos, it is evident from the 2005 photo that further degradation has ceased and there is at least an indication that the situation has been improved, with some vegetation recovery evident. However, on visiting the various sites on the land this recovery is clearly well underway and consistent with the expectations raised by the aerial photos.

All of this information is extremely important evidence as it goes to the heart of the not only the unfair criticism and assessment from the Coast Protection Board but weigh heavily on the way in which a proper assessment against the Development Plan provisions should occur. Specifically, whilst it would be possible to approach the assessment, as I contend the Coast Protection Board has, assuming that degradation has occurred in order to establish the structures in question and the access to them and they are therefore in conflict with the Development Plan and coastal provisions generally, a more realistic and, frankly, proper approach would be to compare the 'before' and 'after' situation (including by way of a site visit) and apply the relevant provisions on that basis.

It is also highly relevant that thought must be given to the activities that would necessarily flow if the application was refused (and upheld by the Court if appealed). Removal of the structures would most likely result in degradation on the vegetation in the area and the ability to actively care for vegetation and maintain paths and controlled access would fall away. Further, given the continuing use of the area since the 1970s for camping, the area could simply become part of the main camping ground area again and temporary visitors once more permitted to camp on piece 12, which would undoubtedly result in much poorer environmental outcomes and be directly in conflict with the desires of the Development Plan. However, it would require no further approval and there would be limited if any ability for effective control by the State given the remoteness of the location.

Summary of the Applications

Although the applications are all submitted separately, at least in some respects they need to be considered as one, as they have all come into being and arrived at the point for ostensibly the same reasons. I note it was intention of DAC to use this approach in March 2014 when the applications were first due for determination.

As described above, the lease areas were created for a select and specific group of people (the applicants) who had been visiting and returning to Cactus Beach for many years as part of the overall commercial use of pieces 12 and 13 as a camping ground. The lease areas were created to give the applicants a place to return to when visiting (which would not be rented out or occupied by others) but permanent occupation of the site and the construction of dwellings was not envisaged nor permitted by the landowner.

Apart from area A (given area L is the area used for vehicular access), a structure exists on each of the areas marked B to K inclusive, with two structures on the area marked G.

All of the main structures are essentially simple structures providing both shelter for a caravan (parked permanently on the site) and associated outdoor areas. As the climate in the area can be extreme during the height of summer and winter in particular, shelter from the elements and prevailing winds is highly desirable.

There are also subordinate structures associated with toilets and the like, with some dating back to the early 1970s.

All the sites have designated areas for access and parking, as well as defined tracks for walking to and from the sites, between the sites and to and from the beach and dune area. Entry to the area (on Lot L adjacent lot K) is clearly set up such that public access is not permitted or encouraged and as such vehicular access and parking is strictly controlled.

All of the locations in question were selected to take advantage of areas already denuded of vegetation (from decades of public camping on the land) and as a result of the confining of the public campground to piece 13, it has been possible to care for the areas surrounding the lease sites on piece 12 and this nurturing has resulted in the significant re-establishment and regrowth of vegetation with commensurate improvements in biodiversity.

Most of the lease sites are well set back from Point Sinclair Road, with site K the closest and as a result the structure on that lot is the most prominent.

The selection of photos below shows some of key aspects of the structures and their impacts on the local environment.

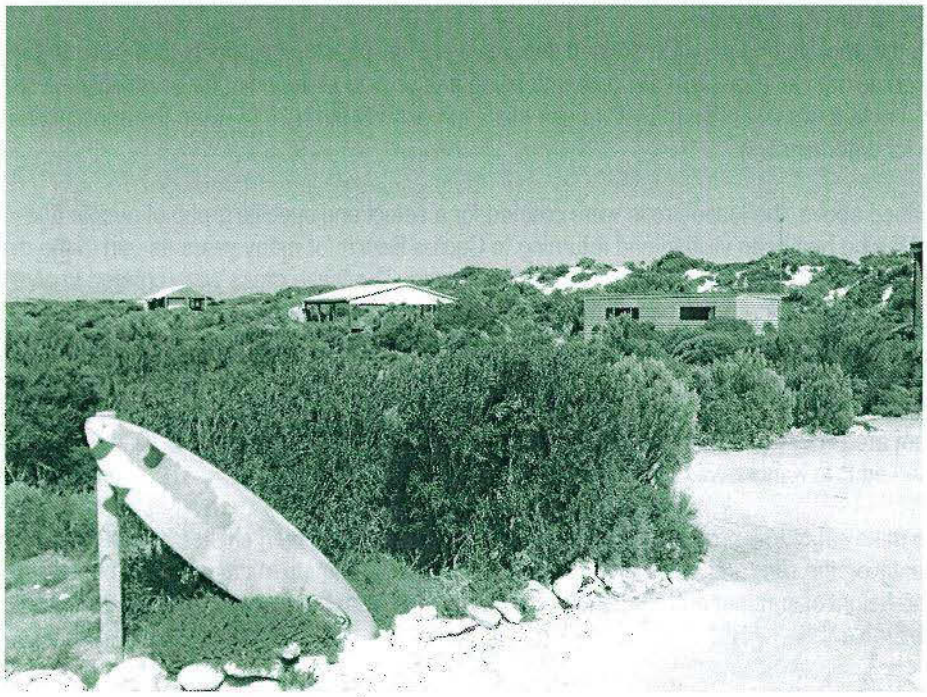


Photo 1 - The structures are relatively small and simple and sit low in the landscape

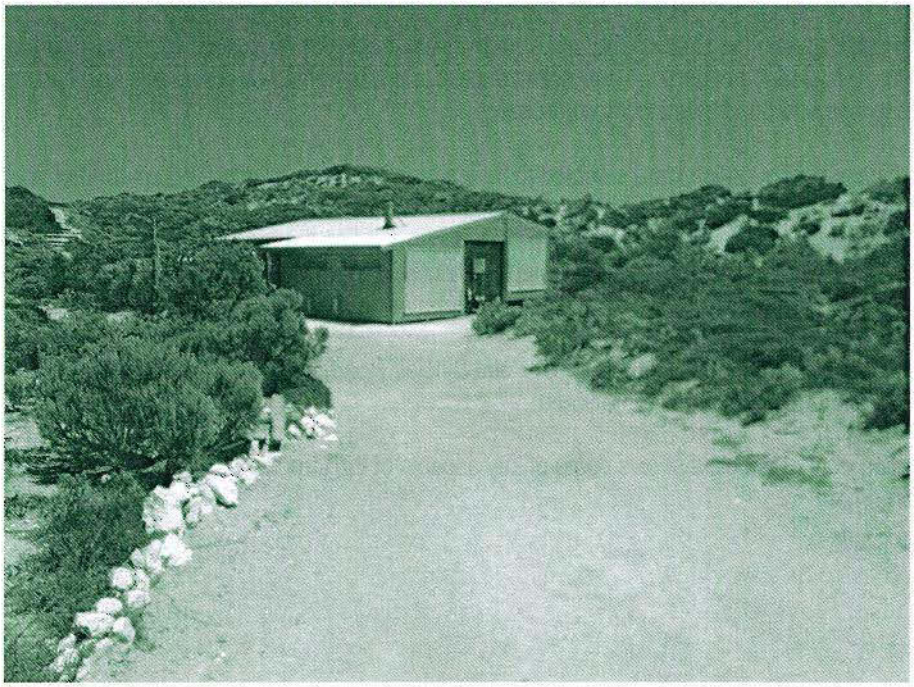


Photo 2 - approaches to the structures are generally well defined and marked out

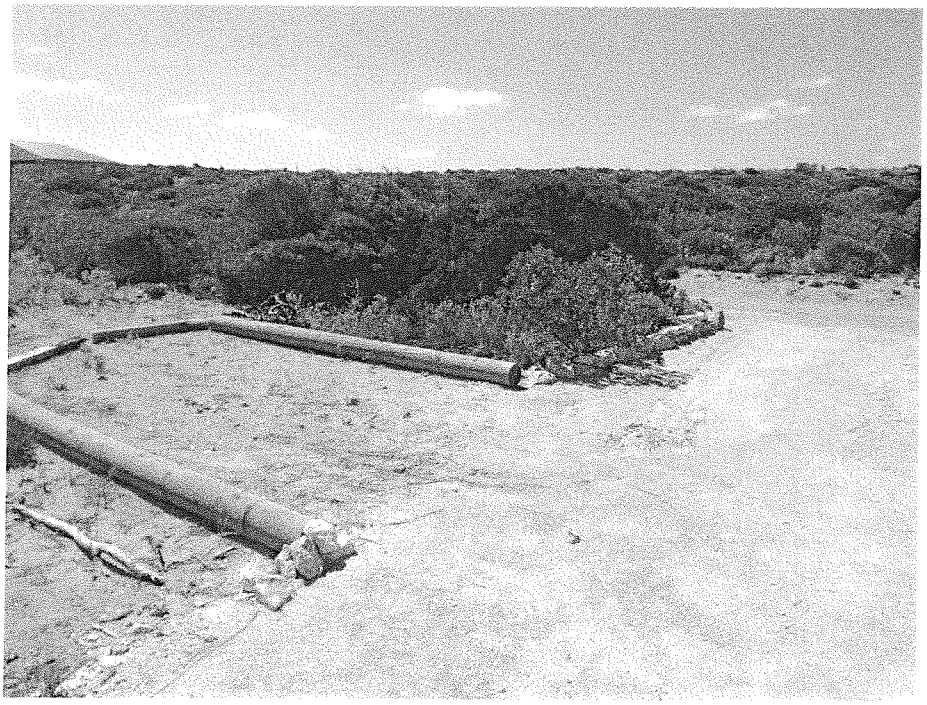


Photo 3 - vehicle parking areas are well defined and marked out

Photo 4 - the structures sit low in the landscape, are relatively small and spread over a large area

Photo 5 - view back across the site, Point Sinclair Road on the right

Photo 6 - a view of the structure on Lot D

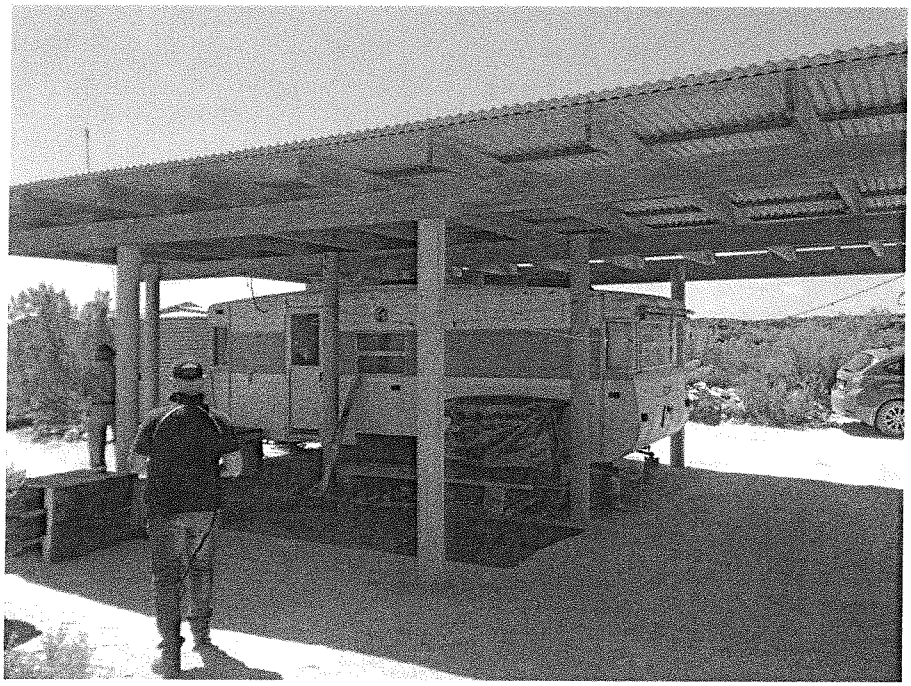


Photo 7 - view of the structure on Lot D

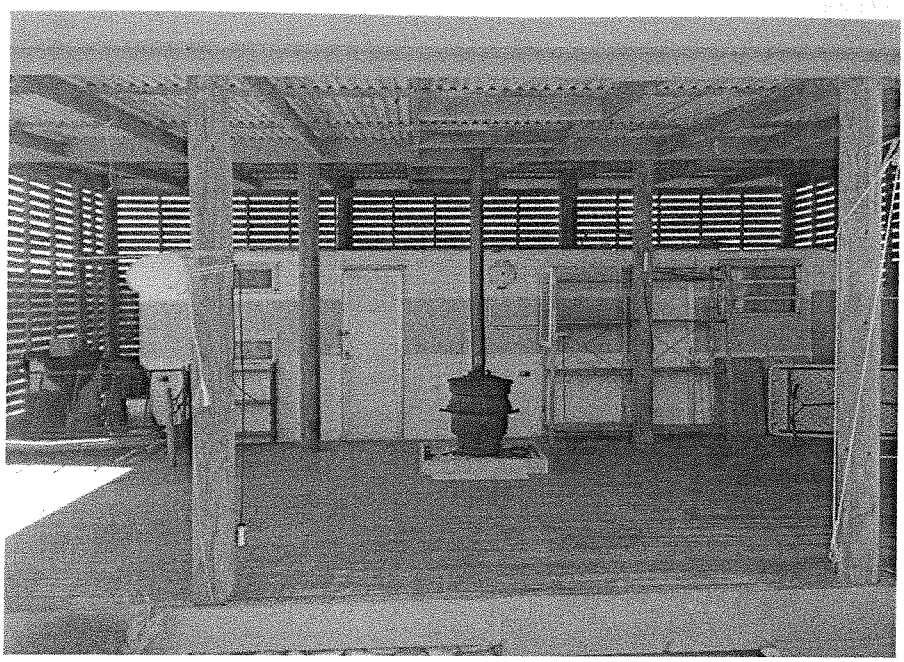


Photo 8 - a view of the structure Lot J

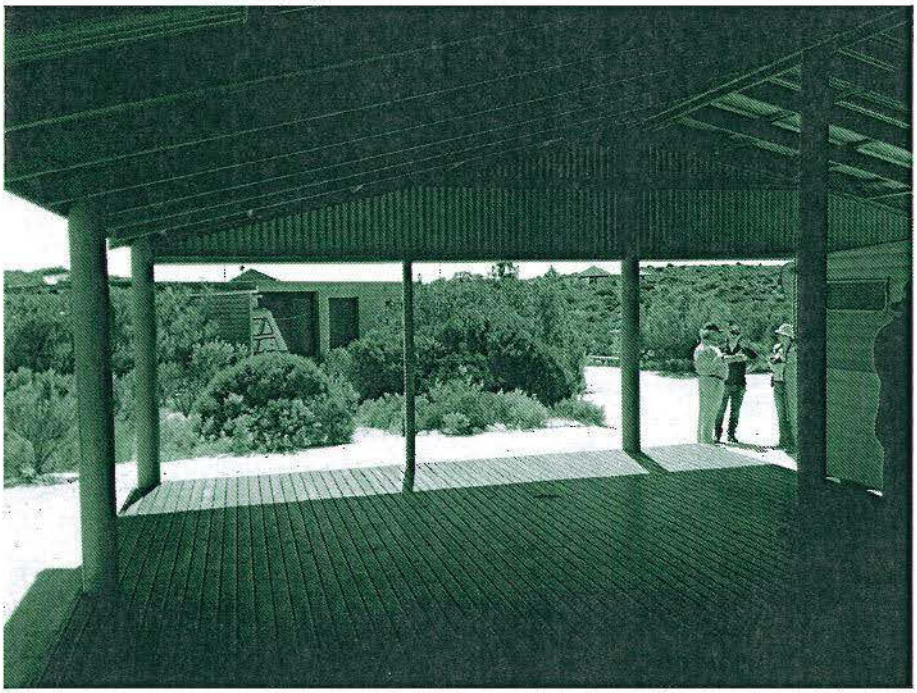


Photo 9 - a view of the structure on Lot F

Photo 10 - a view of the structure on Lot K

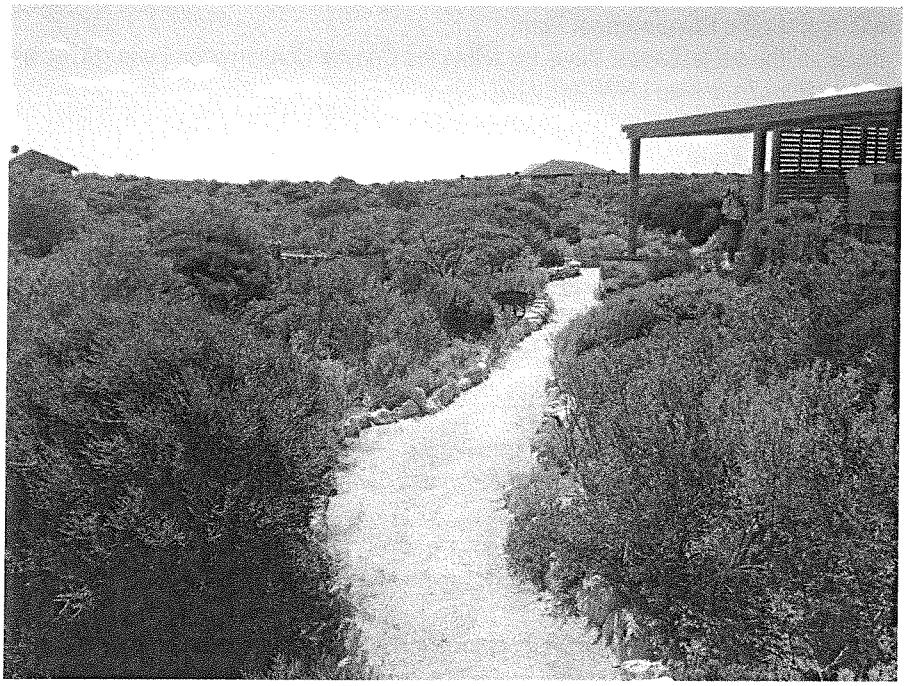


Photo 11 - paths to, from and between the structures are well defined to avoid damage to vegetation

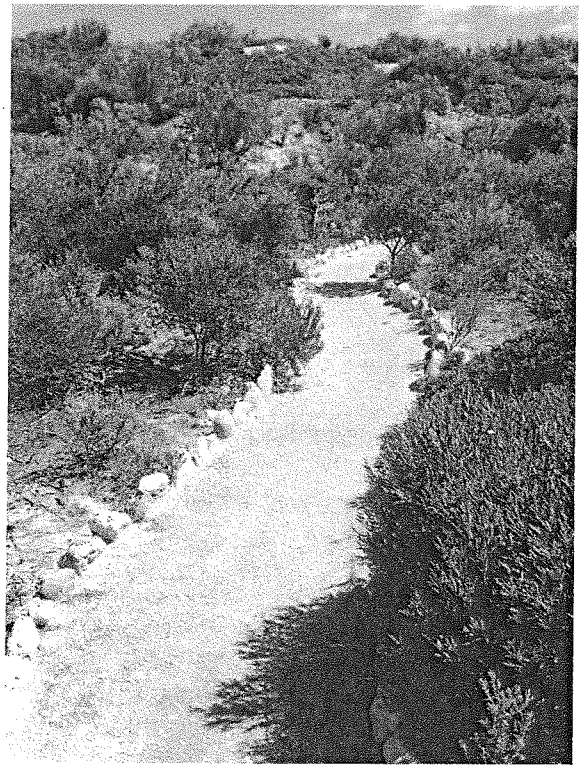


Photo 12 - view of another well-defined walking path

Assessment against the Development Plan
As noted above, all the subject applications fall within the *Coastal Conservation Zone (CCZ)*, as shown on Development Plan Zone Map LNWCA(E)/12.

Coastal Conservation Zone
It is noteworthy that in this particular Development Plan, the CCZ extends for about 400 kilometres from just east of Point Bell to the SA/WA state border. Although the same zone and subject to the same policy, it would be reasonable to assume that there would be many local variations and circumstances across such a large distance which would impact on the practical application of Development Plan policy in any particular situation. I would contend this is the case with the subject applications.

The Objectives of the CCZ state:

Objective 1	*To enhance and conserve the natural features of the coast including visual amenity, landforms, fauna and flora.*
Objective 2	*Low-intensity recreational and tourist accommodation located where environmental impacts on the coast will be minimal.*
Objective 3	*Development that contributes to the desired character of the zone.*

The CCZ also contains a statement of Desired Character, which focuses heavily on public access to the coast, recreation and tourism and the natural features and beauty of the area being the dominant features.

With respect to the subject applications, the following points drawn from the Desired Character are highly relevant:

- coastal features and scenic qualities are preserved;
- appropriate public access is maintained;
- development is not subject to coastal hazards;
- development borrows from, and complements, the natural landscape in form and scale....and the scenic quality of the coast is protected;
- the zone includes only a limited number of 'iconic', nature-based/eco-tourism developments....these developments achieve excellence in environmental protection and management;
- access over dunes and beaches is pedestrian only.

In terms of the wording of the Objectives, my view is as follows:

Objective 1:
A visit to the site leaves one in no doubt that the coastal environment is being cared for and nurtured in a much improved fashion than was the case prior to the establishment of the structures in question. This is evidenced both through the changes to the way in which the public camping ground operates (with a reduced area and strict and enforced management regime) and the siting of the structures in question in areas that are clearly shown in historical aerial photos as having already been denuded of native vegetation.

Improvement has resulted to the quality, coverage and protection of vegetation (primarily through the use of existing cleared areas and the delineation of walking and vehicular tracks), there are no erosion issues and access to the beach is by defined walkway and is pedestrian only. This has a corresponding impact on the improvement of the situation for fauna.

The location of the structures behind the main dune means there is no impact on the scenic qualities of the coastline or its features.

As such, there is no doubt that this Objective has been met through the changes to the public camping ground operations and the establishment of the subject structures on the land.

Objective 2:
Both the public camping ground and the activities and visitation associated with the subject structures are clearly a combination of low-intensity recreational and tourism accommodation and have been for many years. The improved management practices associated with the public camping ground and the environmental improvements which have come about due to the establishment of the subject structures and their highly controlled use have resulted in an outcome that has a much lesser impact on the coast than the prior use, which could have continued unchecked and without any approval.

As such, the intent of this Objective is met and in a more effective and positive way than was the case with the previous activity regime on the subject land.

Objective 3:
In respect of the Desired Character statement, the following is noted:

- All of the developments in question are low-profile structures sitting behind the main dune and visually separated from the coastline and coastal hazards such as flooding and erosion. Therefore, there is no impact on coastal features or scenic quality, nor increased flooding or erosion risk - and even the Coastal Protection Board (CPB) acknowledges this in its advice on the applications (see section below).

- Access to and from the structures and the beach is by defined pedestrian-only walkways, as is the case in the public camping ground to the south. Vehicle access is also clearly marked and utilises existing cleared areas, with no direct access to the beach. Public vehicular access has effectively been halted through piece 12 due to the establishment of the subject structures.

- The camping ground is the very definition of an iconic tourism development. As noted above, Cactus Beach is known around the world for the quality of its surf and although there is no mains power, very basic facilities in the campground and extremes of temperatures in a generally harsh climate, people from all over the State, the country and from around the world visit. Nearby Penong is home to a bespoke surfboard maker, which speaks to the iconic and spiritual nature this place has for surfers, including all of the applicants, some of whom have been coming to the site since the early 1970s.

As such, when all relevant factors are taken into account, the development, its functioning and the environmental outcomes which result are consistent with the Desired Character statement and therefore consistent with Objective 3.

The CCZ Principles of Development Control (relevant to the applications) are as follows, along with my comments on each.

PDC 1 The following forms of development are envisaged in the zone:
- *conservation works*
- *interpretive signage and facilities*
- *nature-based/eco-tourist accommodation.*

As detailed above, there have been extensive conservation works and the caravan accommodation and associated structures which have been constructed are simple, 'fit for purpose' and based around the natural features of the coast and proximity to the surf beach. The applications are not for dwellings or even buildings which can or will be permanently occupied. As such, I consider the applications to be consistent with this Principle.

PDC 2 Development listed as non-complying is generally inappropriate and not acceptable unless it can be demonstrated that it does not undermine the objectives and principles of the Development Plan.

The applications are for development which is to be assessed 'on-merit' and is not non-complying.

PDC 3 Buildings and structures should mainly be for essential purposes, such as shelters and toilet facilities associated with public recreation, navigation purposes or necessary minor public works.

The structures in question are not dwellings and are essentially 'fit for purpose' shelters for caravans, which allow for some protection from the harsh elements for the caravans and also for the occupants when outside the caravans. Toilet facilities are also in place. There are no ancillary outbuildings, such as sheds, or other unnecessary structures.

Given the subject land is part of the camping ground and has always been (although the camping ground for temporary visitors has now been redefined and confined to piece 13), the parking of caravans on the land is obviously part and parcel of that. In this particular instance, the parking of caravans has resulted in them being there permanently and some associated structures to protect them and their occupants from the weather have also been constructed. Although the extent and quality of the structures varies from location to location, overall the structures are very simple. Importantly, the outcome of the establishment of these structures in areas already cleared of native vegetation, has resulted in a much lesser environmental impact than would be the case for 'normal' temporary parking of caravans on the land, which might result in hundreds of vehicles movements over the course of a year along with the inevitable destruction or degradation of the land and its vegetation.

As such, the structures comply with the simplicity desired by this Principle but also ensure the impacts are much more controlled and minimal than they would otherwise be if the area was still open to public camping as it was in the past.

PDC 4 Development involving the removal of shell grit or sand, other than for coastal protection works purposes, or the disposal of domestic and industrial waste should not be undertaken.

The developments do not offend this Principle as none of these activities occur.

PDC 6 Development should not be undertaken unless it is consistent with the desired character for the zone.

As established in the discussion under Objective 3 above, the development is consistent with the desired character for the zone.

PDC 7 Development should be designed and sited to be compatible with conservation and enhancement of the coastal environment and scenic beauty of the zone.

As noted and discussed above, all of the structures are set behind the main dune and have no impact on the appearance or scenic beauty of the coastline. The outcomes of the siting of the structures in question have undoubtedly resulted in improved conservation and environmental outcomes for the coast.

PDC 8 Development should:
(a) not adversely impact on the ability to maintain the coastal frontage in a stable and natural condition
(b) minimise vehicle access points to the area that is the subject of the development
(c) be landscaped with locally indigenous plant species to enhance the amenity of the area and to screen buildings from public view
(d) utilise external low reflective materials and finishes that will minimise glare and blend in with the features of the landscape.

The development complies in all respects with this Principle in that:

- there are no flooding or erosion risks associated with the structures (also acknowledged by the CPB);
- there is only one main vehicle access point servicing all of the sites in question, with vehicular tracks using already cleared areas, which are clearly delineated;
- improvements to vegetation are extensive, which has enhanced the environmental and biodiversity values of the area significantly over time and will continue to do so; and
- the structures are generally low in profile and use low-reflective materials and finishes.

PDC 9 Where public access is necessary in sensitive locations, walkways and fencing should be provided to effectively control access.

The outcome desired by this Principle has been precisely what has occurred both on piece 12 (the subject land) and piece 13. Only pedestrian access to the beach is provided and only in a limited and controlled fashion.

PDC 10 Development should:
(a) be self-sufficient in terms of infrastructure and services, such as water, sewerage, electricity and waste disposal, unless existing infrastructure is available that can accommodate the projected demand from the development
(b) minimise impacts on the natural surrounding environment by containing construction within a tightly defined site boundary
(c) not obscure existing views to coastal features or be visibly prominent from key public vantage points, including public roads or car parking areas
(d) avoid areas that may endanger or threaten important nesting or breeding areas or the movement/migration patterns of fauna.

With respect to this Principle, I make the following observations and comments:

- The structures and their use does not rely on any public utilities as they are self-sufficient in all respects;
- The structures (and access to them) have been placed where vegetation clearance has already occurred (as clearly evidenced in historical aerial photographs), with the boundaries of each site not only clearly defined physically but also by a formal lease area boundary;
- the structures do not obscure existing views of prominent coastal features and from most public areas are not prominent in the landscape (and not at all visible from the beach area); and

- as noted above, the structures are constructed in areas already cleared of vegetation and as such there is no impact on areas important to fauna as described in the Principle.

As such, the development complies with this Principle.

PDC 12 Tourist accommodation should be designed to minimise the potential conversion of buildings into dwellings such as through shared facilities, grouped accommodation and/or shared parking.

It is clear from an inspection of the sites that the structures are essentially shelters (with some storage) and provide protection from the elements for the associated caravan as well as varying degrees of outdoor areas. Not only would conversion to dwellings be difficult it would not be in accordance with the agreement with the landowner. Further, given the scrutiny now given to these applications such conversion (which would be difficult) is now even less likely in my view - and in any event is not desired by the owners.

PDC 13 Car parking and access points to development should, wherever practicable, be:
(a) constructed of a permeable surface
(b) located on cleared land or along property boundaries to avoid the unnecessary removal of important native vegetation.

Vehicular access to the sites is from a single point off Point Sinclair Road, utilises areas already cleared of vegetation (and used previously for vehicles) and car-parking is clearly defined at each site with no requirement for the removal of vegetation.

PDC 14 Parking for tourist accommodation should be:
(a) a maximum of 1 space per tourist accommodation unit, plus parking for employees
(b) grouped in one location, unless it can be demonstrated that an alternative arrangement will reduce the impact on the natural environment
(c) located in an area where minimal vegetation clearance is required.

Parking is available at each of the sites in an area that is well defined and requires no vegetation clearance.

General Section Provisions
Of the provisions contained in the General Section of the Development Plan, in my view the sections relevant to an assessment of the applications are:

- Coastal Areas
- Design and Appearance
- Energy efficiency
- Hazards
- Infrastructure
- Interface between Land Uses
- Landscaping, Fences and Walls
- Natural Resources
- Orderly and Sustainable Development
- Siting and Visibility
- Waste

Each of these sections, along with their relevant provisions, have been considered with comments set out below.

Coastal Areas
Relevant provisions:
Objectives 1, 2, 3, 4, 5, 6, 7, 8, 9
Principles of Development Control 1, 2, 3, 4, 5, 6, 8, 9, 13, 18, 23, 25, 30

These provisions are similar to that of the *Coastal Conservation Zone*, particularly in that development should protect and enhance the natural coastal environment, areas of high amenity should be protected, public access to the coast should be enhanced with minimal environmental impact and hazards, such as inundation and erosion, are avoided.

Development should also be compatible in terms of its built form, appearance and landscaping, with low-pitched roofs and non-reflective textures. Development should also not occur in areas of substantially in-tact native vegetation.

For the reasons already discussed at length in previous sections, the applications achieve the intent of all of these policies - the environmental outcomes which have resulted are without doubt positive for the coastal area. These outcomes are self-evident when comparing what is on the ground today to historical aerial photographs and observing the orderly nature and care with which the area is occupied and used - particularly the fact that the general public is excluded from the area. There are no risks from flooding or erosion, public access to the coast is strictly controlled and the areas used for the structures in question were selected on the basis they did not comprise areas of substantially intact native vegetation.

Design and Appearance
Relevant provisions:
Objectives 1, 2
Principles of Development Control 1, 2, 3, 5, 7, 9, 10, 11, 12, 17

Almost all of the existing structures are all well set back from Point Sinclair Road and all sit low and unobtrusively in the landscape, well below the height of the dune behind and do not interrupt any significant views. Lot K is closest to Point Sinclair Road and on a small rise, which gives the impression that structure is larger or more prominent than others, but the building is in fact of similar height and scale to some of the others. However, it could not be said that this structure unreasonably interrupts any significant views.

Each structure is relatively small (compared with a dwelling, which they are not), simple to interpret, including its access points and vehicle parking areas. The road access into the area (ie. along Lot L) is clearly marked such that the public will not access the area.

As such, the structures are generally in accordance with the intent of these policies.

Energy Efficiency
Relevant provisions:
Objectives 1
Principles of Development Control 1, 2, 3, 4, 5, 6

There is no mains electricity, water or sewer at the site and as such all of the structures are self-sufficient in that regard. The structures are for temporary occupation only and have generally been oriented to screen the occupants from the prevailing winds and heat which can be very harsh at times.

In any event, there is no requirement for public services to be connected to the site and all needs are catered for on-site.

Hazards
Relevant provisions:
Objectives 1, 2, 4, 5
Principles of Development Control 1, 2, 3, 4, 5, 6, 7, 8, 11

As described above, the structures have been constructed in areas already disturbed and with minimal impact on their respective sites. As the structures are very simple and not dwellings they have no concrete slabs and are situated behind the main dune, so impact from flooding is non-existent.

Point Sinclair is not identified on the relevant hazard map in the Development Plan as being particularly at risk from any coastal process. In short, the structures are not exposed to (nor do they create or exacerbate) any unreasonable level of coastal hazard.

Infrastructure
Relevant provisions:
Objectives 1, 4
Principles of Development Control 1, 4, 5, 6

There is no mains electricity supply or water supply to the land and the necessary infrastructure and arrangements are in place to allow each of the sites in question to cater for their own needs (which are minimal given the sites are not permanently occupied).

Access tracks through the land and to and from the individual sites are located in those areas already cleared of vegetation and have minimised any further impact by being well defined and controlled, with effectively no public access to this area.

Interface between Land Uses
Relevant provisions:
Objectives 1
Principles of Development Control 1, 2

The structures, which are not permanently occupied, are set well away from the public areas of the coast and the main camping ground. Each of the structures is also well separated from each other. There is a prohibition on the structures being occupied permanently or by anyone else apart from the leaseholders. As such, there is no impact on adjoining land uses.

Landscaping, Fences and Walls
Relevant provisions:
Objectives 1
Principles of Development Control 1, 2, 3

Landscaping generally consists of plantings around the structures and along the defined paths throughout the area. The recovery and nurturing of vegetation outside the areas used for the structures, access and parking is a high priority. Locally indigenous plants are almost exclusively used, although there are some introduced species which could be removed as part of any approval.

There is no fencing or walling throughout the area.

Natural Resources
Relevant provisions:
Objectives 1, 5, 6, 7, 8, 9, 12
Principles of Development Control 1, 2, 5, 7, 28, 29, 30, 31, 36

As has already been explained at length, the tenure arrangement by which the structures have resulted has and is continuing to have a positive impact on the vegetation and biodiversity of piece 12. The siting of the structures, their access and parking areas have all occurred in areas already denuded of vegetation and with these areas now clearly defined revegetation, both through natural recovery and active management, has made significant advances.

As such, there can be no argument that the environmental outcomes have improved significantly on the subject land since the structures have been in place. Further, there is a risk to the natural resources - vegetation and biodiversity in particular - if the structures are removed and the area is returned to general camping as those advances will be lost and degradation will again occur over time.

Orderly and Sustainable Development
Relevant provisions:
Objectives 1, 3, 4
Principles of Development Control 1

The development of the structures on the site has been in accordance with the lease plan layout shown above and has been orderly and efficient as can clearly be seen by visiting the site.

The development and use of the structures, which are not permanently occupied, has no impact on the proper functioning of the main camping ground nor that of the coastal area.

Further, rather than prejudice the achievement of the provisions of the Development Plan, there is clear evidence that the structures and their use have helped to achieve some of the outcomes sought by the Development Plan. More specifically, a situation has been created that reverses some of the deleterious environmental effects of the use of the land (piece 12) as part of the temporary visitor camping area.

Siting and Visibility
Relevant provisions:
Objectives 1
Principles of Development Control 1, 2, 3, 4, 5, 6

The structures are all relatively small, generally 'fit for purpose' and sited unobtrusively in the landscape well back from Point Sinclair Road, apart from Lot K, which is more prominent by way of its siting close to the road. However, given this location was chosen due to the cleared nature of the site and provide for two family groups in a single structure, it would still be preferable for the structure to be located here rather than choose a less prominent position that required the removal of vegetation *or* construct two structures rather than a single one. Further, there is little more that can be done to reduce the prominence of this location and it in my view this issue alone determines Lot K's fate when all relevant factors are considered.

Waste
Relevant provisions:
Objectives 1, 2
Principles of Development Control 1, 2, 3, 4, 7, 10, 11, 13, 14

Each of the lots takes responsibility for its own waste disposal, which includes bio-toilets or septic, or simply complete removal from the site.

Coastal Protection Board Comments

Due to the location of the applications within a coastal zone, all were referred to the Coastal Protection Board (CPB) for comment. DAC is required to have regard to the CPB response prior to making a decision on the applications.

Due to the similar nature of all the applications, the CPB comments are basically identical and can be summarised as follows:

- the CPB has acknowledged that the site(s) satisfy the CPB's flooding hazard risk policies;
- the CPB has acknowledged that the site(s) are sufficiently set back from the coast as to satisfy the CPB's erosion hazard risk policies;
- the CPB contends that the proposed development may require the clearance of native vegetation;
- the CPB contends that due to increased human traffic there is potential disturbance to native fauna, introduction and spread of weeds, vegetation damage and clearance and increased potential damage from cats and dogs;
- the CPB contends the proposal is at odds with its opposition to scattered coastal development and prefers development to be concentrated in existing developed areas or appropriately chosen node;
- the CPB considers the beach, sand dunes, vegetation and clifftops of the area to be of high landscape value and erosion and degradation risks would be exacerbated through additional development pressures such as dwellings and vehicle access;
- the CPB considers the development is prominent when viewed from the main road, which has a significant impact on the visual amenity appeal of this coastal region.

In my respectful view, the CPB's position is both predictable in its arguments and conclusions, but unsustainable and illogical. The CPB's advice is written as if the development has not yet occurred, has had no regard for the significant environmental improvements that have occurred on the site and assumes the site was in pristine condition prior. It also ignores the fact that this is not a new 'settlement' and the site has been used for decades for camping. There is also no suggestion that there is any pressure to develop dwellings on the land.

In reality, three of the key outcomes of the development, which is merely a different way of using the land for short-term camping (as it has been since the 1970s), as it currently stands are:

- the structures and associated access have been established where vegetation was already cleared - this is clearly evidenced from historical photos of the land;
- walkways around the site and in particular over the dunes and to the beach are delineated and strictly enforced; and
- the re-establishment of vegetation throughout, given both vehicle and pedestrian paths are clearly marked, has been significant and the environmental outcomes positive.

The amount of human traffic is over the land is also significantly reduced and the applicants also actively combat introduced species such as feral cats and mice, as well as providing water points for birds and kangaroos.

In short, the site is in far better condition today that if the main camping ground had continued operating in this area. There is no risk from vehicles using undesignated areas, there is no risk of vegetation being used for firewood and there is on-going nurturing of the environmental values of the land because of the long-term outlook and attachment to the site by the applicants.

As such, in my view, the CPB's views are not based on any sound and up-to-date information and there has clearly been no proper site inspection prior to the penning of its formal advice, even though the aerial photos attached to this report came from the very department of which the CPB is part. If a more rigorous approach to the assessment of the applications had occurred and there had been an acknowledgement of the improved environmental outcomes on the land, it is difficult to see how the CPB could not support the development, albeit with some on-going management conditions and perhaps expressing its opposition to any further intensification of development on the land.

To that end, and given DAC and CPB staff have now visited the land, in determining the applications proper consideration needs to be given to the actual situation on the ground, which is patently obvious, and consideration of the previous situation of public camping in the area the effects of which can be seen in the historical aerial photographs.

Further, in my respectful view, both DAC and CPB also need to each turn its mind to the alternative situation - refusal resulting in the removal of the structures (and associated damage and disruption to the environment) and general camping resuming on the subject land, for which an existing use is in place and has been for more than forty years.

In my view, if proper regard is had for all the relevant matters, the CPB advice should be regarded as incorrect and not based in fact in a number of areas which have resulted in an incorrect conclusion overall that could easily result (and in all likelihood would result) in a more deleterious effect on the coastal environment that if the existing structures are approved and permitted to stay in place.

Accordingly, the CPB's advice that the applications should be refused be set aside as it does not, in my view, constitute robust and reliable advice and instead will lead to a demonstrably worse outcome if adopted.

Conclusion

The ten retrospective development applications have been lodged to obtain approval for structures associated with caravans for short-term but regular stays at Cactus Beach for a group of owners who have a long-term connection with the area, some of whom have been visiting at least annually since the 1970s.

Piece 12, on which all of the applications are situated, has formed part of the Point Sinclair camp ground (along with piece 13) since about 1970, however more recently temporary visitors are accommodated in the camp ground on piece 13 and those with long-term connections to the area who return at least annually have areas designated for their use on piece 12.

Without a knowledge of the site, and in particular a visit to the land which includes talking to the applicants and understanding the nature of their connection to the land, the frequency of use of the structures and, most importantly, the positive impact the controlled use of the area has had on the coastal vegetation, access to the coast and biodiversity generally, it is easy to see how a cursory look at the provisions of the Development Plan and consideration of the comments from the Coast Protection Board might lead one to think such development could not possibly be in accordance with or to the benefit of the coast.

However, there is no doubt when all the facts are considered the structures have resulted in much improved environmental outcomes (as least on piece 12) and outcomes which are consistent with the intent of the Development Plan policy and, I would contend, even consistent with Coast Protection Board policy if properly assessed against it.

It is relevant to consider the ramification of the refusal of the applications, which if upheld, would necessitate removal of the structures and, clearly, would result in damage and degradation to vegetation and other features of the land. As camping has been a continuous use on the land since the 1970s, there would be nothing preventing the reintroduction of this area for short-term visitors, which would undoubtedly, over time, reverse some of the significant gains already seen.

Having considered all of the relevant information, including two visits to the site during 2014, I have assessed the applications against the Development Plan in a detailed way and considered the practical implications of the possible outcomes. From that, I have concluded the policies of the Development Plan are properly served by approval of the applications, albeit with the inclusion of some reasonable conditions that assist in the on-going management of the land and the expectations from here.

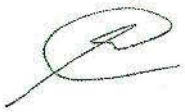
As such, in my view the applications should be granted planning consent with some management conditions imposed as part of those consents to ensure use of the structures continues in the way in which it is intended and positive environmental outcomes can continue.

As discussed, my clients believe there is a great deal of merit in having the DAC visit and tour the site prior to making a determination on the applications as this will give a full understanding of the issues involved. We also support the hearing component of the meeting being held in Ceduna to allow for at least one of two of the applicants to attend.

Either way, I will be in attendance at the future DAC hearing (anticipated to be 1 October) to further expound the merits of these applications.

Please don't hesitate to contact me if you require further information.

Yours sincerely



MARK BAADE
B.Planning (Hons)
M: 0417 088 000
markb@skplanning.com.au

Attachment:
Appendix A - historical aerial photos

APPENDIX A

POINT SINCLAIR/CACTUS BEACH

AERIAL PHOTOS

(FULL FRAME PLUS RELEVANT EXTRACTS)

1968

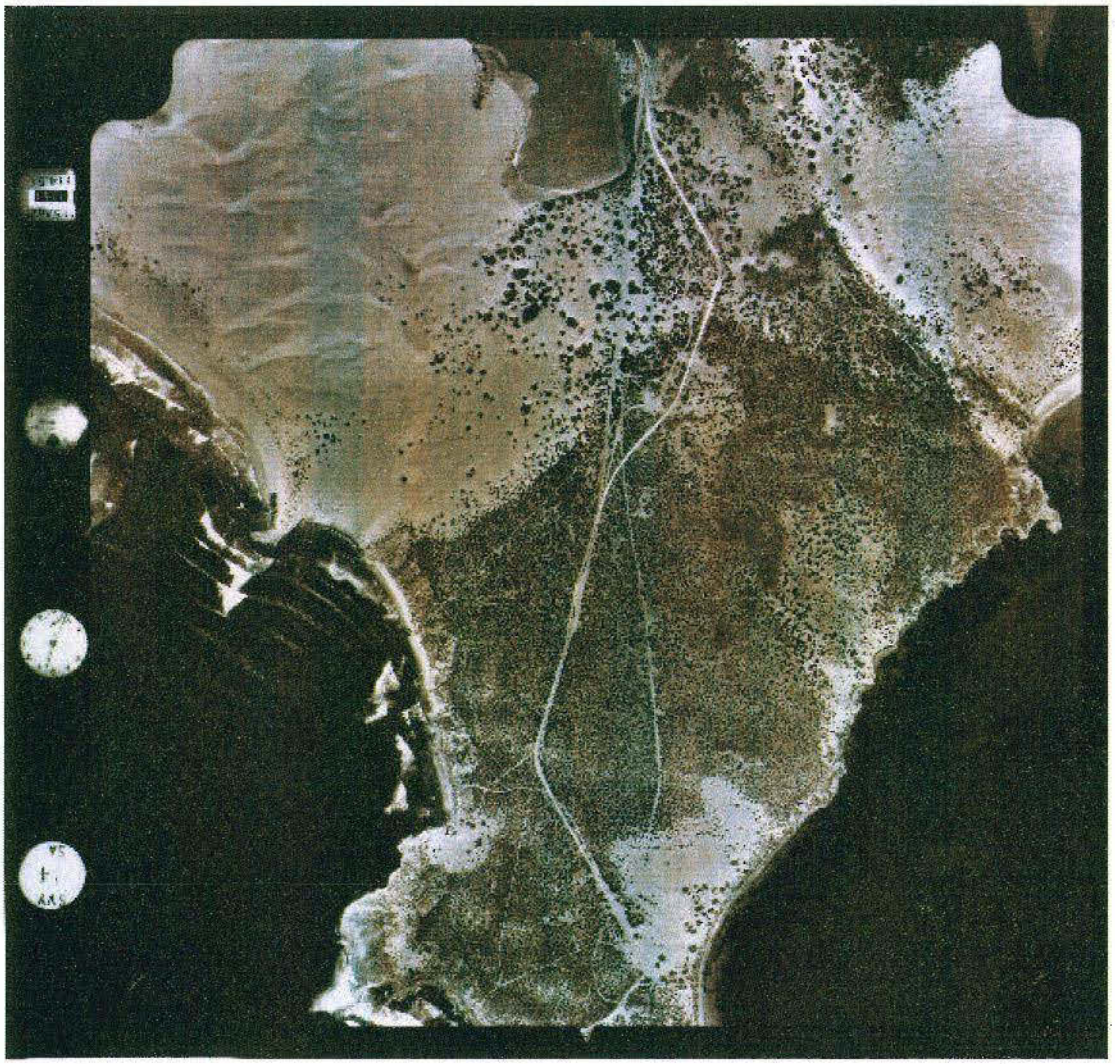
1976

1992

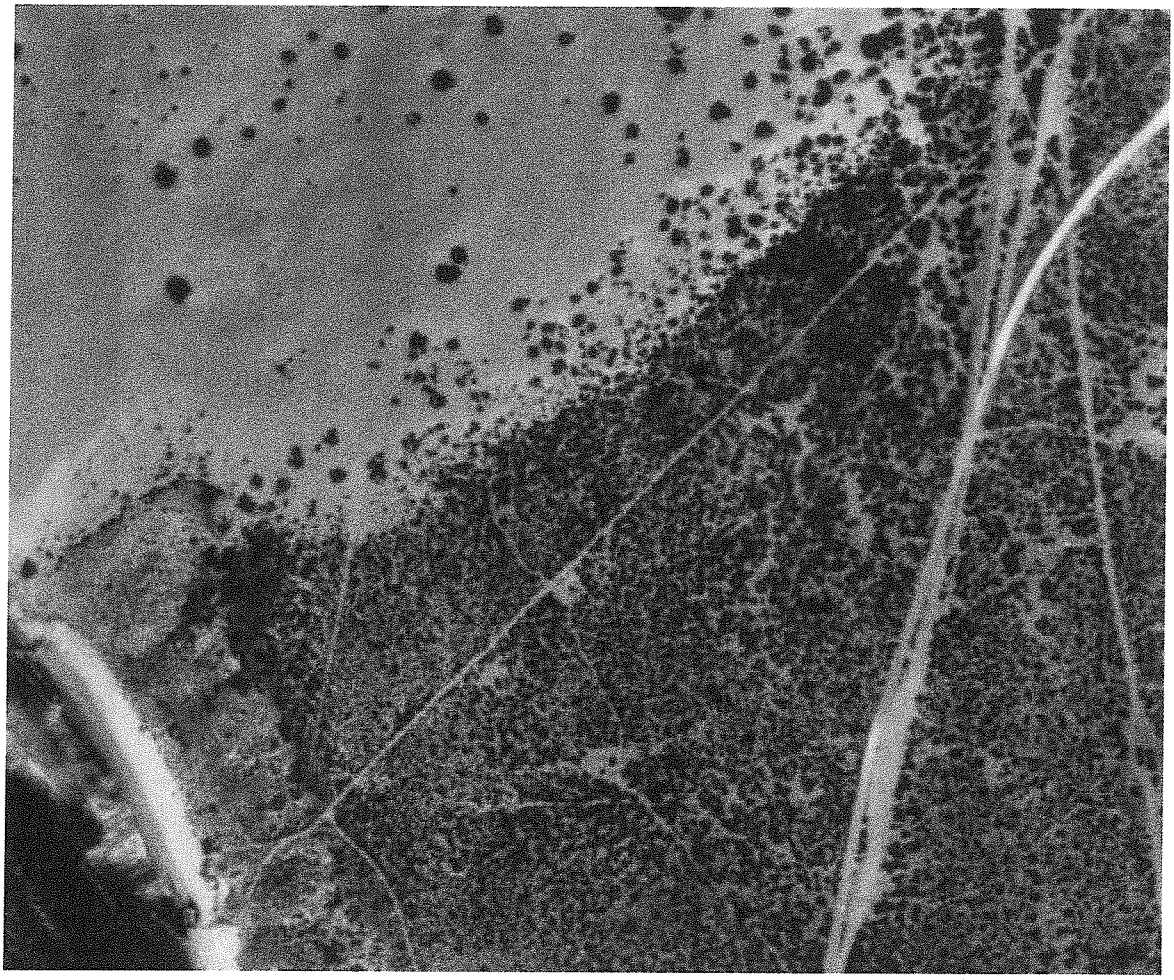
1999

2005

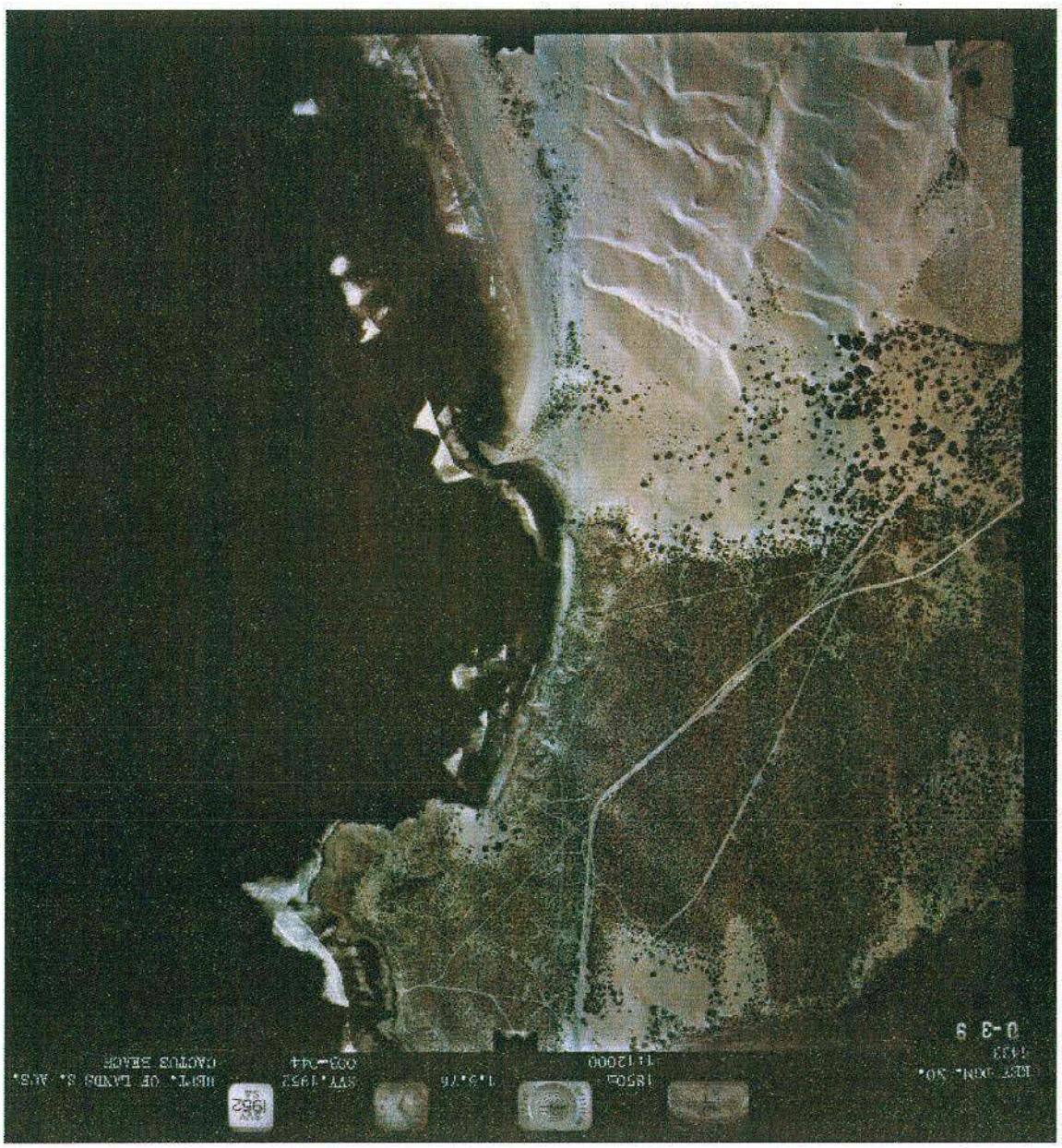
AERIAL PHOTO - 1968



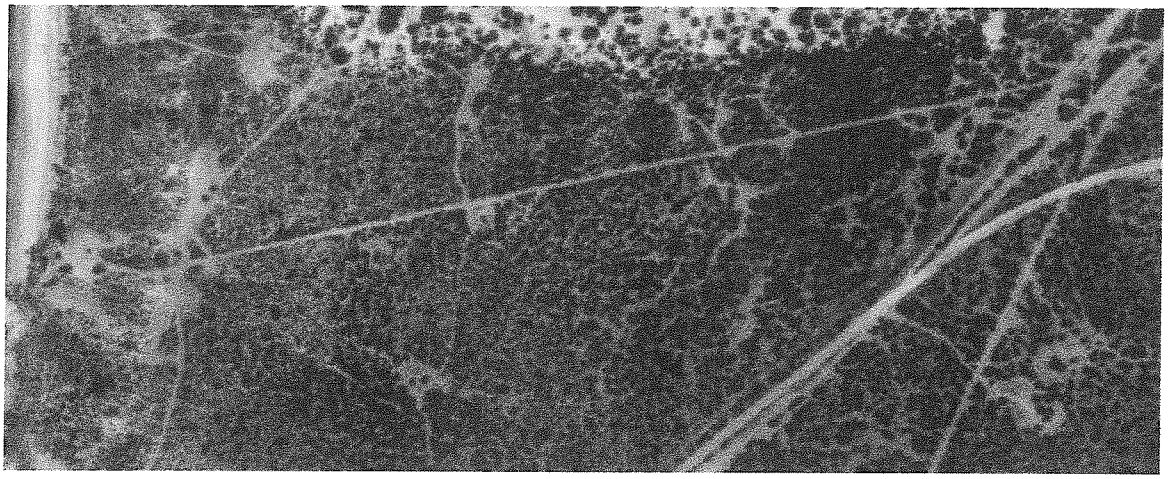
EXTRACT FROM AERIAL PHOTO - 1968



AERIAL PHOTO - 1976

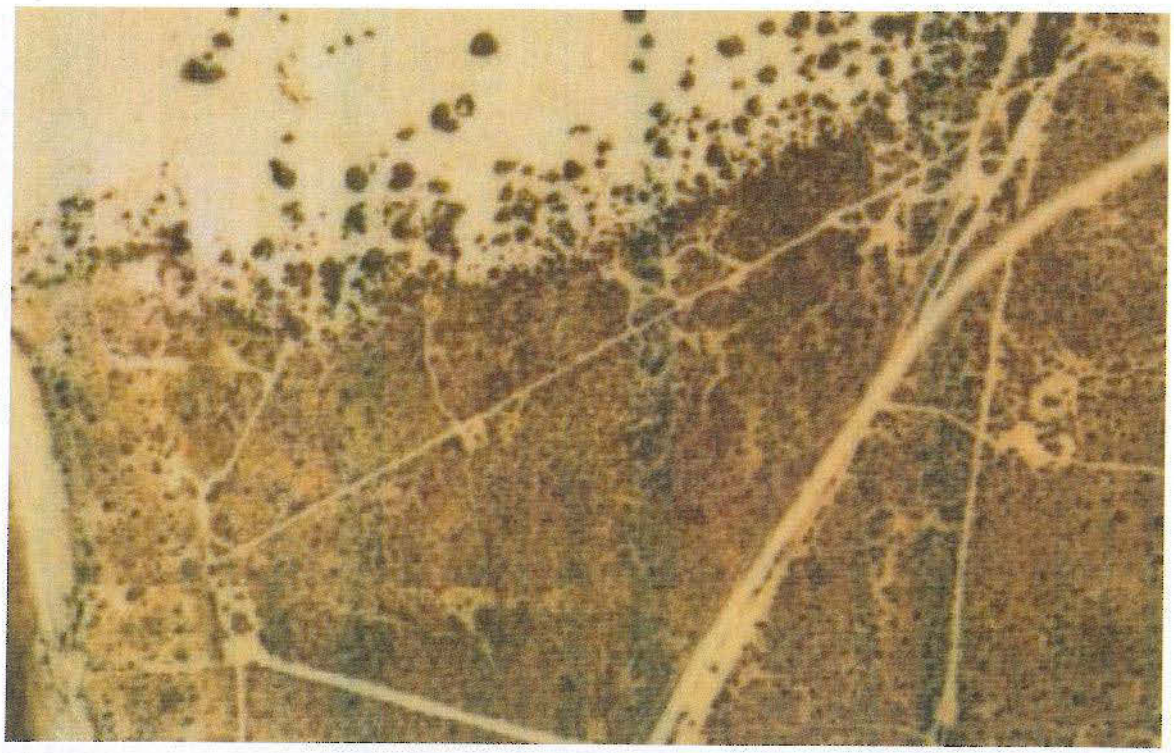


EXTRACT FROM AERIAL PHOTO - 1976

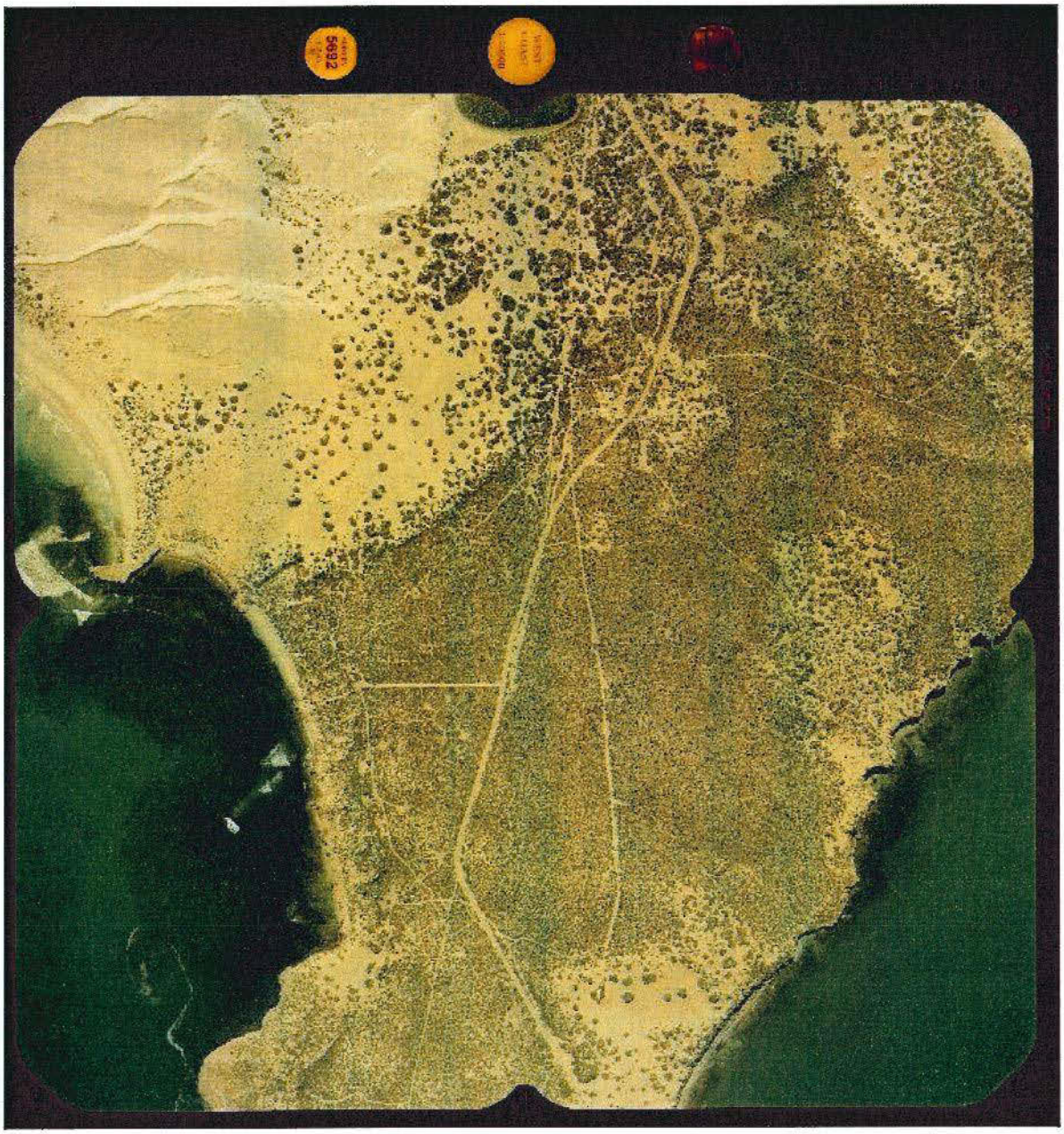


AERIAL PHOTO - 1992

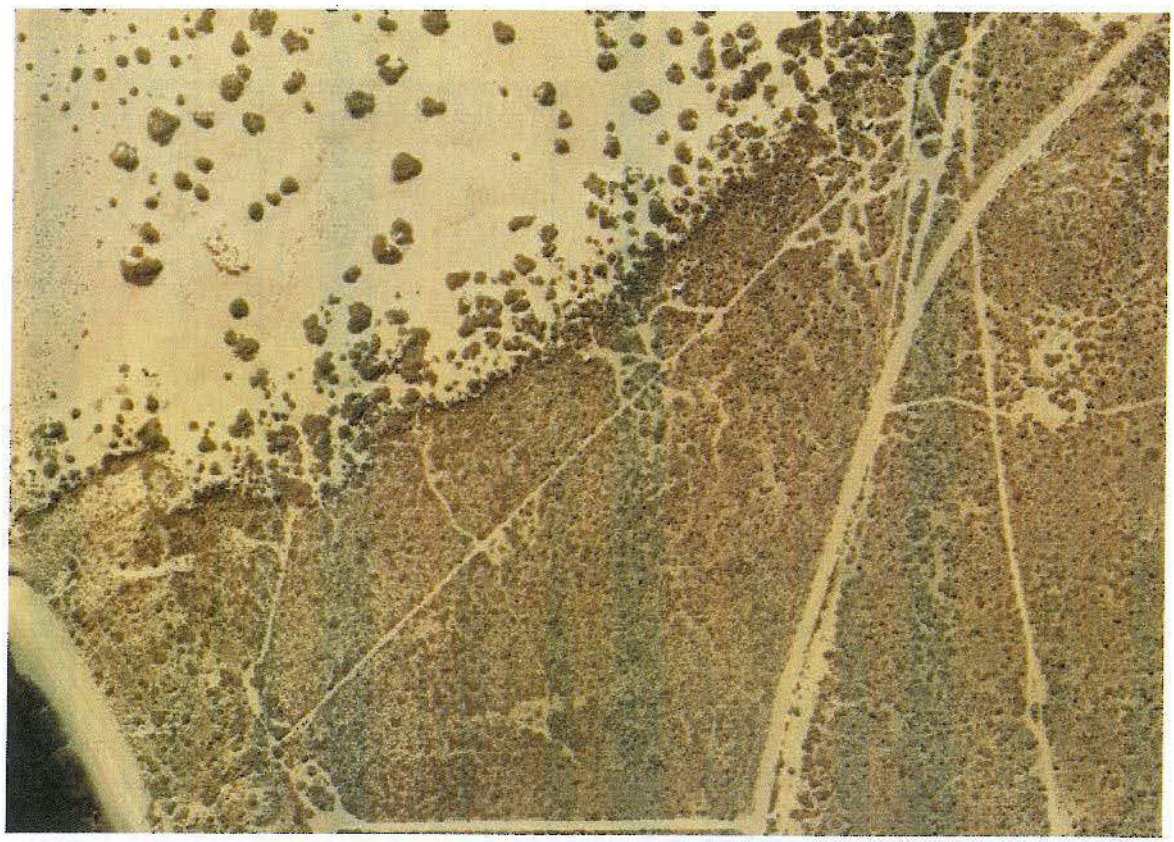
EXTRACT FROM AERIAL PHOTO - 1992



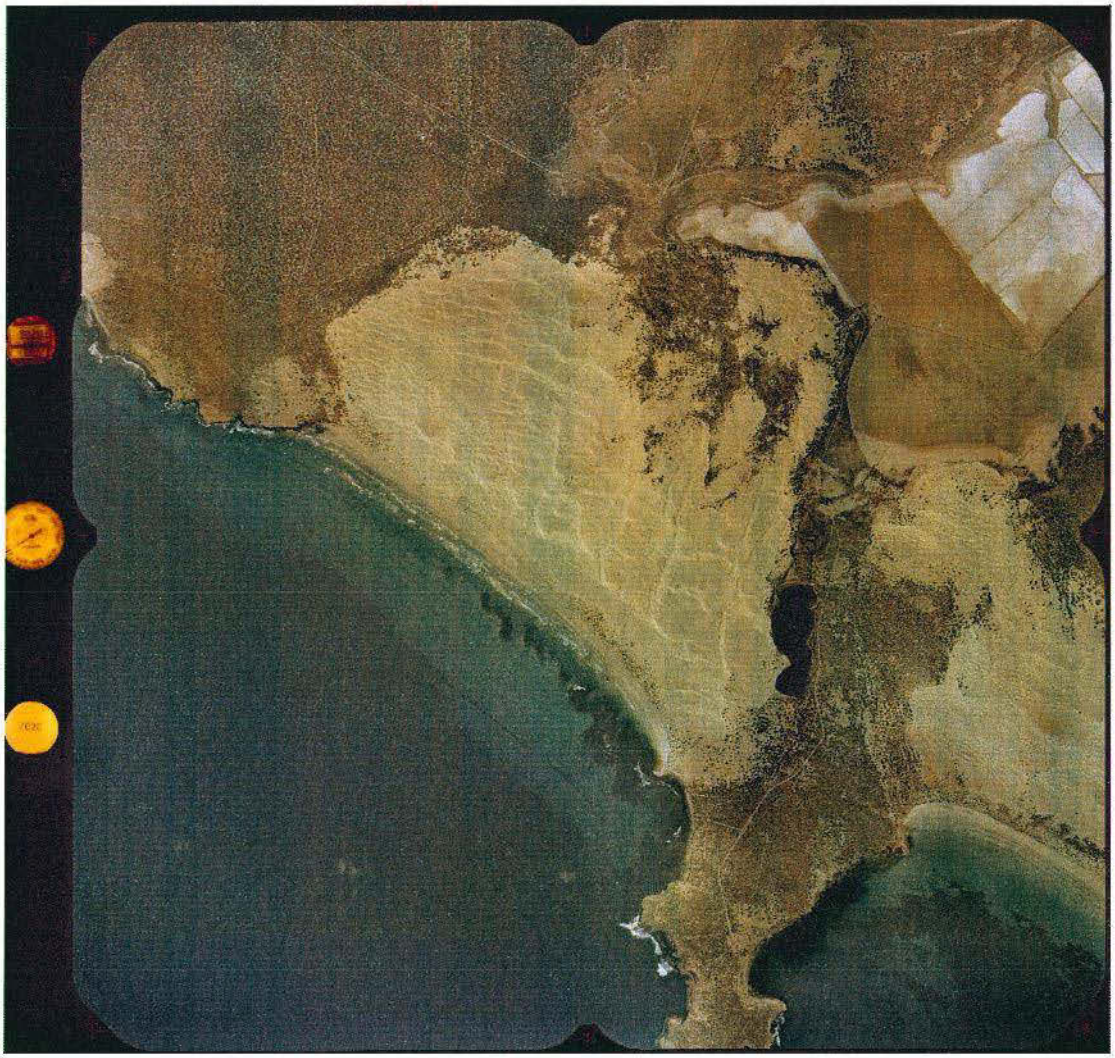
AERIAL PHOTO - 1999



EXTRACT FROM AERIAL PHOTO - 1999



AERIAL PHOTO - 2005



EXTRACT FROM AERIAL PHOTO - 2005

Government of South Australia
Coast Protection Board

Reference: CPB/055/13

10 May 2013

BY EMAIL

Ryan Moyle
Development Assessment Commission
GPO Box 1815
ADELAIDE SA 5001

Level 1 ANR House
1 Richmond Rd
Keswick SA 5035

GPO Box 1047
Adelaide SA 5001
Australia
DX138

Contact Officer: Peter Allen

Ph: 8124 4906
Fax: 8124 4920

e-mail: peter.allen@sa.gov.au

www.environment.sa.gov.au

Development Application No:	010/U025/13
Applicant's Name:	Ian Edgar Smith
Description:	Caravan Shelter and deck
Location:	Site F, Q12, DP55064, Cactus Beach
Council:	Out of Council
Zone	Coastal Conservation Zone

I refer to the above mentioned development application forwarded to the Coast Protection Board (the Board) in accordance with Section 37 of the Development Act 1993. The planning authority is required to have regard to this response prior to making a decision on the proposal.

In accord with part 43 of the Development Regulations, a copy of the decision notification must be forwarded to the Board at the above address.

The following response is provided under delegated authority for the Board in compliance with its policies. Those policies are contained in the Board's Policy Document which is located on the following web site:

http://www.environment.sa.gov.au/Conservation/Coastal_Marine/Coast_Protection_Board/Policies_strategic_plans

Proposal

The proposal is for a shelter to cover a caravan and deck. The site is within the Coastal Conservation Zone and outside of Council areas.

Comments

Flooding and Erosion

The Board's flooding and erosion policies are reflected in the General Section of the Land Not Within a Council Area Eyre, Far North, Riverland and Whyalla Development Plan.

Although site levels are not provided, the site is considered to satisfy the Board's flooding hazard risk policies. The development site is also adequately set back from the coastline and so is considered to satisfy the Board's erosion hazard risk policies.

Native Vegetation

The proposed development may require the clearance of native vegetation. Your attention is drawn to the provisions of the *Native Vegetation Act 1991* in respect to approvals required for the clearance of native vegetation.

Conservation and environmental protection

The Board seeks to identify, protect and manage coastal biodiversity. The Eyre Peninsula Coastal Action Plan and Conservation Priorities Study identifies the coast in this area as having a medium conservation value, with the area important for Aboriginal Heritage, rare and endemic species and floristic communities, habitat for butterflies and threatened flora and fauna species.

The proposed development is likely to impact on these biodiversity and conservation values through increased human traffic potentially resulting in disturbance to native fauna, increasing weed introduction and spread, vegetation damage and/or clearance and increasing the potential for damage from feral species such as cats and dogs.

Orderly Development and scenic amenity

The proposed development is at odds with the Coast Protection Board policy which opposes scattered coastal development [CPB Policy 1.5 (a)]. The Board prefers development to be concentrated within existing developed areas or appropriately chosen nodes (CPB Policy 1.5 (a)).

The Board encourages development to be clustered along the coast in planned, distinctive and compact coastal towns. The Board strongly discourages development that adds to incremental sprawl and which has the potential to detract from the visual appearance and overall appeal of the natural coastline. The proposed development cannot be considered to be within a planned, compact township, and due to existing constraints is not envisaged to become one in the future.

The beach, sand dunes, vegetation and clifftops of this area are of high landscape, environmental and amenity value. The landforms of the site and surrounds are subject to erosion risks and degradation and this risk would be exacerbated through additional development pressures including dwellings, fire safety vegetation clearance requirements, vehicle access, and other development.

The Board has a duty to protect coastal environments of high scenic value and in doing so ensures that incremental development does not detract from the aesthetic appearance of the coast. In this regard, the Board seeks to ensure the siting and design of development on the coast minimises its impact on the visual amenity of the coast.

The proposed development is along coastline that is relatively free of built development and has a highly valued scenic amenity. Scenic amenity is an important feature of the tourism economy of this region, noting the Cactus campground is located nearby. This should not be threatened by further incremental development along inappropriate parts of the coastline.

The Board's position as stated in policy 1.4 (e) is to oppose development that impacts on the environment, and visual amenity of the coast. The prominent positioning of the development from the road will have a significant impact on the visual amenity and appeal of this coastal region.

The Board seeks to:

- Retain coastal open space
- minimise impacts of development on the coast
- protect coastal biodiversity
- protect scenic amenity
- maintain compact coastal settlements and restrain 'sprawl' along the coastline.

The application is therefore considered at variance with the Board's orderly development and scenic amenity policies.

Coast Protection Board Response

The Coast Protection Board advises that the application be refused as the proposed development:

- does not represent orderly development
- represents scattered coastal development, which is contrary to effective coastal management
- impacts on the preservation of coastal areas of high landscape and scenic amenity value
- impacts on the conservation and biodiversity values of this area.

Disclaimer

The Board attaches the following disclaimer to the above advice;

> *Based upon current knowledge and information the development and development site is at some risk of coastal erosion and inundation due to extreme tides notwithstanding any recommendations or advice herein, or may be at future risk. Neither erosion nor the effect of sea level change on this can be predicted with certainty. Also, mean sea level may rise by more than the 0.3 metres assumed in assessing this application.*
>
> *Accordingly neither the South Australian Coast Protection Board nor any of its servants, agents or officers accept any responsibility for any loss of life and property that may occur as a result of such circumstances.*

If this application is approved, the Council should consider including a similar disclaimer in its Decision Notification to the applicant. However, no reference must be made to the Coast Protection Board in the Council's disclaimer.

Yours sincerely

Peter Allen
Planning Officer
Public Land and Coastal Conservation Branch
Department of Environment, Water and Natural Resources

Delegate for Coast Protection Board

Moyle, Ryan (DPTI)

From: Burmazovic, Gorica (DPTI)
Sent: Tuesday, 9 April 2013 4:39 PM
To: Moyle, Ryan (DPTI)
Subject: FW: 010/U097/12 & 010/U025/13

Gorica Burmazovic
Graduate Planning Officer
Planning Reform and Projects
Planning Division
Department of Planning, Transport and Infrastructure

Telephone: (08) 8226 2914
: (08) 8303 0782
Email: Gorica.Burmazovic@sa.gov.au
Web: www.dpti.sa.gov.au and www.sa.gov.au

The information contained in this e-mail message may be confidential, and may also be the subject of privileged or public interest immunity. If you have received this e-mail in error please telephone DPTI on (08) 8343 2222. This e-mail and any attached files is subject to copyright. However, unless it has been expressly forbidden in this e-mail, recipients are permitted to forward or circulate this e-mail (unaltered and with this disclaimer) to any other party. No liability for loss or damage resulting from any action taken or not taken on reliance on this e-mail and any attached files is accepted. This e-mail and any attached files should be scanned to detect viruses.

From: Chapman, Tanja (DEWNR)
Sent: Tuesday, 9 April 2013 4:18 PM
To: Burmazovic, Gorica (DPTI)
Subject: 010/U097/12 & 010/U025/13

Hi Gorica,

NVBMU would like to reiterate our previous advice relating to these applications. Because the clearance has already occurred and the statutory time frame of one year for which we can still enforce compliance has lapsed, we can only advise on current and future applications and our advice would be as follows:

> The NVBMU advises that development of prescribed buildings and structures other than dwellings is assessed in accordance with *Regulation 5(1)(b)* of the *Native Vegetation Regulations 2003.* All parts of that regulation must be satisfied before approval can be granted in accordance with the regulation, if all parts are not satisfied then the applicant will be required to submit a clearance application.
>
> However, we would like to point out that the NVC cannot approve clearance of 'intact native vegetation', and after viewing aerial photography it is the consideration of the NVBMU that the area supports intact native vegetation identified as;
>
> > *Melaleuca lanceolata, Geijera linearifolia, +/-Pittosporum angustifolium, +/-Exocarpos aphyllus mid open shrubland over +/-Atriplex paludosa ssp. cordata, +/-Rhagodia crassifolia, +/-Atriplex vesicaria ssp. low shrubs over +/-Carpobrotus rossii (NC), +/-Threlkeldia diffusa, +/-Frankenia sessilis.*
>
> The land under questions is zoned Coastal Conservation and as such should be protected from this kind of development, the NVBMU would not support any further development of dwellings and structures on this land, and would ideally like to see some of the access tracks closed off and rehabilitated.

The *Native Vegetation Act 1991* does not allow for retrospective approval and therefore we advise the applicant to contact the NVBMU for further advice before any future developments or clearance occur, failure to do so may be considered a breach of the Act. The existing native vegetation clearance is exempt from compliance action because the statutory time frame of one year has passed.

Regards

Tanja Chapman
Senior Scientific Officer
Native Vegetation and Biodiversity Management Unit Natural Resources Branch
Strategy and Advice, Department of Environment, Water and Natural Resources

P: (08) 8303 9745
F: (08) 8303 9780
Email: tanja.chapman@sa.gov.au

Hannaford Building Ground floor, Entrance 3, Waite Road, Urrbrae, SA 5064
GPO Box 1047, Adelaide, SA 5001, AUSTRALIA
www.environment.sa.gov.au | www.nrm.sa.gov.au |
www.waterforgood.sa.gov.au | www.waterconnect.sa.gov.au |

The information in this e-mail may be confidential and/or legally privileged. Use or disclosure of the information to anyone other than the intended recipient is prohibited and may be unlawful. If you have received this e-mail in error please advise by return e-mail or by telephoning 8303 9745

Think before you print. *Please consider the environment before printing this e-mail.*

Government of South Australia

Outback Communities Authority

12 Tassie Street,
Port Augusta
PO Box 2353
Port Augusta SA 5700

Tel 08 8648 5970
Fax 08 8648 5971
oca@sa.gov.au
www.oca.sa.gov.au

27 March 2013

RECEIVED
- 2 APR 2013
DPTI
PLANNING DIVISION

The Secretary
Development Assessment Commission
GPO Box 1815
ADELAIDE SA 5001

Re: Development Application Number 010/U025/13

Attention: Ryan Moyle

The Outback Communities Authority (OCA) has been asked to comment on the use of land in a proposal for development of a Caravan shelter and deck at Allotment F, in DP55064.

The OCA wishes to advise that the provision of power, water and other municipal services may not be available in this area.

The OCA supports the proposal as described in the Development Application Form.

Yours sincerely

Byron Gough
Governance Manager
Office for the Outback Communities Authority

encl

Objective ID: A1624244

Development Assessment Commission,
G.P.O. Box 1815,
ADELAIDE SA 5001

Dear Sir,

I advise that this Agency has **the attached/no report** to make on the proposed development described below.

Reporting Officer

25/3/13
Date

Municipal Services such as power & water may not be available in this area.

Agency	OUTBACK COMMUNITIES AUTHORITY
Application Number	010/U025/13
Relevant Authority	DAC
Kind of Development	MERIT
Due Date to Reply	18/04/2013
Minor/Major/Technical	LAND USE
Officer	RYAN MOYLE

South Australian Country Fire Service

Development Assessment Service

Your Ref: Cactus Beach
Our Ref: 20161107 – 02tf – Out-of-Council-Area DA

7/11/16

Daniel Pluck
c/o Development Assessment Commission

Daniel.Pluck@sa.gov.au

Dear Daniel

RE: CACTUS BEACH SHACKS – BUSHFIRE VULNERABILITY

The Australian Standard TM 3959 [AS3959] *"Construction of Buildings in Bushfire Prone Areas"* is referenced by the National Construction Code to determine the fire protection requirements for the level of construction of a building that will be subjected to the impact of a bushfire.

Compliance with the fire protection requirements is not a guarantee the dwelling will not burn, but its intent is to provide a *'measure of protection'* from the approach, impact and passing of a bushfire.

To comprehensively address the fire risk a site bushfire attack assessment should be conducted with reference to AS3959 to evaluate the existing vegetation to ascertain the bushfire hazard.

The site bushfire attack assessment considers the bushfire hazard (up to 100m) in relation to the topography and the separation distance between the asset and the hazard.

This assessment will result in the determination of a Bushfire Attack Level (BAL) for each dwelling which in turn will determine the relevant construction fire protection requirements.

The vegetation community for the locality would generally be described as Shrubland.

The BAL rating would therefore range (on level ground) from:

- BAL Flame Zone for separation distances of <7m between the Shrubland & the asset,
- BAL 40 for separation distances of 7 to <9m,
- BAL 29 for separation distances of 9 to <13m,
- BAL 19 for separation distances of 13 to <19m,
- BAL 12.5 for separation distances of 19m or greater.

From the images you have supplied, CFS notes the existing structures vary from a shelter roof over caravans to 'lightweight' timber structures and iron cement-sheet clad structures.

The evidence provided in the images would indicate that none of the structures would comply with the fire protection requirements of BAL Flame Zone or BAL 40.

The most robust structures would be those that are constructed of iron and cement-sheet provided that they are sealed to prevent the ingess of embers. However it is doubtful they would comply with the requirements of BAL 29.

It is noted that some sleeping quarters are caravans, which are not addressed by AS3959 – since they are 'portable' dwellings, and as such probably offer low bushfire resistance due to their construction.

Based upon the BAL table above combined with the images of the existing density of the vegetation the minimum level of construction would likely be the equivalent of BAL 19.

Mitigation of the fire risk may be achieved by also considering the landscape relationship between the structures and the bushfire hazard.

An increased separation distance will reduce the potential impact upon the structure and hence may provide a lower BAL rating.

Unfortunately a 'one-size-fits-all' answer to the situation is not possible due to the uniqueness of each structure.

CFS would strongly advise that the occupiers of each structure develop a robust Bushfire Survival Plan as a contingency.

Should there be any need for further information please contact the undersigned at the SA CFS Development Assessment Service on (08) 8391 6077

Yours faithfully

TREVOR FINNEY
BUSHFIRE SAFETY OFFICER
DEVELOPMENT ASSESSMENT SERVICES

75 Gawler Street Mount Barker
T 08 8391 6077 F 08 8391 1877 E das@cfs.sa.gov.au
ABN 97 677 077 835
www.cfs.sa.gov.au

Government of South Australia

Orig. L 10653407

16:00 2-Mar-2007
5 of 9 Fees: $104.00

BELOW THIS LINE FOR OFFICE USE ONLY

Date	Time

FEES

R.G.O.	POSTAGE	NEW C.T.

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886

Solicitor/~~Registered Conveyancer/Lessee~~
PELLEGRINO RINO ZOLLO

AGENT CODE

Lodged by: COATES PL COP7P

Correction to:

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. .....
2. .....
3. .....
4. .....
5. .....

Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

1. .....
2. .....
3. .....

RNR

CORRECTION	PASSED
18.4.07	

REGISTERED

19 JUN 2007

pro REGISTRAR-GENERAL

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S).

ITEM(S)	AGENT CODE

© CORPORATE FORMS PTY LTD (May 2000) Lic No.1

LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR GENERAL

BELOW THIS LINE FOR AGENT USE ONLY

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene the provisions of Section 32 of the Development Act 1993.

Australia and New Zealand Banking Group Ltd hereby consents to the within lease under and by virtue of Mortgage No. 9341120

Dated ....8../..2../2006 2007

EXECUTED by AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
by being Signed by its Attorney Robert John Howlett
Manager Securities
under Power of Attorney No. 9480083
and Substitutionary Power No. 10215638
in the presence of:
Phillip Norman Richardson
Ph 8211 5866

DATED 16/2/07

EXECUTION

.....
Signature of the LESSOR

.....
Signature of WITNESS – Signed in my presence by the LESSOR who is either personally known to me or has satisfied me as to his or her identity. *

LIAM PAUL GATES
Print Full name of Witness (BLOCK LETTERS)

POINT SINCLAIR VIA PENONG
SOUTH AUST 5690
Address of Witness
Business Hours Telephone Number 08 86251036

.....
Signature of the LESSEE

.....
Signature of WITNESS – Signed in my presence by the LESSEE who is either personally known to me or has satisfied me as to his or her identity. *

PHILIP RICHARD WANALYN
Print Full name of Witness (BLOCK LETTERS)

25 FLAXMAN ST PORT LINCOLN
Address of Witness
Business Hours Telephone Number 86 83 03 76

.....
Signature of the LESSEE

.....
Signature of WITNESS – Signed in my presence by the LESSEE who is either personally known to me or has satisfied me as to his or her identity. *

DANIELLE HEASLIP
Print Full name of Witness (BLOCK LETTERS)

104 TASMAN TERRACE
PORT LINCOLN SA 5606
Address of Witness
Business Hours Telephone Number ~~0428821455~~ 86823155

.....
Signature of the LESSEE

.....
Signature of WITNESS – Signed in my presence by the LESSEE who is either personally known to me or has satisfied me as to his or her identity. *

Camille Tanner
Print Full name of Witness (BLOCK LETTERS)

20 Aidas Crt.
PORT LINCOLN
Address of Witness
Business Hours Telephone Number 0425 815 736

* NB: A penalty of up to $2000 or 6 months imprisonment applies for improper witnessing.

Form L1

MEMORANDUM OF LEASE

CERTIFICATES OF TITLE BEING LEASED

GP 8/12002

Allotment F in ~~DP 55064~~ being portion of the land comprised in Certificate of Title Register Book Volume 5851 Folio 904

ESTATE AND INTEREST	ENCUMBRANCES
FEE SIMPLE	Subject to Mortgage No. 9341120

RevenueSA - Stamp Duty - ABN 19 040 349 855 ©
RevNetID/PRA Bundle No.: 113780168
Orig/Copy 1 of/with 2 copies
Consideration/Value/Security: $ 21,000
SA Proportion (if applicable): $ N/A
SD: $ NIL LTO Fees: $ N/A
Int: $ NIL Hen/Add Tax: $ N/A
Signature: Date: 16.1.06

LESSOR (Full Name and Address)

RONALD PAUL GATES of Point Sinclair Via Penong South Australia 5690

LESSEE (Full Name, Address and Mode of Holding)

JOHN CHARLES HINKS of 6 Smith Street, Port Lincoln SA 5606 and REECE GYNELL of 19 Adelaide Place, Port Lincoln SA 5606 and BRIAN JOHN GALE of PO Box 1430, Port Lincoln SA 5606 as tenants in common in equal shares

TERM OF LEASE

COMMENCING ON 1ST DAY OF JANUARY 2006

EXPIRING ON 31ST DAY OF DECEMBER 2027

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

ONE THOUSAND DOLLARS ($1,000.00) per annum payable by one (1) yearly instalments of ONE THOUSAND DOLLARS ($1,000.00) the first of which payments becomes due and payable on the 1st day of January and which thereafter shall be paid on the 1st day of each and every year during the term.

OPERATIVE CLAUSE [a] delete the inapplicable

The Lessor LEASES TO THE LESSEE the land ~~hereinafter~~ ABOVE described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed herein and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negatived below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

~~Allotment F in DP 55064 being portion of the land comprised in Certificate of Title Register Book Volume 5851 Folio 904~~

NOT APPLICABLE

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

COVENANTS OF LEASE

1.0 **Interpretation**

1.1 It is hereby mutually covenanted that in the covenants of this Lease hereinafter set forth unless repugnant to the context:

1.1.1 The following expressions shall have the meanings or be interpreted in manner set out hereunder:

(a) "the Lessor" means the said Ronald Paul Gates and his respective executors or administrators and assigns, servants and agents and any person authorised by them or either of them;

(b) "the Lessee" means the said **John Charles Hinks, Reece Gynell and Brian John Gale** together with their heirs executors and assigns, the servants agents contractors invitees tenants licensees visitors and customers of the corporation being the Lessee under this lease for the time being;

(c) "the premises" means the land described in DP 55064 and marked F together with all improvements on the land and all fixtures fittings plant machinery and equipment of the Lessor now or afterwards installed in the premises.

(d) "term" includes as well as the period mentioned above any extension or renewal.

1.1.2 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine or neuter genders and vice versa.

1.1.3 Any reference to a person shall be deemed to include a corporate body.

1.1.4 References to a statue include all amendments for the time being in force and any other statute enacted in substitution for and the regulations, by-laws or orders for the time being made under that statute.

1.2 In the event of any part of this Lease being or becoming void or unenforceable then that part shall be severed from this Lease to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any severance.

2.0 THE LESSEE HEREBY COVENANTS AND AGREES with the Lessor as follows:

2.1 That during the term or any extended term or any period during which the Lessee shall hold over or be or remain a tenant or be in occupation of the premises:

2.1.1 To pay the agreed rent on the days and in the manner hereby stipulated without deduction.

2.1.2 To pay when due all telephone and electricity charges during the term or any extension of it for such services used by the Lessee in the course of his business at the premises.

2.2 Not to assign, transfer, sublet or part with the possession of the premises or any part of the premises or permit the premises or any part to be assigned, transferred, sublet or put into possession of any person without the prior consent in writing of the Lessor whose consent shall not be unreasonably or capriciously withheld PROVIDED THAT the Lessee is not then in default in the performance and observance of any covenant or agreement on the Lessee's part contained in this Lease.

2.3 Not to use the premises or permit them to be used otherwise than for the purpose of a residence and not to be or permit to be done anything which may become unlawful or an annoyance or nuisance or damage to the Lessor or to any other person in the neighbourhood, or use or permit the premises to be used for residential purposes.

2.4 To maintain, replace, repair and keep the whole of the premises and all the Lessor's partitions, fixtures and fittings in good and substantial repair, order and condition other than damage resulting from fire, flood, lightning, storm, tempest, fair wear and tear, inevitable accident or Act of God and at the expiration or earlier determination of this lease to deliver up the premises to the Lessor together with the Lessor's partitions, fixtures and fittings in good and substantial repair and condition in all respects and where appropriate in the same working order as they now are including all lights, and electrical fittings, bulbs, tubes, airconditioning (if any) floor finishes and glazing, other than damage resulting from fire, flood, lightning, storm, tempest, fair wear and tear, inevitable accident or Act of God PROVIDED THAT this covenant shall not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair except where it is rendered necessary by any act or omission on the part of the Lessee the servant, agent, contractor, sub-tenant or employee or any person on the premises with the consent of the Lessee or by the use of the premises by the Lessee.

2.5 Without affecting the generality of the preceding covenants at the Lessee's expense:

2.5.1 To keep and maintain in good order, repair and condition all fittings, plant, furnishings and equipment (including carpets) of the Lessee to the extent necessary to prevent any hazard to or deterioration in the condition of the premises.

2.5.2 To make good any breakage, defect or damage to the premises or any associated facility caused by lack of care, misuse or abuse by the Lessee or the Lessee's servants, agents, contractors, sub-tenants or licensees of the Lessee or otherwise caused by any breach or default of the Lessee under this lease or under any rules or regulations (and any modification and amendments to them) under this lease except for usual wear and tear.

2.5.3 To comply with all statutes, orders or regulations present or future affecting or relating to the Lessee's use of the premises and with all requirements which may be made or notices or orders which may be given by any Governmental, municipal, civic or other authority in respect of the use of the premises including compliance with regulations concerning the installation and maintenance of fire safety equipment and to keep the Lessor indemnified in respect of all matters referred to in this paragraph PROVIDED THAT this covenant shall not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair except where it is rendered necessary by any act or omission on the part of the Lessee the servant, agent, contractor, sub-tenant or employee of the Lessee or any

person on the premises with the consent of the Lessee or by the use of the premises by the Lessee.

2.6 Not to use or permit the servants, sub-tenants, contractors agents or employees of the Lessee or any person on the premises with the consent of the Lessee to use the lavatories, toilets, sinks and drainage and other plumbing facilities in the premises for any purpose other than that for which they were constructed and not to deposit or allow any rubbish or other material to be deposited in them and any damage caused by such misuse shall be niade good by the Lessee FORTHWITH.

2.7 To give to the Lessor prompt notice in writing of any circumstances including any accident to or defect in or need to repair any service to or fittings in the premises of which the Lessee should be aware and which might cause any danger, risk or hazard to the premises or any person in them.

2.8 Not without the previous consent in writing of the Lessor to make any alteration or addition in or to the premises nor without the consent in writing of the Lessor which consent shall not be unreasonably withheld to install or alter any partitioning work, fixed equipment or other fixed installation in or on the premises. However where such consent is given the materials and design shall first be approved by the Lessor and such work, equipment or installation shall be installed or altered in accordance with approval so given. All such partitioning work and such installations other than the Lessor's fixtures and/or fittings shall remain the property of the Lessee who shall be responsible for their maintenance and (in the case of any plant or equipment) for the repair and running costs and such partitioning work and/or installations may and if required by the Lessor, shall be removed by the Lessee at or immediately prior to the expiration of the lease but the Lessee shall upon such removal immediately repair and reinstate the premises to the condition they were in prior to such installation.

2.9 Not to bring upon the premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the Lessee's permitted use of the premises and in no circumstances shall the Lessee bring upon the premises any heavy machinery or other plant or equipment of a nature or size as to cause or (in the reasonable opinion of the Lessor) be likely to cause any structural or other damage to the floors or walls or any other parts of the premises nor shall it be of such construction or manufacture as to cause any noise or vibration, noxious odour, fumes or gas that could pervade the premises or escape from them to the discernible notice of any person outside the premises nor shall the Lessee bring or allow any dangerous, noxious, toxic, volatile, explosive or inflammable substance to be brought onto the premises without the prior written consent of the Lessor. Before bringing any heavy machinery or other plant or equipment upon the premises the Lessee shall inform the Lessor of the Lessee's intention to do so and the Lessor may direct the routing, installation and location of all such machinery, plant and equipment and for this purpose the Lessor may employee the services of its architects or engineers to ascertain the safest and most favourable and convenient method of routing, installing and locating such machinery and the Lessee shall observe and comply with all such directions that the Lessor or its authorised agents may give.

2.10 To permit the Lessor and its authorised agents during business hours upon giving reasonable notice to the Lessee (except in the case of emergency when no notice shall be required) to enter upon the premises and examine their state of repair and the Lessor may then serve upon the Lessee a notice in writing of any lack of repair for which the Lessee is

responsible under this lease requiring the Lessee within a reasonable time to carry out such repair and if the Lessee fails to do so the Lessor may (without any obligation on the part of the Lessor to do so) enter and execute the required repairs as if it were the Lessee and for that purpose the Lessor its architects, contractors, workmen and agents may enter the premises and remain for the purpose of planning, preparing for and completing the work and any reasonable expenses and costs of carrying out such work shall FORTHWITH be payable by the Lessee to the Lessor.

2.11 Not at any time during the term do or permit to be done any act on the premises which may result in any insurance in respect of the premises in respect of becoming void or voidable. Any increase in the rate of premium on the Lessor's insurance arising out of the business activities of the Lessee shall forthwith be made good by the Lessee to the Lessor.

2.12 Not at any time during the term do or permit to be done any act on the premises which may result in any insurance in respect of the premises becoming void or voidable or as a result of which the rate of premium on any insurance shall be liable to be increased.

2.13 To indemnify the Lessor from and against all and any actions, claims, demands, losses, damages, costs and expenses for which the Lessor shall or may be or become liable in respect of or arising from:

2.13.1 The negligent use, misuse, waste or abuse by the Lessee or any agent, servant, sub-tenant of the Lessee or any other person claiming through or under the Lessee or any person on the premises with the consent of the Lessee of the water, gas, electricity, oil, lighting and other services and facilities of the premises.

2.13.2 Overflow or leakage of water (including rain water) in or from the premises but having origin inside the premises caused or attributed to by any act or omission on the part of the Lessee its servant, agent, sub-tenant or other persons previously referred to.

2.13.3 Loss or damage or injury from any cause to property or persons caused or contributed to by the use of the premises by the Lessee or any servant, agent, sub-tenant or other persons previously referred to.

2.13.4 Loss, damage or injury from any cause to property or persons within or without the premises caused or contributed to by an act, omission, neglect, breach or default of the Lessee or any servant, agent, sub-tenant or other persons previously referred to.

2.14 To occupy, use and keep the premises at the risk of the Lessee and the Lessee HEREBY RELEASES the Lessor its servants and agents to the full extent permitted by law from all and any claims, demands, and damages of every kind resulting from any accident, damage, or injury occurring on the premises except where deriving from any wilful act of the Lessor or any agent of the Lessor and the Lessee EXPRESSLY AGREES that the Lessor shall have no responsibility or liability for any loss or damage to fixtures, fittings or personal property of the Lessee.

3. THE LESSOR HEREBY COVENANTS AND AGREES with the Lessee as follows:

3.1 That the Lessee paying the rent and observing and performing the covenants, obligations and provisions in this lease to be observed and performed by the Lessee shall peaceably

possess and enjoy the premises for the term and any extension without any interruption or disturbance from the Lessor its servants or agents.

3.2 That the Lessor shall pay all rates taxes levies and other outgoings in relation to the premises as and when the same shall fall due for payment.

3.3 That the Lessee may at or prior to the expiration of the lease take, remove and carry away from the premises all fixtures, fittings, plant, equipment or other articles on the premises in the nature of trade or tenants fixtures brought upon the premises by the Lessee but the Lessee shall not cause any damage to the premises or if the Lessee does so SHALL FORTHWITH repair such damage and reinstate the premises to the condition they were in prior to the installation of such fixtures, fittings, plant or equipment.

4. THE LESSOR AND THE LESSEE HEREBY MUTUALLY COVENANT AND AGREE as follows:

4.1 If the rent or any part of the rent is not paid for fourteen (14) days after any of the days on which the rent ought to have been paid in accordance with the covenant for payment contained in this lease (although no formal or legal demand shall have been made by the Lessor) or the Lessee commits any breach or default in the observance and performance of any of the covenants, obligations and provisions of this lease or of any rules and regulations made under it or if (the Lessee being a company) an order is made or resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld) or if the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts within the meaning of the Corporations Act 1992 or if execution is levied against the Lessee and not discharged within fourteen (14) days THEN and in any one or more of such events the Lessor at any time thereafter shall have the right to re-enter and re-possess the premises as if this lease had never been made but without prejudice to any right of action or other remedy which the Lessor may have for arrears of rent or breach of covenant or for damages as a result of any such event and upon re-entry the Lessor shall be discharged from any action, suit, claim or demand by or obligation to the Lessee by virtue of this lease.

4.2 That in case of a breach of any covenant or condition contained in this lease then the notice to the Lessee to be given pursuant to the Landlord and Tenant Act 1936 shall provide that the period of fourteen (14) days is the time within which the Lessee is to remedy any such breach or default if it is capable of remedy or to pay reasonable compensation or make restitution to the satisfaction of the Lessor.

4.3 That without prejudice to the rights, powers and remedies of the Lessor otherwise under this lease the Lessee will pay to the Lessor interest at the rate of twelve percent (12%) on any moneys due but unpaid fourteen (14) days after the due date such interest to be calculated from the due date for payment until payment of such moneys is made in full, and to be recoverable in the same manner as arrears of rental.

4.4 That in the event that the Lessor becomes entitled to re-enter and take possession of the premises and to determine this lease after necessary compliance with any relevant statutory provisions regarding forfeiture (of which the statutory declaration of an officer of the Lessor shall be conclusive evidence for the purpose of the Registrar General) the Lessee

HEREBY IRREVOCABLY APPOINTS the Lessor the attorney of the Lessee in the Lessee's name and as the Lessee's act and deed from time to time for the purpose of giving full effect to the power of re-entry or to sign a surrender of this lease and to arrange registration of such surrender and to record this Power of Attorney and to arrange any act, matter or thing to be done which may be required according to the Real Property Act or any law or regulation for the time being in force in the State of South Australia.

4.5 That the reasonable costs of recovery of rent due and unpaid interest and the Lessor's costs and expenses incurred by remedying or attempting to remedy any breach of the Lessee's covenants contained in this lease, including professional charges, workmen's wages and the amount paid by the Lessor by way of damages and penalties resulting from such breach whether by law or otherwise shall be treated as additional rent falling due and payable on the date on which such rent, interest, costs, expenses, wages, charges, damages, or penalties became due and owing and attaching to the Lessor's rights and remedies under this lease for the recovery of rent.

4.6 That if the whole or any part of the premises shall be destroyed or damaged on the happening of and in consequence of any event or risk against which the Lessor is insured the Lessor shall as soon as practicable apply all moneys which shall be received by the Lessor from the insurer towards rebuilding or reinstating the premises or such part of the premises as shall be so destroyed or damaged and that in rebuilding or reinstating the premises the Lessor may make any structural alteration in the buildings (including any increase or reduction in the size of them) as the Lessor may think fit and the rent or a fair and reasonable proportion of it according to the nature and extent of the damage (if any) sustained by the premises shall from the date of such destruction or damage be suspended until the premises shall have been put in proper condition by the Lessor for use and occupation by the Lessee.

4.7 That in the event of the Lessee holding over after the expiration or sooner determination of the said term with the consent of the Lessor the Lessee shall become a monthly tenant of the Lessor and the lease shall be determinable by fourteen (14) days prior notice expiring at any time at a monthly rental equivalent to a monthly proportion of the total annual rent payable under this lease at the expiration of such term and otherwise on the same terms and conditions (mutatis mutandis) as those contained in this lease where applicable.

4.8 In the event that at any time during the term of this Lease the Lessor shall be desirous of offering up for sale the land comprising the demised premises alone and no other portion of the Complex then the Lessor shall first offer to the Lessee the right to purchase the demised premises or the relevant part or parts thereof subject to and upon the terms and conditions upon which the Lessor is desirous of offering up the demised premises or part or parts thereof for sale as aforesaid by delivering to the Lessee a Law Society Form of Contract for Sale and Purchase of Land (in triplicate) containing all the terms and conditions upon which the Lessor is desirous of selling the demised premises or part or parts thereof as the case may be.

4.9 The Lessee shall be at liberty to accept such offer by the execution by the Lessee of one (1) copy of the Contract delivered to the Lessee pursuant to sub-clause 4.8 hereof and the delivery of same to the Lessee at any time within one (1) calendar month after service by the Lessor upon the Lessee of the Contract pursuant to sub-clause 4.8 hereof in which event the Lessor shall proceed to sell the demised premises to the Lessee subject to and upon all the terms and conditions of such Contract.

4.10 In the event that the Lessee shall not accept the offer referred to in sub-clause 4.9 hereof then the Lessor shall be at liberty at any time within one (1) year after the date of such offer to offer up the demised premises or part or parts thereof as the case may be for sale to any person or corporation subject to and upon terms and conditions no more favourable than offered to the Lessee pursuant to sub-clause 4.8 hereof.

4.11 In the event that the Lessor shall offer up the demised premises for sale during the period referred to in Clause 4.9 and such offer shall not be accepted within that period then in the event that the Lessor shall still desire to sell the demised premises subject to and upon terms and conditions no more favourable than offered to the Lessee pursuant to clause 4.8 hereof then the Lessor shall first offer to the Lessee the right to purchase the demised premises upon such terms and conditions by the delivery to the Lessee of a Contract (in triplicate) contained all such terms and conditions which offer the Lessee shall be at liberty to accept in the manner provided in clause 4.9 hereof.

4.12 In the event that the Lessee shall not accept the offer referred to in clause 4.8 hereof and the Lessor shall thereafter be desirous of offering up the demised premises or any part or parts thereof for sale upon terms and conditions no more favourable than already offered to the Lessee then the Lessor shall first offer to the Lessee the right to purchase the demised premises upon such other terms and conditions as to those said matters by the delivery to the Lessee of a Contract (in triplicate) contained all such other terms and conditions which offer the Lessee shall be at liberty to accept in the manner provided in clause 4.9 hereof.

4.13 4.13.1 Expressions used in this clause have the meanings given to them in the GST Act.

4.13.2 An amount payable by a party under this Lease in respect of a taxable supply by the other party, unless expressed to be exclusive of GST, represents the value of the taxable supply and the recipient must in addition to that amount and at the same time, pay to the supplier the GST payable on the cost of the supply.

4.13.3 If the Lease requires the Lessee to pay, reimburse or contribute to an amount paid or payable by the Lessor in respect of a creditable acquisition from a third party the total amount payable will be the amount required to pay, reimburse or contribute to the expense plus the GST payable in respect of that portion of the supply.

4.13.4 A party is not obliged under this clause to pay the GST on a taxable supply to it under the Lease until that party is given a valid tax invoice for that supply.

4.14 The Lessee shall reinstate the premises to the same state and condition as detailed in the original plan of the premises upon expiration or earlier termination of the Lease unless otherwise agreed between the Lessor and the Lessee.

4.15 That no waiver by the Lessor of one breach of any covenant obligation or provision contained in this lease or implied by law shall operate as a waiver of another breach of the lease or of any other covenants obligations or provisions contained in this lease or implied by law.

4.16 That without prejudice to any other means of giving notices required to be served under this lease such notice or notices shall be adequately served on the Lessor or Lessee if served personally or if left addressed to the Lessor or Lessee and forwarded to the Lessor or Lessee by pre-paid post to the last known place of business or residence of the Lessor or

the Lessee and any notices sent by post shall be deemed to be given at the time when it ought to be delivered in the ordinary course of post.

4.17 This lease is SUBJECT TO the special terms and conditions (if any) as specified and in the event of there being any inconsistency between any such terms and conditions and any of the provisions of this lease then such special terms and conditions shall prevail.

5.1 The Lessee is to ensure that the premises are to be occupied by no more than a caravan fixed annex and shade provision at all times;

5.2 The premises are not to be used at any time for a permanent residence;

5.3 The premises are not to be sublet without the prior written consent of the Lessor.

Development Applications 010/U097/12, 010/U001/13, 010/U025/13, 010/U033/13, 010/U034/13, 010/U055/13 & 010/U022/14

Land Not Within A Council Area (Eyre, Far North, Riverland and Whyalla) Development Plan - Consolidated 18 October 2012

ZONE POLICIES

Coastal Conservation Zone

1 To enhance and conserve the natural features of the coast including visual amenity, landforms, fauna and flora.

2 Low-intensity recreational and tourist accommodation located where environmental impacts on the coast will be minimal.

3 Development that contributes to the desired character of the zone.

DESIRED CHARACTER

Within this zone coastal features and scenic quality are conserved; appropriate public access is maintained; and development is not subject to coastal hazards and is subservient to the conservation of the coastal environment. The Zone includes Point Bell Conservation Park, Chadinga Conservation Reserve, Fowlers Bay Conservation Park, Wahgunyah Conservation Park and Nullarbor National Park.

The zone continues to be a predominately natural landscape containing coastal features and habitats such as wetlands, samphire flats, beaches, sand dunes and cliff tops. A wide variety of plant communities occur within these habitats.

The topography varies from low-lying samphire flats near Fowlers Bay to high cliff formations such as those along the Nullarbor. A variety of vegetated and unvegetated dune systems are found, including extensive sand drifts such as those at the Head of the Bight. The variety of land forms reflects major geological differences and variation in the influence of wind and waves along the coast.

The area is abundant in native wildlife, including the Osprey, White-bellied Sea-Eagle and Australian Sea Lion, all of which depend on the natural coastline for survival.

Development borrows from, and complements, the natural landscape in form and scale, and in building materials, textures, colours and tones, so that the natural elements of the site/locality remain dominant to any introduced elements, and the scenic quality of the coast is protected.

The zone includes only a limited number of 'iconic', nature-based/eco-tourism developments, located a minimum of 25 kilometres apart. These developments provide experiences that relate to the natural environment, whether for relaxation, discovery and/or adventure, and meet the needs of tourists and the people who live in the region, while protecting and enhancing opportunities for the future. These developments achieve excellence in environmental protection and management by ensuring their impacts (activities, visitation and buildings) on the ecology and natural environment are minimal and their design is of a high quality that complements the natural environment, site features and conditions.

Those parts of the zone at risk from coastal hazards such as flooding, erosion, sand drift and acid sulphate soils are kept free from development. Road construction is minimal and limited to that which is required to access a car park. Access over dunes and beaches is pedestrian only, using boardwalks to protect sand dunes from erosion.

Land Use

1 The following forms of development are envisaged in the zone:

- *conservation works*
- *interpretive signage and facilities*
- *nature-based/eco-tourist accommodation.*

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

3 Buildings and structures should mainly be for essential purposes, such as shelters and toilet facilities associated with public recreation, navigation purposes or necessary minor public works.

4 Development involving the removal of shell grit or sand, other than for coastal protection works purposes, or the disposal of domestic and industrial waste should not be undertaken.

Form and Character

6 Development should not be undertaken unless it is consistent with the desired character for the zone.

7 Development should be designed and sited to be compatible with conservation and enhancement of the coastal environment and scenic beauty of the zone.

8 Development should:
(a) not adversely impact on the ability to maintain the coastal frontage in a stable and natural condition
(b) minimise vehicle access points to the area that is the subject of the development
(c) be landscaped with locally indigenous plant species to enhance the amenity of the area and to screen buildings from public view
(d) utilise external low reflective materials and finishes that will minimise glare and blend in with the features of the landscape.

9 Where public access is necessary in sensitive locations, walkways and fencing should be provided to effectively control access.

10 Development should:
(a) be self-sufficient in terms of infrastructure and services, such as water, sewerage, electricity and waste disposal, unless existing infrastructure is available that can accommodate the projected demand from the development
(b) minimise impacts on the natural surrounding environment by containing construction within a tightly defined site boundary
(c) not obscure existing views to coastal features or be visibly prominent from key public vantage points, including public roads or car parking areas
(d) avoid areas that may endanger or threaten important nesting or breeding areas or the movement/migration patterns of fauna.

13 Car parking and access points to development should, wherever practicable, be:
(a) constructed of a permeable surface
(b) located on cleared land or along property boundaries to avoid the unnecessary removal of important native vegetation.

Land Division

15 Land should not be divided unless either of the following applies:

(a) the division would create an allotment greater than 5 hectares to accommodate an existing tourist accommodation development
(b) the division would not create any additional allotments either wholly or partly within the zone and would not increase the number of allotments with direct access to the coast or a reserve, including through the creation of land under rights of way or community title.

GENERAL SECTION

COASTAL AREAS

OBJECTIVES
1 The protection and enhancement of the natural coastal environment, including environmentally important features of coastal areas such as mangroves, wetlands, sand dunes, cliff-tops, native vegetation, wildlife habitat shore and estuarine areas.

2 Protection of the physical and economic resources of the coast from inappropriate development.

3 Preservation of areas of high landscape and amenity value including stands of vegetation, shores, exposed cliffs, headlands, islands and hill tops, and areas which form an attractive background to urban and tourist areas.

4 Development that maintains and/or enhances public access to coastal areas with minimal impact on the environment and amenity.

5 Development only undertaken on land which is not subject to or that can be protected from coastal hazards including inundation by storm tides or combined storm tides and stormwater, coastal erosion or sand drift, and probable sea level rise.

6 Development that can accommodate anticipated changes in sea level due to natural subsidence and probable climate change during the first 100 years of the development.

7 Development which will not require, now or in the future, public expenditure on protection of the development or the environment.

8 Management of development in coastal areas to sustain or enhance the remaining natural coastal environment.

PRINCIPLES OF DEVELOPMENT CONTROL
1 Development should be compatible with the coastal environment in terms of built-form, appearance and landscaping including the use of walls and low pitched roofs of non-reflective texture and natural earth colours.

Environmental Protection

2 The coast should be protected from development that would adversely affect the marine and onshore coastal environment, whether by pollution, erosion, damage or depletion of physical or biological resources, interference with natural coastal processes or any other means.

3 Development should not be located in delicate or environmentally-sensitive coastal features such as sand dunes, cliff-tops, wetlands or substantially intact strata of native vegetation.

4 Development should not be undertaken where it will create or aggravate coastal erosion, or where it will require coast protection works which cause or aggravate coastal erosion.

5 Development should be designed so that solid/fluid wastes and stormwater runoff is disposed of in a manner that will not cause pollution or other detrimental impacts on the marine and on-shore environment of coastal areas.

6 Effluent disposal systems incorporating soakage trenches or similar should prevent effluent migration onto the inter-tidal zone and be sited at least 100 metres from whichever of the following requires the greater distance:

(a) the mean high-water mark at spring tide, adjusted for any subsidence for the first 50 years of development plus a sea level rise of 0.7 metres

(b) the nearest boundary of any erosion buffer determined in accordance with the relevant provisions in this Development Plan.

8 Development should be designed and sited so that it does not prevent natural landform and ecological adjustment to changing climatic conditions and sea levels and should allow for the following:

(a) the unrestricted landward migration of coastal wetlands

(b) new areas to be colonised by mangroves, samphire and wetland species

(c) sand dune drift

(d) where appropriate, the removal of embankments that interfere with the abovementioned processes.

Maintenance of Public Access

9 Development should maintain or enhance public access to and along the foreshore.

10 Development should provide for a public thoroughfare between the development and any coastal reserve.

11 Other than small-scale infill development in a predominantly urban zone, development adjacent to the coast should not be undertaken unless it has, or incorporates an existing or proposed public reserve, not including a road or erosion buffer, of at least 50 metres width between the development and the landward toe of the frontal dune or the top edge of an escarpment. If an existing reserve is less than 50 metres wide, the development should incorporate an appropriate width of reserve to achieve a total 50 metres wide reserve.

12 Except where otherwise specified in a particular zone or policy area, buildings on land abutting coastal reserves should be set back either a distance of 8 metres from any boundary with the reserve or in line with adjacent development, whichever is the greater distance.

13 Development that abuts or includes a coastal reserve should be sited and designed to be compatible with the purpose, management and amenity of the reserve, as well as to prevent inappropriate access to the reserve.

14 Development, including marinas and aquaculture, should be located and designed to ensure convenient public access along the waterfront to beaches and coastal reserves is maintained, and where possible enhanced through the provision of one or more of the following:

(a) pedestrian pathways and recreation trails

(b) coastal reserves and lookouts

(c) recreational use of the water and waterfront

(d) safe public boating facilities at selected locations

(e) vehicular access to points near beaches and points of interest

(f) car parking.

17 Access roads to the coast and lookouts should preferably be spur roads rather than through routes, other than tourist routes where they:

(a) do not detract from the amenity or the environment

(b) are designed for slow moving traffic
(c) provide adequate car parking.

Hazard Risk Minimisation

19 Development including associated roads and parking areas, other than minor structures unlikely to be adversely affected by flooding, should be protected from sea level rise by ensuring all of the following apply:
(a) site levels are at least 0.3 metres above the standard sea-flood risk level
(b) building floor levels are at least 0.55 metres above the standard sea-flood risk level
(c) there are practical measures available to protect the development against an additional sea level rise of 0.7 metres, plus an allowance to accommodate land subsidence until the year 2100 at the site.

21 Development that requires protection measures against coastal erosion, sea or stormwater flooding, sand drift or the management of other coastal processes at the time of development, or in the future, should only be undertaken if all of the following apply:
(a) the measures themselves will not have an adverse effect on coastal ecology, processes, conservation, public access and amenity.
(b) the measures do not nor will not require community resources, including land, to be committed.
(c) the risk of failure of measures such as sand management, levee banks, flood gates, valves or stormwater pumping, is acceptable relative to the potential hazard resulting from their failure.
(d) binding agreements are in place to cover future construction, operation, maintenance and management of the protection measures.

Erosion Buffers

23 Development should be set back a sufficient distance from the coast to provide an erosion buffer which will allow for at least 100 years of coastal retreat for single buildings or small scale developments, or 200 years of coastal retreat for large scale developments (ie new townships) unless either of the following applies:
(a) the development incorporates appropriate private coastal protection measures to protect the development and public reserve from the anticipated erosion.
(b) the council is committed to protecting the public reserve and development from the anticipated coastal erosion.

24 Where a coastal reserve exists or is to be provided it should be increased in width by the amount of any required erosion buffer. The width of an erosion buffer should be based on the following:
(a) the susceptibility of the coast to erosion
(b) local coastal processes
(c) the effect of severe storm events
(d) the effect of a 0.3 metres sea level rise over the next 50 years on coastal processes and storms
(e) the availability of practical measures to protect the development from erosion caused by a further
sea level rise of 0.7 metres per 50 years thereafter.

25 Development should not occur where essential services cannot be economically provided and maintained having regard to flood risk and sea Ievel rise, or where emergency vehicle access would be prevented by a 1 in 100 year average return interval flood event, adjusted for 100 years of sea level rise.

Land Division

26 Land in coastal areas should only be divided if:
(a) it or the subsequent development and use of the land will not adversely affect the management of the land, adjoining land or the coast
(b) sand dunes, wetlands and substantially intact strata of native vegetation are maintained or consolidated within single allotments.

27 Land division in coastal areas outside of designated urban or settlement zones should not increase either of the following:
(a) the number of allotments abutting the coast or a reserve
(b) the number of allotments, including community title allotments and those that incorporate rights of way, with direct access to the coast or a reserve.

Protection of Economic Resources

29 Development should be sited, designed and managed so as not to conflict with or jeopardise the continuance of an existing aquaculture development.

Development in Appropriate Locations

30 Development along the coast should be in the form of infill in existing developed areas or concentrated into appropriately chosen nodes and not be in a scattered or linear form.

DESIGN AND APPEARANCE

OBJECTIVES
1 Development of a high architectural standard that responds to and reinforces positive aspects of the local environment and built form.

2 Roads, open spaces, buildings and land uses laid out and linked so that they are easy to understand and navigate.

PRINCIPLES OF DEVELOPMENT CONTROL
1 The design of a building may be of a contemporary nature and exhibit an innovative style provided the overall form is sympathetic to the scale of development in the locality and with the context of its setting with regard to shape, size, materials and colour.

3 Buildings should be designed to reduce their visual bulk and provide visual interest through design elements such as:
(a) articulation
(b) colour and detailing
(c) small vertical and horizontal components
(d) design and placing of windows
(e) variations to facades.

7 The external walls and roofs of buildings should not incorporate highly reflective materials which will result in glare.

9 Building design should emphasise pedestrian entry points to provide perceptible and direct access from public street frontages and vehicle parking areas.

10 Development should provide clearly recognisable links to adjoining areas and facilities.

11 Buildings, landscaping, paving and signage should have a coordinated appearance that maintains and enhances the visual attractiveness of the locality.

12 Buildings (other than ancillary buildings or group dwellings) should be designed so that their main façade faces the primary street frontage of the land on which they are situated.

Infrastructure
OBJECTIVES
1 Infrastructure provided in an economical and environmentally sensitive manner.

3 Suitable land for infrastructure identified and set aside in advance of need.

5 The efficient and cost-effective use of existing infrastructure.

PRINCIPLES OF DEVELOPMENT CONTROL
1 Development should not occur without the provision of adequate utilities and services, including:
- *(a) electricity supply*
- *(b) water supply*
- *(c) drainage and stormwater systems*
- *(d) waste disposal*
- *(e) effluent disposal systems*
- *(f) formed all-weather public roads*
- *(g) telecommunications services*
- *(h) social infrastructure, community services and facilities*
- *(i) gas services.*

2 Development should not take place until adequate and coordinated drainage of the land is assured.

4 In areas where no reticulated water supply is available, buildings whose usage is reliant on a water supply should be equipped with an adequate and reliable on-site water storage system.

NATURAL RESOURCES
OBJECTIVES
1 Retention, protection and restoration of the natural resources and environment.

2 Protection of the quality and quantity of South Australia's surface waters, including inland, marine and estuarine and underground waters.

3 The ecologically sustainable use of natural resources including water resources, including marine waters, ground water, surface water and watercourses.

5 Development sited and designed to:
(a) maximise the use of stormwater
(b) protect stormwater from pollution sources
(c) protect or enhance the environmental values of receiving waters
(d) prevent the risk of downstream flooding
(e) minimise the loss and disturbance of native vegetation.

6 Storage and use of stormwater which avoids adverse impact on public health and safety.

7 Native flora, fauna and ecosystems protected, retained, conserved and restored.

8 Restoration, expansion and linking of existing native vegetation to facilitate habitat corridors for ease of movement of fauna.

9 Minimal disturbance and modification of the natural landform.

11 Protection of areas prone to erosion or other land degradation processes from inappropriate development.

12 Protection of the scenic qualities of natural and rural landscapes.

Biodiversity and Native Vegetation

28 Development should retain existing areas of native vegetation and where possible contribute to revegetation using locally indigenous plant species.

29 Development should be designed and sited to minimise the loss and disturbance of native flora and fauna, including marine animals and plants, and their breeding grounds and habitats.

31 Native vegetation should be conserved and its conservation value and function not compromised by development if the native vegetation does any of the following:

(a) provides an important habitat for wildlife or shade and shelter for livestock
(b) has a high plant species diversity or includes rare, vulnerable or endangered plant species or plant associations and communities
(c) provides an important seed bank for indigenous vegetation
(d) has high amenity value and/or significantly contributes to the landscape quality of an area, including the screening of buildings and unsightly views
(e) has high value as a remnant of vegetation associations characteristic of a district or region prior to extensive clearance for agriculture
(f) is growing in, or is characteristically associated with a wetland environment.

32 Native vegetation should not be cleared if such clearing is likely to lead to, cause or exacerbate any of the following:

(a) erosion or sediment within water catchments
(b) decreased soil stability
(c) soil or land slip
(d) deterioration in the quality of water in a watercourse or surface water runoff
(e) a local or regional salinity problem
(f) the occurrence or intensity of local or regional flooding.

33 Development that proposes the clearance of native vegetation should address or consider the implications that removing the native vegetation will have on the following:

(a) provision for linkages and wildlife corridors between significant areas of native vegetation
(b) erosion along watercourses and the filtering of suspended solids and nutrients from run-off
(c) the amenity of the locality
(d) bushfire safety
(e) the net loss of native vegetation and other biodiversity.

34 Where native vegetation is to be removed, it should be replaced in a suitable location on the site with vegetation indigenous to the local area to ensure that there is not a net loss of native vegetation and biodiversity.

35 Development should be located and occur in a manner which:

(a) does not increase the potential for, or result in, the spread of pest plants, or the spread of any nonindigenous plants into areas of native vegetation or a conservation zone
(b) avoids the degradation of remnant native vegetation by any other means including as a result of spray drift, compaction of soil, modification of surface water flows, pollution to groundwater or
surface water or change to groundwater levels
(c) incorporates a separation distance and/or buffer area to protect wildlife habitats and other features of nature conservation significance.

36 Development should promote the long-term conservation of vegetation by:

(a) avoiding substantial structures, excavations, and filling of land in close proximity to the trunk of trees and beneath their canopies
(b) minimising impervious surfaces beneath the canopies of trees
(c) taking other effective and reasonable precautions to protect both vegetation and the integrity of structures and essential services.

ORDERLY AND SUSTAINABLE DEVELOPMENT
OBJECTIVES
1 Orderly and economical development that creates a safe, convenient and pleasant environment in which to live.

2 Development occurring in an orderly sequence and in a compact form to enable the efficient provision of public services and facilities.

4 Development that does not prejudice the achievement of the provisions of the Development Plan.

5 Urban development generally contained within existing townships and settlements.

PRINCIPLES OF DEVELOPMENT CONTROL
1 Development should not prejudice the development of a zone for its intended purpose.

2 The economic base of the region should be expanded in a sustainable manner.

3 Urban development should form a compact extension to an existing built-up area.

4 Ribbon development should not occur along the coast, water frontages or arterial roads as shown on the Overlay Maps - Transport (refer to the Map Reference Tables).

5 Development should be located and staged to achieve the economical provision of public services and infrastructure, and to maximise the use of existing services and infrastructure.

TRANSPORTATION AND ACCESS

PRINCIPLES OF DEVELOPMENT CONTROL
16 Development should have direct access from an all weather public road.

17 Development should be provided with safe and convenient access which:
(a) avoids unreasonable interference with the flow of traffic on adjoining roads
(b) accommodates the type and volume of traffic likely to be generated by the development or land use and minimises induced traffic through over-provision
(c) is sited and designed to minimise any adverse impacts on the occupants of and visitors to neighbouring properties.

22 Driveways, access tracks and parking areas should be designed and constructed to:
(a) follow the natural contours of the land
(b) minimise excavation and/or fill
(c) minimise the potential for erosion from run-off
(d) avoid the removal of existing vegetation
(e) be consistent with Australian Standard AS 2890 Parking facilities.