

AGENDA ITEM: 11.1

To: Development Assessment Commission on 22 June 2006.

From: Alan Richardson, Senior Project Officer, Assessment Branch.

Subject: Land division within the General Farming Zone.

Application No: 422/D008/05.

1. APPLICANT

1.1 MJ Hintz.

2. PROPOSAL

2.1 The proposal is to create a 1ha allotment for an existing farm dwelling with the balance of 148 ha being land used for farming purposes.

2.2 The proposal was amended on Council's advice to reduce the site area for the dwelling from 4 ha to 1 ha, so that the land currently used for farming is maintained for that purpose. Both proposals are non-complying developments.

3. ROLE OF THE COMMISSION

3.1 Pursuant to Regulation 25(b), Council has sought the Commission's concurrence to approve the proposed land division.

4. COUNCIL

4.1 Regional Council of Goyder.

5. DEVELOPMENT PLAN POLICY SUMMARY

5.1 The subject site is located in the General Farming Zone depicted on the Goyder (Regional Council) Zones Map Go/3 (consolidated 24 March 2005). Refer to ATTACHMENTS A1 – A4. (A1 being the location plan, A2 an aerial photograph, A3 a Lot map of Australia Plains and A4 the zoning map).

5.2 The Objectives for the General Farming Zone relates to promotion of general agricultural activities on large holdings and the reinforcement of the existing rural character.

5.3 Land division creating additional allotments less than 100ha should not be undertaken unless creating:

- a 1ha lot for a second dwelling built before December 1972, or
- a 1ha lot for buildings and facilities associated with value adding rural industry;
- a lot greater than 20ha for a more intensive use (commercial/farm forestry); or
- a lot greater than 10ha for horticulture.

Division of land which does not meet the above criteria is non-complying development.

6 DESCRIPTION OF THE SITE AND LOCALITY

- 6.1 The land borders the northern boundary of the rural settlement of Australia Plains, which has approximately 10 residential sized lots, with more than half of the lots containing dwellings.
- 6.2 The character of the immediate locality of the site is residential (being the Australia Plains settlement) to the south of the subject land and the other surrounding land is used for general farming purposes.
- 6.3 The subject land is 149 ha in area, is gently undulating and is generally cleared of vegetation. The primary use of the land is for cropping purposes and it contains a dwelling with associated sheds. The dwelling on the land is located approximately 280m north of the Australia Plains boundary as can be seen on Attachments A2.

7 PROPOSAL IN DETAIL

- 7.1 The proposal is to divide 1ha lot from the balance of the land which contains the exiting dwelling and associated outbuildings. Refer to the plan of division, ATTACHMENT B1, for the land division details.
- 7.2 Refer to the applicant's statement of support for the proposal, ATTACHMENT B2 – B3.

8 AGENCY COMMENTS

- 8.1 **SA Water Corporation:**
It is necessary for the developer to satisfy this Corporation's financial, augmentation and easement requirements for the provision of water supply and/or sewerage services. Alteration of internal pipework to the satisfaction of this Corporation is also required.
- 8.2 **Primary Industry and Resources – *Agriculture and Wine.***
PIRSA does not favour the creation of rural living allotments within rural areas. Because of the size and proximity to agricultural land of these allotments dwellings on them may be subject to effects such as noise, smoke, dust, fumes, odours, spray drift or reduced visual amenity. Experience demonstrates that non-farm residents within primary production areas often have divergent expectations about amenity that can lead to pressure on primary industry.

9 COUNCIL COMMENTS

- 9.1 Council has sought the Commission's concurrence to approve the proposal. Refer to ATTACHMENT C1-C2.
- 9.2 Council's planners report is ATTACHMENT C 3- C10, supporting the proposal.

10 REPRESENTATIONS

- 10.1 The proposal was given Category 3 notice by Council and attracted three representations supporting the development.
- 10.2 Copies of the representations are not attached as they merely say they are in favour of the application.

11 PLANNING ASSESSMENT

- 11.1 An assessment against the relevant General Farming Zone, Objectives and Principles of Development Control is outlined in ATTACHMENT D 1-D2.

- 11.2 An assessment against the relevant Council Wide Objectives and Principles of Development Control is outlined in ATTACHMENTS E1-E2.

12. CONCLUSION

- 12.1 A land division proposal by a third generation farmer wanting to remain in the family home by dividing it from the balance of the farm seems to be a reasonable request. This would be the case providing the provisions within the Development Plan support this desire. However, as the relevant policies and development control principles do not support the proposal, it becomes impractical for a planning authority to approve the proposal without creating an undesirable precedent which would encourage similar proposals.
- 12.2 Council is currently reviewing its Development Plan, but it has no intention of introducing land division amendments to cater for long standing retiring farming families to remain living in the farm dwelling. The applicant could however achieve his desire to remain in the family home by selling the land to a neighbouring farmer with an agreement to lease the dwelling back at a peppercorn rental rate. This would not have the same monetary return for the land owner as it would to separate the assets onto individual allotments.
- 12.3 The Commission's previous decisions on similar land division proposals have been not to concur with a proposal which creates a rural living allotment within General Farming/Rural Zones.

13 RECOMMENDATION

- 13.1 I recommend that the Development Assessment Commission:

- (1) RESOLVE that the proposed development is NOT seriously at variance with the policies in the Development Plan.
- (2) RESOLVE NOT to GRANT concurrence to development application numbered 422/D008/05 by M Hintz, to divide land at Lot 888, Section 311, Hundred of English at Australia Plains for the following reason:
 - the proposal is contrary to the General Farming Objective 2 and Principles 9 and Council Wide Objective 56.



Alan Richardson
SENIOR PROJECT OFFICER
ASSESSMENT BRANCH

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ATTACHMENTS

LOACTION/AERIAL PHOTOS/LOTS	
MAP FOR AUST. PLAINS/ZONE MAP	A1-A4
PLAN OF DIVISION	B1
STATEMENT OF SUPPORT	B2-B2
COUNCIL REQUEST FOR CONCURRENCE	C1-C2
CONCIL'S PLANNERS REPORT	C3-C10
ASSESSMENT, GENERAL FARMING ZONE	D1-D2
ASSESSMENT, COUNCIL WIDE	E1-E2

GENERAL FARMING ZONE

Introduction

The objectives and principles of development control that follow apply to the General Farming Zone. These are additional to those expressed for the whole council area.

OBJECTIVES

Objective 1: Promotion of general agricultural activities on large land holdings, with aquaculture, horticulture, commercial forestry and value adding rural industry at suitable locations.

Objective 2: Reinforcement of the existing rural character of the area.

COMMENTS:

This zone comprises most of the council area and is used mainly for agricultural production and the grazing of stock on relatively large holdings. The zone includes some land divisions scattered around the region such as Australia Plains Bower, Hampden, Hanson, Julia, Point Pass, Sutherlands and Whyte Yarcowie. These land divisions have not grown to any level of recognition as settlements although they are part of the general farming area.

Justification for this proposal can only be based on the close proximity of the existing dwelling to the settlement of Australia Plains and that initially (i.e. until the new owner of the larger balance of the land decides to build a dwelling on the larger portion of the land as the statement of support states that the total land holding is unviable as a farm holding) there would be no real loss of productive rural land. Council's planner mentions that the settlement, "once served its surrounding rural area now comprises of a collection of dwellings occupied by persons that either visit on weekends or those full-time that have no connection to the surrounding rural land". This comment along with the representors agreeing that the proposal should be approved, suggests that there is some pressure for rural living in this locality and it is likely to be the same for the other settlements within the council area.

As the dwelling is in the general proximity of the settlement of Australia Plains it could be said that it forms part of that community and relates to the residential character of the immediate locality to the south of the land, rather than the rural character of the greater locality. However, if this approach is taken where does one draw the line to approving or refusing other rural living proposals? The applicant's family has worked and owned the land for three generations and it would seem reasonable to approve the proposal on compassionate grounds. Council however has no provisions within their Development Plan which support the proposed land division and as such would be likely to have a serious detrimental impact on the integrity of the purpose of the zone and create an undesirable precedent.

PRINCIPLES OF DEVELOPMENT CONTROL

1 Development should be primarily for agricultural production and livestock grazing on large land holdings, with aquaculture, horticulture and commercial forestry activities occurring where there is suitable land capability, drainage, aspect and availability of groundwater.

9 Land division involving the creation of allotments of less than 100 hectares should not be undertaken unless:

Attachment D2

- (a) an owner of land wishes to create a separate allotment of one hectare in area to contain one of two habitable dwellings on the land, each of which was built before 1
- (b) the division is for the purpose of creating a separate allotment of one hectare in area to be used for buildings and facilities associated with value adding rural industry and processing, display and sale of goods grown on land;
- (c) the division is for the purpose of more intensive use of the land for commercial/ farm forestry on allotments not less than 20 hectares in area; or
- (d) the division is for the purpose of more intensive use of the land for horticulture on allotments not less than ten hectares in area,

10 Land division which does not involve the creation of additional allotments should be undertaken only where:

- (a) the number of resulting allotments of less than 100 hectares is not greater than that existed prior to re-adjustment of the boundaries of the Certificate of Title;

19 The following kinds of development are **non-complying** in the General Farming Zone: Land Division which creates allotments less than 100 hectares in area, except in accordance with Principles 9 and 10.

COMMENTS:

The general pattern of occupation in the zone with homesteads, ancillary buildings and paddocks enclosing crops and livestock dominate the environment and firmly establish an open and rural character.

It is desirable that general farming activities continue and the proliferation of intensive development and occupation of the zone be restrained so that these elements do not threaten the proper function of the zone and render the rural character susceptible to these competing demands and undesirable change. To maintain the agricultural importance and stability of the zone, it is vital that the size of the land holdings is not significantly reduced or the potential to erode the rural character by encouraging other similar land division proposals. The proposal is in conflict with Objectives 2 & 9.

Whist the proposal is to create a 1 ha allotment which is a requirement for some merit forms of land division, the division does not satisfy any of the other specified criteria, (such as a second dwelling or associated value adding rural industry) listed to promote land division within the General Farming Zone.

Council's planner has verbally advised that Council is currently reviewing its Development Plan, but it has no intention of introducing land division amendments to cater for long standing farming families to separate dwellings from their farm holdings. Clearly Council could have such an exemption from being a non-complying development in their Development Plan to recognise the rural communities need as indicated by the representors.

COUNCIL WIDE

Introduction

The policies for the region are expressed firstly in relation to the whole area of the Regional Council of Goyder and then in more detail for particular zones.

OBJECTIVES

Form of Development

Objective 1:

Orderly and economic development

New housing, holiday accommodation and other urban and rural development should form compact extension of the built-up areas, to achieve economy in the provision of public services, and to create a safe, convenient and pleasant environment in which to live.

Objective 6: Productive rural land retained for primary production.

COMMENTS:

The retention and protection of primary production in the council area is important and basic to the district's economy. However the land division proposal if considered in isolation, is not in conflict with the Objectives 1 & 6, as the dwelling is connected to available public services and the containing the farm buildings is not used for primary production.

Rural Development

Objective 55: Retention of rural land for agriculture and pastoral purposes and the maintenance of natural character and beauty of such areas.

Objective 56: Control of land division in rural areas to avoid fragmentation, except for value adding pursuits.

COMMENTS:

The rural areas should be retained for agricultural and pastoral purposes as the economy of the region largely depends on maintaining a high level of agricultural productivity. The proposal does not involve value adding and the division will create an additional allotment which is contrary to the land division provisions set out in the General Farming Zone. The proposal is therefore in conflict with objective 56.

PRINCIPLES OF DEVELOPMENT CONTROL

Land Division

22 All allotments should have a public road frontage and not be solely dependent upon private road, or right of way, or similar for access.

23 Boundaries of new allotments should not cross areas of native vegetation.

24 Land should not be divided:

(a) in a manner which would prevent the satisfactory future division of the land or any part thereof;

(b) if the proposed use, or establishment of the proposed use, is likely to lead to undue erosion of the land in the vicinity thereof;

Attachment E2

- (c) if new allotments do not contain cleared area for dwellings;
- (d) unless wastes produced by the proposed use of the land, or any use permitted by the principles of development control, can be managed so as to prevent pollution of a public water supply or any surface or underground water resources;
- (e) unless provision can be made for the disposal of waste waters from each allotment without risk to health.
- (f) if the size, shape and location of, and the slope and nature of the land contained in, each allotment resulting from the division is unsuitable for the purpose for which the allotment is to be used;
- (g) if any part of the land is likely to be inundated by drainage or floodwaters and the proposed allotments are to be used for a purpose which would be detrimentally affected when the land is inundated;
- (h) where community facilities or public utilities are lacking or inadequate;
- (i) where the proposed use of the land is the same as that of the existing allotments in the vicinity, and a substantial number of the existing allotments have not been used for that purpose; or
- (j) if land division would lead to development on that land which is incompatible with mining of significant mineral resources;
- (k) if boundaries of new allotments will cross any areas of native vegetation, or
- (l) if there is likely to be significant fire risk.

25 When land is divided:

- (a) any reserves or easements necessary for the provision of public utility services should be provided;
- (b) stormwater should be capable of being managed safely and efficiently from each new allotment and disposed of from the land in a satisfactory manner;
- (c) a water supply sufficient for the purpose for which the allotment is to be used should be made available to each allotment;
- (d) provision should be made for the management of waste waters, sewage and other effluents from each allotment without risk to health;
- (e) roads or thoroughfares should be provided where necessary for safe and convenient communication with adjoining land and neighbouring localities
- (f) each allotment resulting from the division should have safe and convenient access to the carriageway of an existing or proposed road or thoroughfare;
- (g) proposed roads should be graded, or be capable of being graded to connect safely and conveniently with an existing road or thoroughfare;
- (h) for urban purposes, provision should be made for suitable land to be set aside for usable local open space;
- (i) where it would lead to development on land which is incompatible with mining of significant mineral resource;
- (j) if the land borders a lake or creek, the land immediately adjoining the lake or creek should become public open space, with a public road fronting the open space; and
- (k) adequate area should be available on each allotment to ensure that development of buildings, structures, access tracks etc do not impinge on areas of native vegetation.

COMMENT:

The proposal is not in conflict with Principles 22, 23, 24 & 25 as these are basic land division requirements, which do not relate to primary purpose of the General Farming Zone.