



MINUTE TO: MINISTER FOR URBAN DEVELOPMENT AND PLANNING

SUBJECT: LAND NOT WITHIN A COUNCIL AREA CONSOLIDATION AND BETTER DEVELOPMENT PLAN (BDP) CONVERSION DEVELOPMENT PLAN AMENDMENT (DPA) – DIVISION OF THE DPA PURSUANT TO SECTION 26(8) OF THE DEVELOPMENT ACT 1993

BACKGROUND

As Minister, you have decided that the Land Not Within A Council Area Consolidation and Better Development Plan (BDP) Conversion Development Plan Amendment (DPA) be divided into two parts pursuant to section 26(8)(d) of the *Development Act 1993*.

The division of the DPA establishes the following:

- Land Not Within A Council Area Consolidation and Better Development Plan (BDP) Conversion Development Plan Amendment; and
- Land Not Within A Council Area Consolidation and Better Development Plan (BDP) Conversion Development Plan Amendment (Part 2)

Both DPAs continue to operate under interim operation pursuant to Section 28 of the *Development Act 1993* due to terminate on the 14 August 2008. It is understood that you intend to approve Part 1 of the DPA and have referred Part 2 to the Development Policy Advisory Committee (DPAC) for a further report on the extent of the area identified within the Coastal Conservation Zone on Map LNWCA(E)/10. (**Attachment 1**)

The subject land is identified as Section 4 in the Hundred of Sturdee, near Fowlers Bay on the Eyre Peninsula, owned by Mr Bryan Smith of Paxton Ag Pty Ltd. Mr Smith wrote to you in March 2008, raising concern with the extent of zoning of a portion of his property to Coastal Conservation Zone, some 8km inland from the coast. This zoning was a policy component of the original DPA (**Attachment 2**).

In acknowledging the concerns which have been raised by Mr Smith, you have requested further advice from both the Department for Environment and Heritage (DEH) and the Development Policy Advisory Committee (DPAC), in relation to the extent of the Coastal Conservation Zone.

Development Application

DPAC notes that Development Application DAC 010/D006/07, to divide Section 4 and 5 in the Hundred of Sturdee to create 19 allotments was lodged by Paxton Ag Pty Ltd with the Development Assessment Commission (DAC) on 8 August 2007.

As the Application was lodged prior to the DPA being placed on interim operation on 14 August 2007, it is required to be assessed against the Development Plan which was in place at the time of lodgement. Land division is a merit use in the Land Not Within a Council Area (Eyre) Development Plan, Consolidated 25 September 2003.

It is noted that pursuant to the provisions of the DPA which subsequently was placed on interim operation, land division is a non-complying form of development in the Coastal Conservation Zone, except now where the development achieves either (a) or (b) as set out below:

- (a) it would create an allotment greater than 5 hectares to accommodate an existing tourist accommodation development
- (b) both of the following apply:
 - i. no additional allotments are created wholly or partly within the zone
 - ii. there is no increase in the number of allotments with frontage or direct access to the coast.

It is the DPAC's understanding that the Application to the Department of Transport Energy and Infrastructure (DTEI), the Coast Protection Board (CPB) and the Native Vegetation Council (NVC).

DTEI have advised that they do not support the opening of the two proposed roads and have also raised concerns regarding the low lying nature of much of the land which is to be divided.

The CPB have requested levels of the site to the Australian Height Datum to assist in their assessment of inundation.

The NVC have advised the DAC, that the Application in its current form is likely to result in a significant loss of native vegetation and a further reduction of habitat and therefore it does not support the Application.

The DAC subsequently wrote to the applicant on 19 November 2007 (**Attachment 3**), advising them of the above and seeking the following additional information:

- How the Applicant proposes to create the public roads and the standard of roads to be constructed.
- Levels of the site to the Australian Height Datum to assist in the assessment of inundation.
- A plan showing all of the future access tracks, fencing and development envelopes.

At the time of preparation of this report, it was the DPAC's understanding that the Applicant had not provided a response to the DAC.

DISCUSSION

Planning SA staff has consulted with the DEH on your decision to give further consideration to the extent of the Coastal Conservation Zone, who have provided a response dated 11 June 2008 (**Attachment 4**) which is summarised as follows.

The subject land was included in the Coastal Conservation Zone due to the coastal hazard risk (flooding and potential coastal acid sulphate soils), sensitive coastal features (stranded coastal wetland) and coastal vegetation identified.

A site inspection undertaken by the CPB in December 2007, confirmed the area to be low-lying, with areas of the site inundated, and an area in Section 5 (north of Section 4) being "too boggy" to negotiate by vehicle. The site appeared to be relatively well vegetated with samphire vegetation, with some areas of apparently natural, unvegetated saltflats, and a small area of mallee vegetation on the higher ground on the southern boundary of the property. The State and nationally threatened species, *Tecticornia flabelliformis* was found nearby.

Further analysis identified the area as largely covered by stranded coastal wetland which is low-lying and would have been flooded by the sea in the past. The limited contour data for this area, shows that the 0 metre Australian Height Datum contour runs through this area (approximately mean sea level), indicating that if this area was currently connected to the coast, it would be subject to coastal flooding. In the absence of detailed elevation information, landforms are used to identify coastal land and coastal hazards. The landforms support the contour data and indicate that this area is low-lying and therefore vulnerable to sea level rise. A dune barrier, which is quite narrow in places, currently protects the area from ocean flooding. However, a rise in sea level is likely to result in the sea breaching these dunes with consequent coastal flooding. (Refer **Attachment 5**).

Due to the low-lying nature of the land, this area may contain coastal acid sulphate soils, similar to those which have been found in an area on the other side of Fowlers Bay.

The area contains sensitive coastal features (stranded coastal wetland and coastal vegetation). The CPB does not support development in wetlands.

In keeping with CPB policy and in the strategy which has been adopted across the State to ensure sensitive coastal features including hazards are in coastal zones, reducing the size of the Coastal Zone in this area is not supported by the CPB, due to the identified coastal hazard and coastal vegetation present in this area.

The interim Coastal Conservation Zone runs along a road reserve boundary on the northern boundary with Section 4, Hundred of Sturdee. However, this road reserve contains an unmade road and therefore there is no barrier to stop flooding to Section 5. The CPB recommends that consideration is given to extending the Coastal Zone to align with the existing roads surrounding the hazards (that is, the northern boundary of Section 5, Hundred of Sturdee).

It is noted that inclusion of section 5 into Coastal Conservation Zone, has implications for the DPA process as procedural fairness would suggest that the property owner should be afforded the opportunity to consider and make a submission on such a policy change.

CONCLUSION

The Coastal Conservation Zone boundary has been created on the advice of the CPB of the DEH. The additional advice from the CPB and the lack of evidence to the contrary from the property owner appears to reaffirm this position. It would appear that additional investigations should be undertaken to support any revised position.

It is noted that the issues raised and additional information sought from the property owner/applicant by the DAC in their letter of November 2007, would assist in determining the appropriate policy position. However no information has been received from the property owner/applicant to date.

At its meeting held on 18 June 2008, the DPAC considered a report from Planning SA on the above which identified the following options:

Option 1: *Maintain status quo*

Retain Section 4 in the Hundred of Sturdee in the Coastal Conservation Zone. The Minister could then approve the DPA (Part 2) without amendment.

The disadvantage of this option is that in the event that the Development Application for land division being approved by the DAC, any subsequent Development Application for dwellings on the allotments would be non-complying.

Option 2: *Increase Coastal Conservation Zone to include Section 5*

Retain Section 4 in the Hundred of Sturdee in the Coastal Conservation Zone and amend the DPA (Part 2) to include Section 5 in the Hundred of Sturdee in the Coastal Conservation Zone. This process would be undertaken in consultation with the land owner.

The disadvantages of this option are that:

- a. in the event that the Development Application for land division being approved by the DAC, any subsequent Development Application for dwellings on the allotments would be non-complying; and
- b. interim operation of the DPA (Part 2) would lapse.

Option 3: *Undertake further investigations*

Undertake further investigations into the issues raised by the CPB. The property owner would be required to submit information to support an amendment to the boundary of the Coastal Conservation Zone.

The information would include that requested by the DAC in November 2007, in addition to a survey of acid sulphate soils.

The disadvantages of this option are that:

- a. in the event that the Development Application for land division is approved by the DAC, and depending on the timing of the approval, any subsequent development application for a dwelling on an allotment would be non-complying; and
- b. interim operation of the DPA (Part 2) would lapse.

However, if the Development Application for Land Division is approved by the Development Assessment Commission, once additional investigations have been completed for the site (including native vegetation survey and site levels), the land could be rezoned as part of the Flinders Conversion Development Plan Amendment (this DPA is to include the Flinders Ranges into the LNWCA Development Plan, also including new mining policies as negotiated with PIRSA) making a dwelling on an allotment a merit use.

Option 4: *Include policy in the DPA (Part 2) specific to the subject land to enable assessment of the issues at the development assessment stage.*

Retain Section 4 in the Hundred of Sturdee in the Coastal Conservation Zone and create a Policy Area over the subject land, that enables one dwelling per allotment to be established, subject to site levels and native vegetation issues being resolved. This policy would only be applied in the event that the Development Application for land division is approved by the Development Assessment Commission.

The disadvantage of this option is that issues more appropriately resolved at the policy stage, would be deferred to the development assessment stage.

Option 5: *Rezone Section 4 from Coastal Conservation Zone to Remote Areas Zone*

Amend the DPA (Part 2), by rezoning Section 4 in the Hundred of Sturdee from Coastal Conservation Zone to Remote Areas Zone (Section 5 is located within the Remote Areas Zone under the DPA (Part 1)).

The disadvantage of this option is that there is no requirement for referral to the CPB.

Having considered all of the relevant issues, the DPAC has resolved to recommend Option 1 as the most appropriate way forward.

RECOMMENDATION

The DPAC is of the opinion that the Land Not Within a Council Area Consolidation and Better Development Plan (BDP) Conversion Development Plan Amendment (DPA), is in a form suitable for Approval pursuant to Section 26(8) of the Development Act 1993, on the basis that Section 4 in the Hundred of Sturdee be retained in the Coastal Conservation Zone.



Mario Barone FPIA
PRESIDING MEMBER, DPAC

Date: 10 July 2008

- Attachments:
1. Zone Map LNWCA(E)/10
 2. Letter from Mr Smith
 3. Letter from the DAC and proposed land division
 4. DEH response
 5. DEH photographs and additional information