

## 20.1 Late Agenda Item – Development Application 822/062/10



7<sup>th</sup> November 2010

Ref: 5298 Council report

The Chief Executive Officer  
District Council of Robe  
PO Box 1  
ROBE SA 5276

ATTENTION: Michelle Gibbs

Dear Michelle,

**RE: PLANNING APPEAL PROPOSED DWELLING LOT 1 KINGSTON ROAD, ROBE  
DEVELOPMENT APPLICATION NO: 822/062/10**

At the Panel meeting of 19<sup>th</sup> October 2010, the Development Assessment Panel resolved to enter into a Land Management Agreement as a compromise to an appeal lodged by Mr. Matt Austin for a second dwelling on the above mentioned land.

The land is located in the Primary Industry zone in which the Development Plan provisions speak strongly against the development of dwellings and in particular, more than one dwelling on an allotment.

The application was the subject of a planning assessment report from my office (see attached) and was originally refused by the Panel and has subsequently been the subject of an appeal to the Environment Resources and Development Court.

As part of the appeal process the applicants have suggested the use of a Land Management Agreement as a possible solution to allowing the development to proceed.

In correspondence to the Council dated 12 October, Mr. Phillip Brunning, a planning consultant acting for the Austin's has advised.

*"It is stressed that the application is not for land division, with the two dwellings to be used in conjunction with each other, occupied by members of the Mr. Austin's family including his parent and disabled sibling.*

*To affirm this point, Mr. Austin is prepared to enter into a Land Management Agreement with Council that would legally encumber this property (including future land owners) such that the would (sic) preclude the potential for land division.*

*The LMA may also specify that the two dwellings are to be occupied by related households and that they not be individually tenanted by non family members. This would ensure the two dwellings are used in conjunction with each other."*

Section 57 of the Development Act provides that a Council may enter into a Land Management Agreement with a land owner for the purposes of the management, preservation or conservation of land. The LMA will be registered on the Title to the land and will be binding on any future owner of the land.

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The most relevant parts of Section 57 of the Development Act are reproduced below.

- 57A Land management agreements—development applications**
- (1) Subject to this section, a designated authority may enter into an agreement under this section with a person who is applying for a development authorisation under this Act that will, in the event that the relevant development is approved, bind—
    - (a) the person; and
    - (b) any other person who has the benefit of the development authorisation; and
    - (c) the owner of the relevant land (if he or she is not within the ambit of paragraph (a) or (b) and if the other requirements of this section are satisfied).
  - (2) An agreement under this section may relate to any matter that the person applying for the development authorisation and the designated authority agree is relevant to the proposed development (including a matter that is not necessarily relevant to the assessment of the development under this Act).
  - (3) However, the parties proposing to enter into an agreement must have regard to—
    - (a) the provisions of the appropriate Development Plan; and
    - (b) the principle that the entering into of an agreement under this section by the designated authority should not be used as a substitute to proceeding with an amendment to a Development Plan under this Act.

A Land Management Agreement (LMA) must be taken into consideration by the Council when assessing future development on land to which the LMA applies.

A Land Management Agreement can only be entered into by a Council and by resolution of the Council and cannot be agreed by the Development Assessment Panel.

The conditions applying in an LMA must be clear in their intent and must be enforceable.

Failure to comply with the provisions of an LMA will oblige the Council to initiate proceedings under the relevant provisions of the Development Act in the same way as it would enforce a condition of consent to a Development Approval.

Whilst an LMA has not been provided to the Council for consideration I do not consider that the conditions (clauses) proposed thus far by the applicant are enforceable or manageable and will inevitably lead to the very circumstances that the LMA seeks to address.

It is in my opinion impossible for the Council to reasonably identify who is living in the dwelling at any time and it would be an onerous task for the Council staff to make themselves aware of the occupants in any event, and, once approved and developed, the impact of the building on the local environment is established, it becomes a nonsense to either limit the land division to allow the building to be sited on its own title, or limit the occupant of the land.

Moreover, Section 57A (3) requires that an LMA **must** have regard to the appropriate provisions of the Development Plan and should not be used as a substitute for undertaking amendments to the Development Plan.

## ACCESS PLANNING

The Development Plan is clear in my view, as presented to the Panel in the report of 5 June 2010 that a second dwelling should not be erected on the land unless the land forms part of an operating farm. That is clearly not the case in this instance.

There has been no new matters put to the Panel that would indicate the proposed development through the addition of an LMA is closer to complying with the terms of the Development Plan and on that basis alone the Council should not enter into the LMA. Add to this the virtual unenforceability and/or sheer difficulty in imposing the clauses of the LMA which in my opinion make the LMA as proposed, a nonsense.

### RECOMMENDATION

That the Council advise the applicant, Mr. Matt Austin that it declines to enter into a Land Management Agreement for the purposes of a resolution in the matter of an appeal before the Environment Resources and Development Court Appeal action 10-230.

Should you wish to discuss any aspects of this report please do not hesitate to contact me on 8364 1956.

Yours sincerely



David Hutchison  
ACCESS PLANNING (SA) Pty Ltd

6 July 2010

Ref: 5298 report

The Chief Executive Officer  
District Council of Robe  
PO Box 1  
ROBE SA 5276

ATTENTION: Michelle Gibbs

Dear Michelle,

**RE: PROPOSED DWELLING LOT 1 KINGSTON ROAD, ROBE  
DEVELOPMENT APPLICATION NO: 822/062/10**

As requested, the following is a general planning assessment of the abovementioned development application.

In preparing this report I have reviewed the council file on the application and generally familiarised myself with the subject land and locality and relevant provisions of the Development Plan.

## **1.0 DEVELOPMENT DETAILS**

Proposed Development:	A new dwelling on an allotment containing an existing dwelling
Development Application Number:	822/062/10
Applicant:	Mathew Austin PO Box 114 ROBE SA 5276
Owners:	As above
Property Address:	Lot 1 Kingston Road, Robe
Certificates of Title:	Volume 5868 Folio 648
Zone:	Primary Industry Zone
Public Notification:	Category 1

## **2.0 THE SUBJECT LAND AND LOCALITY**

The subject land is an irregular shaped allotment comprising an area of approximately 12 hectares located within the Primary Industry zone.

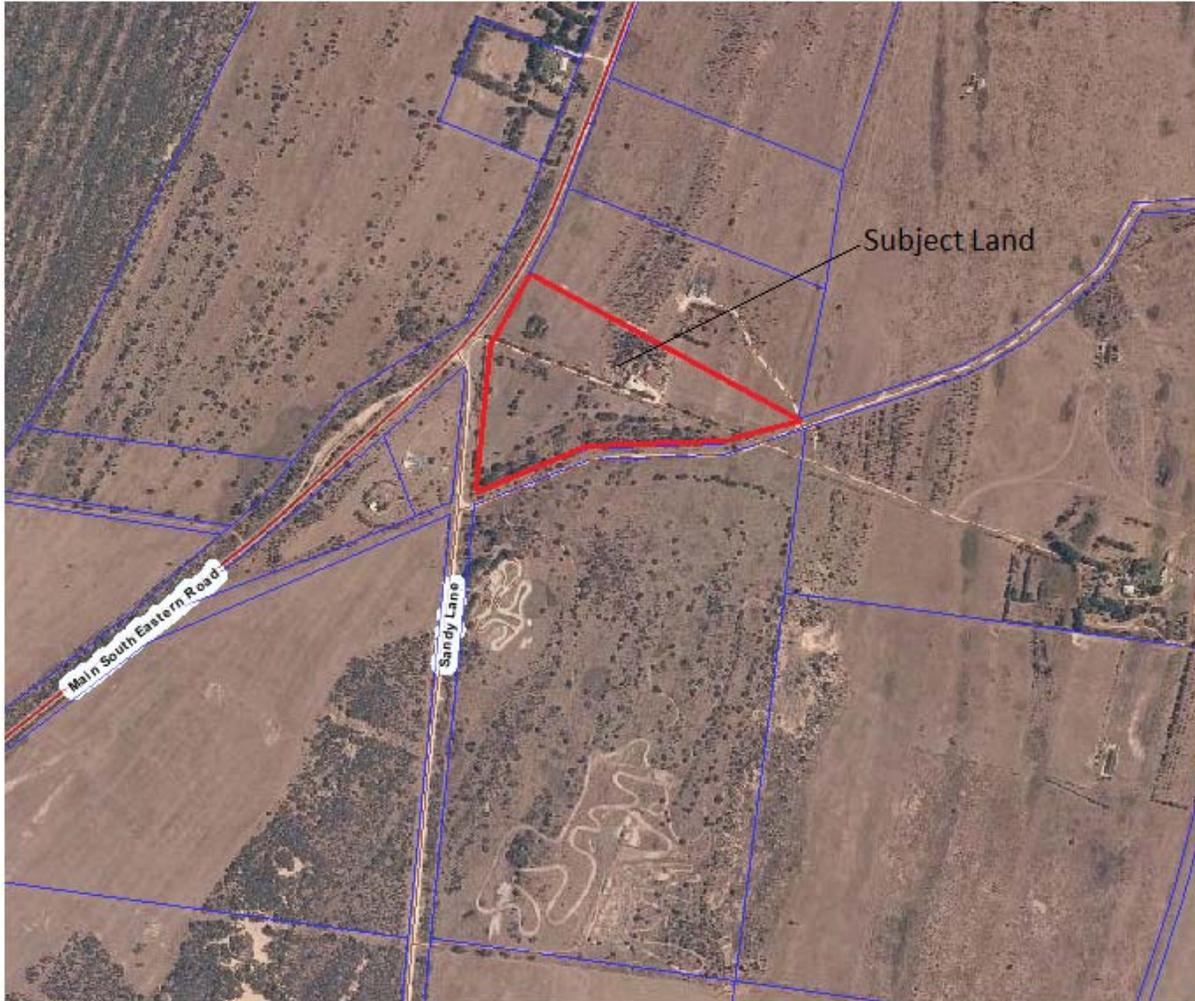
The land is located approximately 5 kilometres east of the Robe town centre and has extensive frontage to three roads; Main South Eastern (Kingston Road) to the north west, Sandy Lane to the west and Nunga Mia Road to the south.

Access to the site is taken via an existing driveway off Main South Eastern Road.

The land contains an existing dwelling sited approximately in the middle of the allotment and as such it is well setback from the adjoining roads. The land has been largely cleared of vegetation, except for plantings along the internal driveway and shrubs and small trees scattered throughout the southern section of the site.

The locality is of an open rural character, derived from farming activities undertaken on predominantly cleared land. Dwellings are sited on the allotments adjoining the subject land to the north, east and west. The land to the south is owned by Council and accommodates dirt kart racing facilities.

The subject land and locality is further depicted below in Figure 1.



**Figure 1:** Subject Land and Locality  
Source: Nature Map ([www.naturemaps.sa.gov.au](http://www.naturemaps.sa.gov.au))

### 3.0 THE PROPOSED DEVELOPMENT

The proposed development involves the construction of a single storey dwelling, incorporating five (5) bedrooms, open plan kitchen, living and dining area, rumpus, study, three (3) bathrooms, laundry garage and outdoor entertaining area.

The dwelling will be located 70 metres from Nunga Mia Road, 80 metres from the northern property boundary and 90 metres east of the existing dwelling on the land.

The proposed dwelling will utilise existing access arrangements taken from Main South Eastern Road.

The proposed development is more particularly illustrated on the submitted plans.

#### **4.0 PUBLIC NOTIFICATION**

Principle of Development Control 43 of the Primary Industry Zone states that Dwellings are assigned to Category 1 within the zone.

Given the above, no public notification was undertaken during the assessment process.

#### **5.0 PLANNING ASSESSMENT**

The subject land is located within the Primary Industry zone. Zone Principle 42 states:

**42** *The following kinds of development are non-complying in the Primary Industry Zone:*

*Dwelling on an allotment which was created after 24 December 1997 other than where the dwelling is to be erected:*

*(a) on an allotment which is 20 hectares or more in area; or*

*(b) on an allotment which has been created by way of boundary realignment only, where no additional allotments are created.*

The subject allotment was created as a result of boundary realignment in 2001 (822/D006/01) which involved original Sections 437 (48.8 ha) and 439 (49.4 ha). The realignment resulted in Lot 1 (12.02 ha) and Lot 2 (86.2 ha). Lot 1 represents the land in question while Lot 2 is the land to the immediate north which I note has since been further divided.

With regard to the non-complying determination above, the subject allotment was created after 24 December 1997, however, the allotment was created by way of boundary realignment and no additional allotments were created. As a result the proposal satisfies part (b) above and therefore the proposed development is not non-complying.

The application is thus for a consent use which must be assessed on its relative merits.

In assessing the development proposal I have had regard to the relevant Primary Industry Zone and Council Wide provisions of the Development Plan, consolidated 21 January 2010.

Those provisions which are considered to be relevant to the proposal and my assessment of them are as follows:

##### **Primary Industry Zone**

Objectives: 1, 3, 9

Principles: 15, 16, 17, 20, 21

##### **Council Wide**

**Form of Development**

Objectives: 4 and 5

### **Rural Development**

Objectives: 10, 12

### **Residential Development**

Objective: 21

Principles: 13, 14

### **Appearance of Land and Buildings**

Objective: 23

Principles: 173

### **General**

Principles: 4

### **Movement of People and Goods**

Principles: 73

### **Primary Industry Zone**

*Objective 1: A zone primarily for primary production.*

*Objective 3: The long-term protection of agricultural land from incompatible land use.*

*Objective 9: New residential development only where:*

*(a) there is a demonstrated ongoing connection with primary production activities which can be sustained in the long term; and*

*(b) the use of a residence will not compromise the continuation of primary production activities within the zone.*

#### *Principles of Development Control*

15 *Buildings should be setback a minimum of 50 metres from every public road, other than adjacent to Southern Ports Highway where the setback should be a minimum of 100 metres.*

16 *Buildings and structures should:*

*(a) be designed, sited and of a scale and appearance to enhance the positive environmental qualities, built form and character of the locality;*

*(b) where practicable, be located in unobtrusive locations and screened from public roads and adjoining properties by:*

*(i) natural landforms;*

*(ii) existing vegetation; or*

*(iii) the planting of appropriate species of locally indigenous vegetation.*

*(c) involve minimal excavation or filling of land;*

*(d) not necessitate the removal of existing vegetation; and*

- (e) be grouped together.
- 17 The external form and appearance of buildings and structures which are visible from public roads or nearby dwellings should:
- (a) consist of a low profile;
  - (b) comprise of smaller components by variations in wall and roof lines;
  - (c) include eaves, verandahs and other similar design techniques to create shadowed areas;
  - (d) be constructed of materials that have a low reflective finish; and
  - (e) be constructed of colours which are consistent with the colours of the natural rural landscape within the locality, to minimise their visual obtrusiveness.
- 20 A dwelling should only be established where:
- (a) its location is unlikely to limit or prejudice the present or future use of the subject or adjoining land for primary production;
  - (b) the dwelling will not give rise to demands for additional or improved infrastructure and services than those which already exist;
  - (c) the dwelling is able to be equipped with an adequate and reliable water supply which has a storage capacity equivalent to 15 000 litres per bedroom;
  - (d) the dwelling is able to be connected to a suitably designed effluent disposal system;
  - (e) the dwelling is sited to allow safe and convenient access to an all weather public road; and
  - (f) no other dwelling exists on the site.
- 21 A second dwelling should only be erected on an allotment if:
- (a) the allotment forms part of an operating farm;
  - (b) the additional dwelling is to accommodate a farm employee or seasonal worker(s) employed in primary production in the region;
  - (c) the proposed dwelling is located within reasonable proximity to the existing dwelling and can be connected to the same services as the existing dwelling; and
  - (d) would not result in the subsequent division of the allotment.

## **Council Wide**

### **Form of Development**

**Objective 4:** Orderly and economic development.

### **Rural Development**

**Objective 10:** Retention of rural land for primary production and conservation

**Objective 12:** Rural living confined to designated zones.

### **Residential Development**

**Objective 21:** Development of dwellings should be undertaken in designated townships or settlements.

13 Residential development should exhibit a high standard of design and external appearance.

- 14 *The design and siting of residential development should be in accordance with the character of the locality and constraints imposed by the shape and topography of the site.*

**Appearance of Land and Buildings**

- Objective 23: *The amenity of localities not impaired by the appearance of land, buildings and objects.*

*Principle of Development Control*

- 173 *Development should not detract from the scenic amenity and rural character of land within the district.*

**General**

- 4 *Development which is liable to be prejudicial to the effective development and ongoing use of other land in the locality should not be undertaken.*

**Movement of People and Goods**

- 73 *Access to development should be safe and convenient, and not interfere with the safety or free flow of traffic.*

Notwithstanding that a dwelling is a consent use in the Primary Industry zone, the Development Plan, when read in its entirety; discourages the development of dwellings in rural areas.

It does firstly by seeking to confine urban development and residential development specifically to townships and Rural Living zones, and, more particularly, residential zones (Council wide Objectives 4 and 21).

Secondly, it seeks to retain farming land for primary production purposes (Council wide Objectives 10 and 12 and principles 1 and 4, Primary Industry zone Objectives 1 to 3, 9, and principle 20).

Rural planning policies recognise that farming land is a very important economic asset of the state and in fact the district, quite apart from its value to the individual owners.

However, its value for farming purposes can be compromised or lost if it is fragmented into small pieces that are not useful for farming purposes. This has already occurred to some extent in the locality, but should not be used as further justification for incremental fragmentation of land or variation from the intent of the relevant planning policy.

The demand for rural houses and rural subdivisions comes from people wanting to exploit the residential value, as opposed to the rural value, of such land.

There is a demand from people who like to live in the country on rural residential lots or hobby farms. Such use is essentially residential, rather than rural in nature.

Fragmentation of land into small holdings and its conversion to essentially rural living use inflates the value of the land by endowing it with a residential or rural residential rather than rural land values.

The land value so inflated often means that the land is removed from farming.

Notwithstanding that some rural activity may be undertaken on the land in association with the existing dwelling, it is unlikely that this would compare with the proper, managed development of the land for rural purposes. It will be further compromised by the approval of a second dwelling on the land.

The introduction of rural living uses can often be detrimental to genuine farming. It can result in poor land management practice that gives rise to vermin and noxious weeds and dogs, all of which impact on viability of adjoining farmland. Further, the establishment of another house on the property is likely to lead to additional potential conflicts with farming activities on the neighbouring land. This may include late night activity associated with sowing or cropping, spraying or the noise from stock.

Furthermore, rural residents frequently start demanding town services which are uneconomic to provide to scattered houses in what is supposed to be farming land.

These demands involve seeking to have other ratepayers, whether real farmers or urban dwellers, subsidise rural residential lifestyles. The inefficiency of trying to provide urban services in such areas is obvious enough.

Whilst the land on its own may not be a viable farming property that is not justification for a further shift away from the intended use of the land for rural purposes and sets a precedent for similar development on other like sized allotments and pressure for further subdivision in due course.

Whilst the design and siting of the development are generally in accord with those provisions of the Development Plan relating to these criteria, the land use is fundamentally inappropriate and does not warrant the support of the Panel

Notwithstanding that the rural character of the locality is already somewhat diminished by the relatively small allotments and number of dwellings in the locality. The addition of another dwelling on the land would further reduce the rural character of the area which is inconsistent with the intent of the zone and abovementioned Appearance and Land and Buildings provisions.

It is noted that the proposed dwelling is well setback from property boundaries consistent with the existing dwelling and the land is provided with safe and convenient access via an existing driveway off Main South Eastern Road, which satisfies principles 14 and 73 above.

## **6.0 CONCLUSION**

Having regard to the assessment above the proposed development is considered to be an inappropriate development within the Primary Industry Zone due to the following;

- The proposal will further reduce the agricultural potential of the land and land in the locality.
- The proposal will result in rural living development which is at variance with intent of the zone
- Residential development of the subject land has the potential to lead to land use conflicts with surrounding farming activities
- The development of the land would further assist to set a precedent for rural living type development within the locality and for the further division and fragmentation of land.

## **7.0 RECOMMENDATION**

That the Development Assessment Panel **refuse** to grant Development Plan Consent to Development Application 822/062/10 that seeks to construct a second dwelling on an allotment containing an existing dwelling at Lot 1 Kingston Road, Robe, as the proposal is considered to be at variance with following Development Plan provisions;

### **Primary Industry Zone**

Objectives: 1 and 9

Principle: 20 (a)(f), 21(a)(b)

### **Council wide**

#### **Form of Development**

Objective: 4

#### **Rural Development**

Objectives: 10 and 12

#### **Residential Development**

Objective: 21

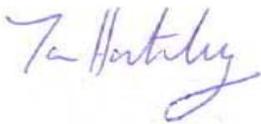
#### **Appearance of Land and Buildings**

Objective: 23

Principle 173

Should you wish to discuss any aspects of this report please do not hesitate to contact me on 8364 1956.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tom Hateley', written in a cursive style.

Tom Hateley

**ACCESS PLANNING (SA) Pty Ltd**