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**TO: PRESIDING MEMBER:** John Brak  
**COUNCIL MEMBERS:** Mayor Talbot  
**INDEPENDENT MEMBERS:** M. Weedon & S. Horsell

NOTICE is hereby given that the next ordinary meeting of the **Council Assessment Panel** will be held at the Kadina Town Hall, 51 Taylor Street, Kadina, on Wednesday, 9 December 2020 commencing at 5.30 p.m.

A copy of the Agenda for the above meeting is supplied containing the relevant reports and documents for the Council Assessment Panel Members' perusal.

Muller Mentz  
ASSESSMENT MANAGER  
3 December 2020

*lifestyle location of choice*



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## COUNCIL ASSESSMENT PANEL MEETING

### AGENDA

**Wednesday, 9 December 2020**  
**Kadina Town Hall, 51 Taylor Street, Kadina**  
**commencing at 5.30 p.m.**

Presiding Member: John Peter Brak  
Council Members: Mayor Talbot  
Independent Members: S. Horsell & M Weedon

**1. Opening of Meeting:**

**2. Apologies:**

- 2.1 Apologies
- 2.2 Leave of Absence

**3. Confirmation of Minutes of previous meeting:**

Recommendation -

That the Minutes of the previous meeting of the Council Assessment Panel held on the 11 November 2020, be taken as read, and confirmed.

**4. Business Arising from Previous Minutes:**

**5. Declaration of Conflict of Interest:**

Pursuant to Section 56A(7) of the Development Act 1993, Members of the CAP who have a direct or indirect personal or pecuniary interest in any matter before the CAP (other than an indirect interest that exists in common with a substantial class of persons)

- (a) must as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
- (b) must not take part in any deliberations or decision of the panel on the matter and must be absent from the room when any deliberations are taking place or decision is being made.

A member of the CAP will be taken to have an interest in a matter if an associate of the member has an interest in the matter.

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## 6. Development Officer's Reports:

### 6.1 Development Applications

#### 6.1.1 Public Notification Applications – Category 3

6.1.1.1 Development No. 340/369/20 - Tim Love  
C/- Botten Levinson  
GPO Box 1042  
Adelaide SA 5001

Representors: John Dente

6.1.1.2 Development No. 340/449/20 – Heather & Mark Leach  
PO Box 40  
Moonta SA 5558

6.1.1.3 Development No. 340/224/20 - Kristy McMillan  
Hodgkison Architects  
189 Wakefield Street  
Adelaide SA 5000

#### 6.1.2 Public Notification Applications – Category 2

Nil

#### 6.1.3 Public Notification Applications – Category 1

## 7. Matters for Panels Attention:

### 7.1 CAP Meeting Dates for 2021 (Wednesday's)

#### Recommendation:

That the scheduled CAP meeting dates for 2021 be adopted and/or amended at discretion.

#### Background

Council's Assessment Panel meetings have in the past been held in the Function Room, Town Hall, Kadina, on the 2nd Wednesday of each month at 5.30 p.m., except January's meeting which is held on the 4th Wednesday to accommodate for the Christmas/New Year holidays.

The following schedule of meeting dates for CAP for 2020 is presented to the panel for adoption.

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<b>CAP Meeting Dates 2021 Wednesday's</b>	
January 27 <sup>th</sup>	July 14 <sup>th</sup>
February 10 <sup>th</sup>	August 11 <sup>th</sup>
March 10 <sup>th</sup>	September 8 <sup>th</sup>
April 14 <sup>th</sup>	October 13 <sup>th</sup>
May 12 <sup>th</sup>	November 10 <sup>th</sup>
June 9 <sup>th</sup>	December 8 <sup>th</sup>

**8. Correspondence (for information only):**

Nil

**9. Closure:**

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**MINUTES OF A MEETING OF THE COUNCIL ASSESSMENT PANEL** held at the Town Hall Function Room, 51 Taylor Street, Kadina on Wednesday, 11<sup>th</sup> November 2020, commencing at 5.30 p.m.

**PRESENT:** Presiding Member: John Brak.  
Independent Members: Stephen Horsell, and Mark Weedon

**IN ATTENDANCE:**

Mr. Muller Mentz, Director Development Services, Assessment Manager  
Mrs Wendy Stevens, Planner

**1. Opening of Meeting:**

Presiding Member, John Brak welcomed all in attendance and opened the meeting.

There were nil Members from the public and 1 member from the media in the gallery at the commencement of the meeting.

**2. Apologies:**

- 2.1 Apologies – Ros Talbot
- 2.2 Leave of Absence – Nil.
- 2.3 Non-Attendance – Nil.

**3. Confirmation of Minutes of previous meeting:**

**CAP05:1120**

**Moved Member Horsell**

That the Minutes of the previous meeting of the Council Assessment Panel held on 9<sup>th</sup> September 2020, be taken as read and confirmed.

**Seconded Member Weedon**

**Carried.**

**4. Business Arising from Previous Minutes:** Nil

**5. Declaration of Conflict of Interest:** Nil

**6. Development Officer's Reports:**

**6.1 Development Applications**

**6.1.1 Public Notification Applications – Category 3**

Nil.

**6.1.2 Public Notification Applications – Category 2**

6.1.2.1 Development No. 340/307/20 – School Building  
(Middle School) – Lot 10 Bagot Street, Wallaroo

Applicants:

Stallard Meek Architects

**CAP 01:0420**

**Moved Member Horsell**

**RECOMMENDATION**

That following consideration and having regard to all relevant matters concerning the proposed School Building (Middle School) at Lot 10 Bagot Street, Wallaroo Development Plan Consent be **GRANTED** subject to the following conditions:

**Conditions:**

- 1 The applicant/developer shall proceed strictly in accordance with the approved plans and other information submitted in support of the development and conditions imposed by this consent, except where otherwise specified by any condition of this approval or where minor changes are required to comply with the Building Code of Australia or any other relevant act. Where there is a conflict between the Plan of Development and a written condition, the written condition shall apply.

**Receptacle for Builders Waste**

- 2 Any person performing building work on the subject land shall at all times provide and maintain an enclosed waste receptacle on the subject land. All builders' waste, hard building material and litter shall be contained and stored in the receptacle at all times in a manner satisfactory to Council. The receptacle must be on site for the duration of the construction period. The receptacle shall be emptied when full. If necessary the receptacle

shall be fitted with a lid to be closed during windy conditions.

### **Carparking**

3 Prior to first occupation of the premises (additions) all carparking spaces, driveways and associated manoeuvring areas must be constructed in accordance with the approved Plan of Development as follows:

- a) It must be constructed and drained in accordance with Australian Standards for off-street car parking (AS/NZS 2890).
- b) It must be hot-sealed with a 25mm minimum thickness asphalt concrete laid in compliance with Transport SA Standard Specifications or brick pavers or concrete to the edge of Bagot Street, sealed road.
- c) All car parking spaces and manoeuvring areas must be sealed as follows:
  - (i) Gravel sealed; or
  - (ii) hot-sealed with a 25mm minimum thickness asphalt concrete; or
  - (iii) Brick pavers; or
  - (iv) Concreted.
- d) All carparking spaces shall be line-marked with continuous white lines along the whole of each side of each carparking space prior to first occupation of the site. The line marking shall be maintained in a clear and visible state at all times.
- e) One (1) disabled car parking space must be provided to Australian Standards.
- f) Car parks shall not be used for any other purpose other than for the parking of a vehicle.
- g) Wheel stopping devices constructed of concrete, metal or wood shall be placed at the end of each parking bay so as to prevent overhang and damage to adjoining landscaped areas, grassed areas and footpaths by motor vehicles.

All carparking spaces, driveways and associated manoeuvring areas must be maintained in a good condition at all times and shall not be used for the storage or display of any materials or goods.

4 All vehicles entering and leaving the site must do so in a forward gear.

### **Lighting**

- 5 All security lights and floodlights associated with the proposed development shall be shielded and adjusted so it does not create nuisance to adjacent or nearby properties and road users as a result of the light it emits either directly or by reflection. Lighting to comply with the Australian Standard for the control of the obtrusive effects of outdoor lighting (AS 4282).

### **Damage to Council Infrastructure**

- 6 The developer/owner must ensure that the proposed development does not impact on any Council infrastructure in any way. In the event that Council infrastructure is affected by the proposed development the developer/owner must rectify all damage at no cost to Council.

### **Stormwater**

- 7 Site falls and gradings are to be directed away from the building perimeter and adjacent sites and all roof water is to be directed to the street drainage (or storage tank) to the satisfaction of Council. The drainage system shall be completed by the finish of the construction of the building.

### **Effluent Disposal**

8. The applicant/owner must obtain approval from Council for the installation of a Waste Control system prior to the commencement of construction. The Waste Control system must be installed in accordance with the conditions of the approval.
9. The applicant/developer shall provide sewerage augmentation contributions in accordance with Council's Community Wastewater Management System Policy current at the time of payment. Payment of such contribution shall be made prior to occupation of the development/clearance of the survey plan in accordance with Section 51 of the Development Act 1993.

### **Toilet Facilities**

- 10 The developer/owner shall ensure that adequate onsite toilet facilities are provided for the duration of the construction of the approved development for use of workers involved with the development. All such facilities must comply with the applicable health



CAP06:1120

legislation in place at the time of the construction of the development.  
**Seconded Member Weedon  
Carried.**

**6.1.3 Public Notification Applications – Category 1**

Nil.

**7. Matters for Panels Attention:**

Nil.

**8. Correspondence:**

Nil.

**9. Closure:**

The Council Assessment Panel meeting closed at 5.40 p.m.

The foregoing Minutes of a Meeting of the Development Assessment Panel were read and confirmed at a Meeting of Development Assessment Panel held on Wednesday, 9<sup>th</sup> December 2020.

PRESIDING MEMBER:.....

**6.1.1.1 Development Application 340/369/20 – Tim Love  
C/- Botten Levinson (AH)**

Assessing Officer:	Humby Consulting
Applicant:	Mr Tim Love C/- Botten Levinson
Property Owners:	Mr Tim Love
Property Location:	36 Bay Road, Moonta Bay SA 5558
Proposed Development:	Partial Change of Use from Residential Dwelling to Residential Dwelling and Storage of Motor Vehicles Associated with a Taxi Service
Zone:	Residential Zone
Certificate of Title:	Volume: 5353 Folio: 131
Category:	Category 3 - Merit
Public Notification:	Yes
Auth Dev. Plan:	Copper Coast Council consolidated – 23 May 2019
Attachments:	<ol style="list-style-type: none"><li>1. Application Plans and Documentation**</li><li>2. Planning report from James Roder</li><li>3. Category 3 Representations</li><li>4. Response to Representations</li></ol>

## **1. REASON FOR REPORT**

In accordance with the Development Plan of the Copper Coast Council consolidated 23 May 2019 (the “Development Plan”), and Section 38(2)(c) of the *Development Act 1993*, the proposed development is a Category 3 form of development which required public notification. During public notification six (6) written submissions were received, therefore requiring a decision by the Council Assessment Panel (the Panel).

## **2. BACKGROUND**

On 1 September 2020 development application 340/369/20 was lodged with the Copper Coast Council by Mr James Roder on behalf of the owner of the subject land for:

*Partial change of use from residential dwelling to residential dwelling and storage of motor vehicles associated with a taxi service*

The application was lodged on behalf of Mr Tim Love being the land owner following communication between the Council and Mr Tim Love regarding the operation of the taxi service and storage of vehicles on the subject land. Council will consider the request for a permit under Section 222 of the *Local Government Act 1999*, once the proposed land use application has been considered.

The subject land is located wholly within the Residential Zone and was determined to be a merit form of development pursuant to Section 35(5) of the *Development Act 1993* (the Act). For the purposes of public notification, the application was determined to be a Category 3 development in accordance with the Development

Regulations 2008. This was as a result of the proposal not being deemed minor in nature and therefore not being classified as either Category 1 or a Category 2 form of development.

The application was made available for public inspection, during which time the Council received six (6) written submissions from the owner(s)/occupiers of impacted land. A response to the representations was supplied by Mr James Roder of Botten Levinson Lawyers on behalf of the owner of the subject land. The six (6) representations received object to the proposal due to the location of the business being inappropriately located within a Residential Zone.

Plans and information for consideration by the Panel are attachments to this report. No referrals were required as part of the assessment of the application.

### 3. DETAILS OF PROPOSAL

The applicant seeks Development Approval for a partial change in land use from an existing residential dwelling to a residential dwelling with storage of vehicles on the subject land for use in conjunction with a taxi service.

The owner of the subject land currently operates Moonta Passenger and Taxi Service and has submitted an application to formalise use of the subject land at 36 Bay Road, Moonta Bay to support the operation of this business.

Specifically the proposal includes consideration of the following:

- Storage of four (4) vehicles (3 sedans and 1 mini-van)
- Up to three (3) staff members (taxi drivers) who do not reside on the subject land
- 1 - 2 staff to support the business will reside on the subject land
- The four (4) vehicles are in-use/available 24/7
- One (1) vehicle parked entirely on Council land with two (2) vehicles partially overhanging at certain times onto the Council land (A permit under Section 222 of the *Local Government Act 1999* has been submitted to formalise encroachment of vehicles on to council land)

Additionally, no signage is proposed as part of the application, 2 persons reside at the subject land and one (1) vehicle is on site for personal use by the occupants of the land.

Council staff have determined the proposal to be 'development', not incidental and independent to the existing residential land use and therefore requires assessment. The carrying on of a home activity on land used for residential purposes is not considered development as defined by the Act (*Development Regulations 2008 – Schedule 3, Clause 5(2)(a)*). The definition of home activity is as follows:

*Home activity means a use of a site by a person resident on the site—*

- (a) that does not detrimentally affect the amenity of the locality or any part of the locality;*  
*and*
- (b) that does not require or involve any of the following:*

- (i) *assistance by more than 1 person who is not a resident in the dwelling;*
- (ii) *use (whether temporarily or permanently) of a floor area exceeding 30 square metres;*
- (iii) *the imposition on the services provided by a public utility organisation of any demand or load greater than that which is ordinarily imposed by other users of the services in the locality;*
- (iv) *the display of goods in a window or about the dwelling or its curtilage;*
- (v) *the use of a vehicle exceeding 3 tonne tare in weight;*

The determination by Council staff is that the proposal is not considered to adhere to clause (a) in that the proposal is considered to detrimentally affect the amenity of the locality and clause (b)(ii) in that the proposal involves a use exceeding 30 square metres.

Whilst the storage of vehicles on private land is not development, in this instance, the storage of 4 vehicles for use in association with a business is not considered to be ancillary or subordinate to the existing residential dwelling land use.

#### **4. THE SUBJECT LAND**

The subject land is an irregular square shaped allotment location on the northern side of Bay Road in the area of Moonta Bay. The subject land is wholly located within the Residential Zone and currently contains a 1920s single storey detached villa and detached garage. The front boundary of the subject land is set back approximately 14m from the Bay Road kerb. Limited vegetation exists within the council verge along Bay Road.

The subject land has an approximate site area of 846 square metres and a frontage width of approximately 25.2 metres. The land is predominantly flat and does not include any notable vegetation.



Figure 1 – Subject land

## 5. LOCALITY

The subject land contains a single-storey detached dwelling which is both consistent with the established Residential Zone character and consistent with the predominant character of the locality.

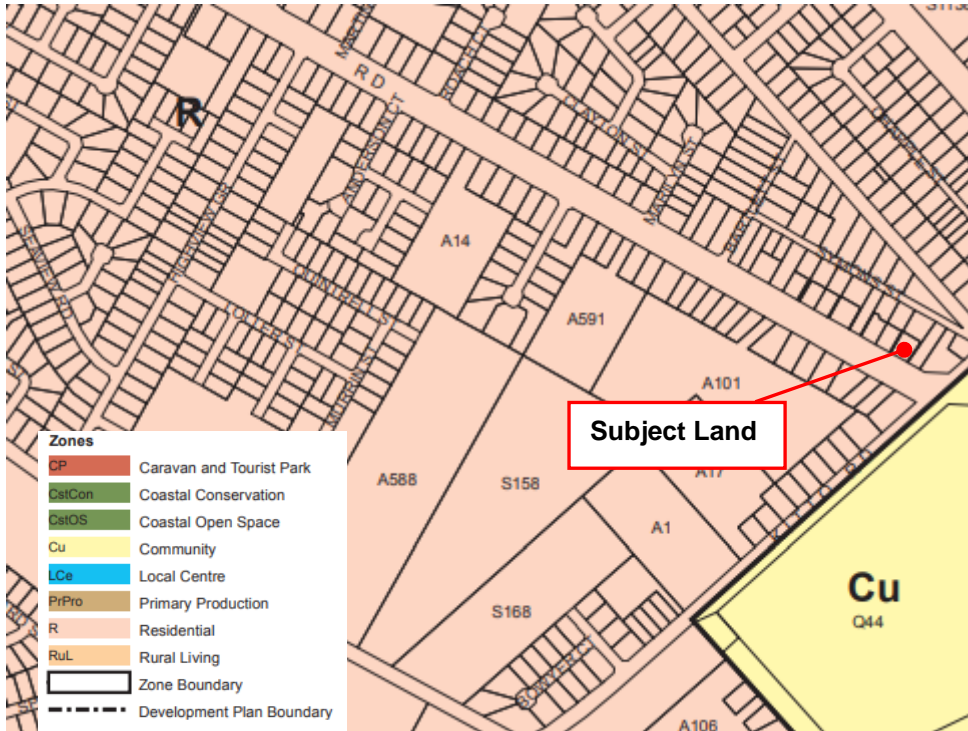
The locality contains predominantly single-storey detached dwellings and generally detached ancillary structures including garages.

The main characteristics of the locality are as follows:

<b>NORTH</b>	To the north of the subject land is a mix of residential allotments in terms of allotment area and boundary arrangement. Dwellings consistently have similar frontages to the public road and a smaller public verge than that seen on Bay Road.
<b>EAST</b>	Directly to the east of the subject land there are two single-storey detached dwellings. Further to the east (approximately 60 metres) is a large council verge area. Further again approximately 80 metres from the subject land is Moonta Golf Course. The Moonta Golf Course is located within the Community Zone.
<b>SOUTH</b>	The characteristics of the area to the southern side of Bay Road are consistent with the northern side of Bay Road, being single-storey detached dwellings. The southern side of Bay Road also includes a large verge area with no pattern to the existing landscaping and

	vegetation within the council verge area.
<b>WEST</b>	The land to the west of the subject land is consistent with the predominant residential character of the locality.

**Table 1 – Description of the locality**



**Figure 2 – Locality and Zone details**



**Photo 1 – Subject land – looking north-west**



**Photo 2 – Subject land – looking north**





**Photo 3 – Opposite subject land – looking south**



**Photo 4 – Looking west along Bay Road**



**Photo 5 – Looking east toward the Golf Course**



**Photo 6 – Subject Land – Looking north-west**

## 6. DETAILS OF PROPOSAL

The proposed development seeks:

*Partial change of use from residential dwelling to residential dwelling and storage of motor vehicles associated with a taxi service*

Specifically the proposal includes consideration of the following:

- Storage of four (4) vehicles (3 sedans and 1 mini-van)
- Up to three (3) staff members (taxi drivers) who do not reside on the subject land
- 1 - 2 staff to support the business will reside on the subject land
- The four (4) vehicles are in-use/available 24/7
- One (1) vehicle parked entirely on Council land with two (2) vehicles partially overhanging at certain times onto the Council land (A permit under Section 222 of the *Local Government Act 1999* has been submitted to formalise encroachment of vehicles on to council land).

## 7. PUBLIC NOTIFICATION

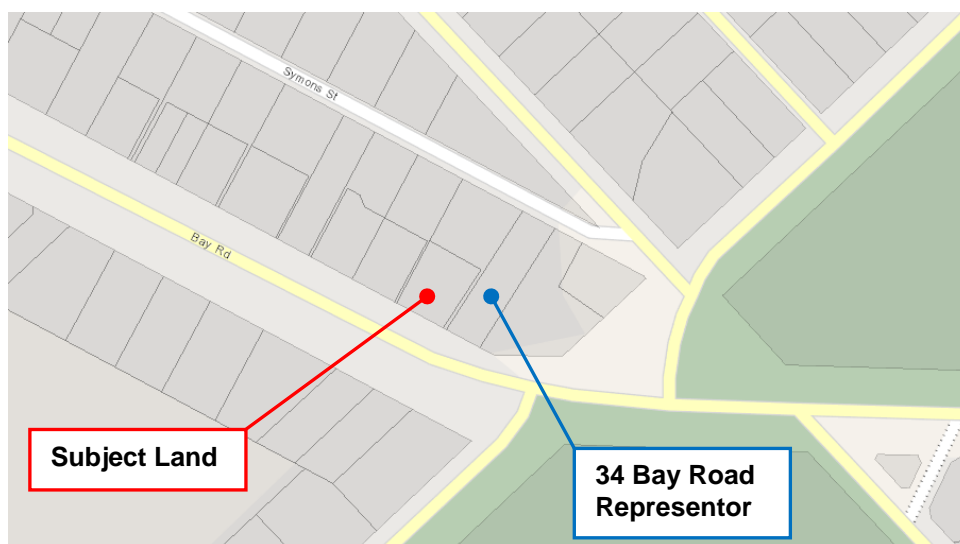
For the purposes of public notification, the application was determined to be a Category 3 development in accordance with the *Development Regulations 2008*. This was as a result of the proposal not being deemed minor in nature and therefore not being classified as either Category 1 or a Category 2 form of development.

Given the application was considered as a Category 3 form of development, a newspaper advertisement was provided and letters to adjacent property owners/occupiers along with any additional properties whom the Council deemed to require direct letter notification. The notification period provided for 10 business days for representors to submit their representation and 10 days for the applicant to respond to the representations received.

Six (6) representations were received as a result of the notification period.

<b>84 Port Road, Kadina</b>	Objection	
<b>34 Bay Road, Moonta Bay</b>	Objection	Wishes to be heard
<b>29 Ryan Street, Moonta</b>	Objection	
<b>22A May Street, Wallaroo</b>	Objection	
<b>1 Cornwall Street, Kadina</b>	Objection	
<b>16 Goldsworthy Street, Matta Flat</b>	Objection	

A number of letters of support of the development were provided from community members as part of the initial lodgement of the application, however did not form part of the formal consultation period.



**Figure 3 – Subject land and one representation location. The 5 other representations are located within surrounding townships**



## 8. ASSESSMENT OF THE PROPOSAL

The following Copper Coast Council Development Plan Objectives and Principles of Development Control (PDCs) were considered in the assessment of this application:

<b>Development Plan</b>	Copper Coast Council – Consolidated 23 May 2019	
<b>Zone</b>	Residential Zone	
<b>Policy Area</b>	N/A	
<b>Section</b>	<b>Objectives</b>	<b>Principles of Development Control</b>
<b>General Section:</b> Design and Appearance	1	1
Interface between Land Uses	1, 3	1, 2
Residential Development	1	1
Transportation and Access	1	11, 34
<b>Zone:</b> Residential Zone	3	1,4, 6

*Table 2 – Objectives and Principles of Development Control (PDCs) considered applicable to the proposed development*

It is considered that the proposal is unreasonable and at variance with the intent of the relevant Objectives and Principles of Development Control contained within the Development Plan.

## 9. ASSESSMENT OF THE PROPOSAL

### 9.1 Design and Appearance

**Objective 1** states:

*Development of a high design standard and appearance that responds to and reinforces positive aspects of the local environment and built form.*

#### Officer Comments

The proposal, albeit for a change in land use with no building work proposed is considered development and therefore should be reasonable in consideration of its appearance to the streetscape and the existing locality. The parking of vehicles on the subject land that are to be used commercially, is not in keeping with the design and appearance of the existing residential character derived from single-storey detached dwellings and associated garaging. The proposal to have a commercial business being conducted with the dwelling that is consistent with the existing character of the locality is not considered to be something that reinforces this existing character.

The local environment is considered to comprise consistent residential land uses which do not unduly impact upon the amenity of the locality.

As mentioned, the proposed change in land use does not seek the authorisation of any building work but rather extends the land use of an existing residential property to include multiple uses. The additional use is the commercial business being a vehicle taxi service. This taxi service would facilitate multiple vehicle movements above and beyond what would normally be expected on a residential property at 24 hours of any given day. The existing locality does not include any commercial properties and the reinforcement of this would not include the addition of a commercial business being operated from an existing dwelling.

## **9.2 Interface Between land uses**

**Objective 1** states:

*Development located and designed to prevent adverse impact and conflict between land uses*

**Objective 2** states:

*Protect desired land uses from the encroachment of incompatible development.*

### **Officer Comments**

The subject land at 36 Bay Road, Moonta Bay is surrounded by residential land uses, comprising single-storey detached dwellings. By enabling a commercial business in this location would erode the existing residential character and conflict with the predominant land use. The land use proposed in conjunction with the existing dwelling will present adverse impacts to the existing amenity of the locality and would not reasonably be expected on a residential property, as is the subject land.

The subject land is contained wholly within the Residential Zone with adjacent properties also located within the Residential Zone. Land to the east of the subject land is located within the Community Zone however, the land uses within this zone are either open space or a Golf Course. The locality is therefore consistent in terms of existing land uses within the locality given there are two types of land uses being residential or open space (golf course).

The proposed taxi business is considered to have adverse impacts on the existing residential character and will provide conflict due to the regular and 24/7 movement of vehicles from the subject land. Commercial business like the one proposed should be located in a suitable area as to not detract from the prevailing character of the locality, such as a Commercial or Light Industry Zone.

**PDC 1** states:

*Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:*

- (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants*
- (b) noise*
- (c) vibration*
- (d) electrical interference*
- (e) light spill*
- (f) glare*
- (g) hours of operation*
- (h) traffic impacts.*

**PDC 2** states:

*Development should be sited and designed to minimise negative impacts on existing and potential future land uses desired in the locality.*

Officer Comments

The proposal for a commercial taxi service is considered to be unreasonable in that it will facilitate unexpected noise including the movement of vehicles 24/7 from the subject land. The hours of operation proposed along with the proposed land use are not expected nor orderly development within the Residential Zone.

The business proposed will generate noise through the movement of vehicles and persons at 24 hours a day. This is not considered a desired outcome within an established residential area, consisting of low scale, detached dwellings. The proposal is considered to be to the detriment of the existing and future land uses given it is out of character with the existing and expected future residential land uses within the locality.

The proposal would be a negative intrusion of a commercial land use within a residential area.

**9.3 Residential Development**

**Objective 1** states:

*Safe, convenient, sustainable and healthy living environments that meet the full range of needs and preferences of a diverse community.*

Officer Comments

Although the needs of a community could be considered to be taken in to account by the taxi business, the proposed location of the business is not considered to be adhering to the needs of a residential community who may not consider the erosion of an existing residential character with the introduction of commercial businesses as proposed, to be reasonable.

**PDC 1** states:

*Residential allotments and sites should have the appropriate orientation, area, configuration and dimensions to accommodate:*

*(a) the siting and construction of a dwelling and associated ancillary outbuildings*

*(b) the provision of landscaping and private open space*

*(c) convenient and safe vehicle, pedestrian and cycling access and parking*

*(d) water sensitive design systems that enable the storage, treatment and reuse of stormwater.*

### Officer Comments

The existing residential allotment is appropriate in terms of its arrangement. The addition of up to 4 extra vehicles being parked on private land for commercial purposes with some intrusion on to Council land is not considered orderly and appropriate residential development. There are limited concerns that the proposed vehicle locations on site are unsafe and are considered to have limited impact on the council verge, which is to be considered as part of a separate Section 222 request under the *Local Government Act 1999*.

## **9.4 Transport and Access**

### **Objective 1** states:

*A comprehensive, integrated, affordable and efficient air, rail, sea, road, cycle and pedestrian transport system that will:*

- (a) provide equitable access to a range of public, community and private transport services for all people*
- (b) ensure a high level of safety*
- (c) effectively support the economic development of the State*
- (d) have minimal negative environmental and social impacts*
- (e) maintain options for the introduction of suitable new transport technologies.*

### Officer Comments

The proposed land use is considered to provide a means of transportation and effectively enables the community to move privately within the area of Moonta Bay and the surrounding townships.

### **PDC 11** states:

*Driveway cross-overs affecting pedestrian footpaths should maintain the level and surface colour of the footpath.*

### Officer Comments

The proposed development application does not seek to alter any levels or impact upon pedestrian movements outside of the subject land. The small overhang of the vehicles to be parked on site over council land is not desirable but does not limit the movement of pedestrians in the area.

### **PDC 15** states:

*Development should provide for the on-site loading, unloading and turning of all traffic likely to be generated.*

### **PDC 34** states:

*Vehicle parking areas should be sited and designed to:*

- (a) facilitate safe and convenient pedestrian linkages to the development and areas of significant activity or interest in the vicinity of the development*
- (b) include safe pedestrian and bicycle linkages that complement the overall pedestrian and cycling network*
- (c) not inhibit safe and convenient traffic circulation*
- (d) result in minimal conflict between customer and service vehicles*
- (e) avoid the necessity to use public roads when moving from one part of a parking area to another*
- (f) minimise the number of vehicle access points onto public roads*

- (g) avoid the need for vehicles to reverse onto public roads
- (h) where practical, provide the opportunity for shared use of car parking and integration of car parking areas with adjoining development to reduce the total extent of vehicle parking areas and the requirement for access points
- (i) not dominate the character and appearance of a centre when viewed from public roads and spaces
- (j) provide landscaping that will shade and enhance the appearance of the vehicle parking areas
- (k) include infrastructure such as underground cabling and connections to power infrastructure that will enable the recharging of electrical vehicles.

### Officer Comments

The proposed parking of vehicles in association with the change in land use does not alter the existing vehicle parking areas on the subject land. Vehicles currently utilise the existing Council verge to reverse into the subject land or conversely, reverse out of the subject land and utilise the Council verge to turn and exit onto Bay Road.

It is recognised that in many residential areas, reversing onto a public road is generally suitable where there is an expected low daily vehicular movements (ie low volume residential streets). In areas where an allotment adjoins a primary road, secondary road or along corridors with reduced visibility, results in the need for vehicles to exit an allotment in a forward direction. Turning areas are required to be provided within the subject land to ensure safe and convenient access for all users.

This is a similar assessment requirement for non-residential land uses, with the Development Plan requiring development to provide turning areas on-site to enable vehicles to exit in a forward direction.

While it is acknowledged that vehicles may currently use the wide Council verge to facilitate this turning process, it is the expectation of the Development Plan that this is undertaken within the subject land and not rely on adjoining land. As such, it is considered that the proposal's parking areas and access is not orderly and appropriate for the establishment of a commercial development.

The appropriateness of the vehicles parking and overhanging onto Council verge is also considered to be not desirable. However, this will be considered via a separate Section 222 request under the *Local Government Act 1999*.

## **9.5 RESIDENTIAL ZONE**

**Objective 1** states:

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

### Officer Comments

The proposed development does not seek to contribute positively to the existing or desired character of the Residential Zone. The proposal is considered to interrupt an existing, well established and consistent character made up of detached dwellings. The intrusion of this type of development to the Zone would be to the detriment of the residences and would set a precedence of unreasonable developments existing within the Zone to the detriment of the amenity of the locality.

The Zone is made up of pleasant, safe and convenient living environments including appropriate community land uses – consistent with the leading paragraph of the Desired Character statement:

*'The zone will provide pleasant, safe and convenient living environments for residents together with an appropriate range of recreation, education, community and aged care facilities'*

The 'appropriate range' of non-residential land uses are aimed at community, educational or recreation based activities, whereas the proposed taxi business is not considered to be a community land use, but rather an independent commercial land use. The proposed land use is therefore considered to be an intrusion upon the existing and future desired character of the Zone.

**PDC 1** states:

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

- *affordable housing*
- *domestic outbuilding in association with a dwelling*
- *domestic structure*
- *dwelling*
- *dwelling addition*
- *land division*
- *small scale non-residential use that serves the local community, for example:*
  - *child care facility*
  - *open space*
  - *primary and secondary school*
  - *recreation area*
  - *supported accommodation.*

**PDC 4** states:

*Non-residential development should be of a nature and scale that:*

- (a) serves the local community*
- (b) is consistent with the character of the locality*
- (c) does not detrimentally impact on the amenity of nearby residents*

**PDC 6** states:

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

### Officer Comments

Although the Residential Zone contemplates non-residential land uses, these are to be small scale and servicing the needs of the local community. As previously discussed, the Desired Character statement provides a context of the range of non-residential land uses that are generally associated with recreational, community or educational purposes. The proposal seeks approval for a commercial business within a Residential Zone. Although the proposal is considered an enabler for the community to gain transport in the local area, it is not considered to be envisaged as a non-residential land use.

PDC 4 states that non-residential land uses should be consistent with the character of the locality and not detrimentally impact the amenity of the nearby residents. The proposal fails on both accounts due to the hours of operation being 24 hours a day and the movement of an excessive number of vehicles to and from the subject land. These two components of the proposal create a land use that is both inconsistent with the existing character and will likely cause detrimental impacts to the amenity of nearby residents.

As mentioned earlier, although the change in land use is not considered substantial in the area require and similarly, no building work is proposed, it is the regular commercial movement of vehicles 24 hours a day that would not be consistent with the desired character of a Residential Zone. The proposed taxi service will erode the established residential character and will create a commercial land use within a residential area.

## 10. CONCERNS RAISED BY REPRESENTORS

The concerns submitted by representors during the public consultation period can be summarised as follows:

- Risk of a precedent being created from the approval of the land use
- Impacts to the amenity of the locality
- Inconsistent land use within a Residential Zone
- Commercial competition

### Applicants Response

The property abutting the subject land to the east has stated that the proposal will unreasonably impact upon his amenity. As the proposal is to seek approval for something that has been operating without consent, this land owner did not raise any concerns before an application was lodged.

The representations received do not identify any relevant planning impacts or assessment criteria for consideration by the Panel. There is an assertion that the representations given their consistent themes have been lodged for personal reasons against the individual applying for consent.

The question over the precedent effect being created by approving the application is not supported by the Environment, Resources and Development Court, as each application should be assessed on its own merits against the Development Plan and each specific site.

The planning assessment process does not take in to account commercial competition as a reason to refuse an application.

### Officer Comments

The subject land is an established residential land use consistent with the desired character of the Residential Zone and the existing character of the locality. The inclusion of a commercial business within the existing character is considered to detract from the amenity of the locality and the nearby residents.

Whilst the proposal could not be considered to present a precedence case to other residential properties within the locality, the approval of a taxi service land use to a residential dwelling is not in keeping with the desired character of the locality. It should, however, be acknowledged that approval of the proposed development may create an expectation that commercial development may be supported in this locality. Commercial competition is not something to consider in the assessment of the application against the relevant Objectives and Principles of Development Control within the Development Plan.

The application was classified as a Category 3 form of development for public notification purposes. This enables anyone to make representation on the proposal for consideration by the applicant and in assessment of the application.

### **SUMMARY**

When assessed against the relevant provisions of the Copper Coast Council Development Plan, it is considered that the proposed development is at variance with the provisions of this plan. The proposal is however finely balanced, and having regard to the context of the locality, its non-residential form, its 24 hour nature and intensity of the proposed development, it is considered that the proposal is not supportable in this established Residential Zone. As such, it is considered that on balance, the proposed development does not warrant support and is recommended for refusal.

### **RECOMMENDATION**

That following consideration and having regard to all relevant matters concerning the proposed partial change of use from residential dwelling to residential dwelling and storage of motor vehicles associated with a taxi service at 36 Bay Road, Moonta Bay, Development Plan Consent be **REFUSED** subject to the following reasons:

1. The proposed development is not consistent with the Desired Character statement, Objective 3 and Principle of Development Control 1 of the Residential Zone as it is not a form of development that will contribute to the ongoing pleasant, safe and convenient living environment for residents.
2. The proposed development is at variance with Design and Appearance Principle of Development Control 1 as the parking of several vehicles in association with the proposed commercial land use is considered to detract from the appearance of the subject land.



3. The proposed development is at variance with Interface between land uses – Principles of Development Control 1 and 2 – as the proposed commercial land use and its 24 hour operation does not interface well with an existing residential character.
4. The proposed development does not provide appropriate on-site vehicular parking areas required for a commercial operation.

Our ref: JLR/220164

1 September 2020

Planning Officer  
Copper Coast Council  
51 Taylor Street  
KADINA SA 5554

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

Dear Sir/Madam

**Development Application - Change of Use - 36 Bay Road, Moonta Bay**

This firm acts for Tim Love in relation to this without prejudice development application concerning his property at 36 Bay Road, Moonta Bay (**the land**).

Please find enclosed the following documents, which with this letter comprise the development application:

1. Development application form;
2. Electricity declaration form;
3. Copy of Certificate of Title Volume 5353 Folio 131

Please contact Mr Tim Love directly on 0447 005 528 to arrange payment of the relevant statutory application fees to the Council.

Please advise if any further statutory fees are payable in due course.

Further, for the avoidance of doubt we confirm that our client's development application is lodged on a *without prejudice* basis.

**The proposal**

The land the subject of the proposed development is currently comprised in Certificate of Title Volume 5353 Folio 131.

The proposal seeks (retrospective) development approval (on a without prejudice basis) for partial change of use of the land from residential dwelling to residential dwelling and storage of motor vehicles for the purposes of the operations of Moonta Passenger & Taxi Service.

Level 1 Darling Building  
28 Franklin Street, Adelaide  
GPO Box 1042, Adelaide SA 5001  
t. 08 8212 9777  
f. 08 8212 8099  
e. [info@bllawyers.com.au](mailto:info@bllawyers.com.au)  
[www.bllawyers.com.au](http://www.bllawyers.com.au)

Our client uses the land for the parking of three (3) sedan vehicles and one (1) mini-van which are used in his business. The vehicles, from time to time, are parked at his property in the period that they are not in use servicing the community.

## **Background**

Our client operates the business trading as Moonta Passenger & Taxi service that provides public transport services to the Copper Coast Council region and broader Yorke Peninsula. The continued operation of our client's business is imperative to the Council achieving the policies set out in its Development Plan (and its broader policies) with respect to tourism, transportation and access and disability movement.

Enclosed with this letter are a range of testimonials from members of the community who find the business operated by our client to be of paramount importance and support its retention in its present form.

## **Approach to Assessment**

In considering the relevant provisions of the Development Plan, it is important to keep in mind the principles established by the Courts as to their application, and the manner in which the provisions are to be applied.

Those principles include:

1. the provisions of the Development Plan are **not** mandatory. They are in the nature of guidelines;<sup>1</sup>
2. the Development Plan is not to be applied in a "**theoretical vacuum**", i.e., in the abstract;<sup>2</sup>
3. the planning legislation is "*... a practical code calling for a practical application.*"<sup>3</sup> In other words, the Development Plan is a "practical planning document" rather than statute. It is to be approached on the basis that it expresses planning objectives and principles **rather than hard and fast rules having mandatory effect**;<sup>4</sup>
4. generally speaking, the task of the relevant authority is to "*... weigh the benefits and detriments, in other words, to weight the "pros and cons" of the proposed development by reference to the plan. **"But to suppose that the "pros" and "cons" are in watertight compartments, or that they do not overlap, is to ignore the complexity of the subject matter and the competing elements which have to be weighed in deciding where the planning balance lies.**"*<sup>5</sup>

## **Relevant Zone and Policy Area**

The land is located in the Residential Zone of the Council's Development Plan (consolidated 23 May 2019).

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<sup>1</sup> *Lackshmanan v City of Norwood and Anor* [2010] SASCF 15.

<sup>2</sup> *Paradise Developments Pty Ltd v The Nature Conservation Society of SA Inc and Kingscote District Council* (1990) 59 SASR 239.

<sup>3</sup> *City of Mitcham v Freckman* [1999] SASC 234.

<sup>4</sup> *St Ann's College v Corporation of the City of Adelaide & Renton* [1999] SASC 479.

<sup>5</sup> *District Council of Munno Para v Remove All Rubbish Co Pty Ltd* (1985) 41 SASR 188.

## **Development Plan assessment**

### Land Use

Principle of Development Control 1 of the Residential Zone envisages small scale non-residential use that serves the local community. PDC 1 then identifies a number of uses particularly envisaged within the zone. There is no basis in interpreting PDC 1 in an *ejusdem generis* manner but rather a proper interpretation of the Development Plan envisages all manner of land uses that are small scale and serve the local community.

In fact, given PDC 1 envisages the development of primary and secondary schools within the zone it is apparent that some land uses that cannot realistically be contemplated as being "small scale" are envisaged within the zone as long as they are properly capable of serving the community.

Our client is the owner and operator of the Moonta Passenger & Taxi Service which, as you are aware, provides a valuable service for the Copper Coast Council and broader Yorke Peninsula.

The proposed development is for the intermittent parking of four vehicles at our client's property in the times when they are not actually in use. In the circumstances this is akin to the number of vehicles that might ordinarily be stored at a private residential property. Effectively, while the Council has taken the strict view that the proposed development amounts to an additional use requiring consent, even if this is the case, there will be negligible (if any) impact on the amenity of the residential zone.

The Moonta Passenger and Taxi Service offers great benefit to the community in providing for safe, affordable and convenient transport, enhancing the area's tourism industry and aiding the mobility of older members of the community.<sup>6</sup> The continuation of the Moonta Passenger and Taxi Service as an economic provision is in the interests of the Copper Coast Council community and our client personally.

### No impact on amenity

The use of our client's land for the parking of vehicles does not detrimentally impact on the amenity of nearby residents different to the parking of vehicles on any land in the locality.<sup>7</sup> The vehicles are parked on our client's property with a slight overhang of the verge of the road (to which our client has sought a separate permit from Council).

Our client's business is substantially operated within business hours such that any traffic impact (which given the negligible number of vehicles the subject of the application would be minor in any event) would not relate in any adverse impact on amenity. We understand that no complaints have been raised with the operational hours of the business from my client's land.

### Interface between Land Uses

Given the passive nature of the proposal, it is unlikely to result in any material impact upon existing adjoining residents.<sup>8</sup> The parking of four vehicles will not result in the creation of any appreciable noise, light spill or traffic impacts in excess of the ordinary undisputed lawful residential use of our client's property.<sup>9</sup>

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<sup>6</sup> Residential Zone PDC 4(a).

<sup>7</sup> Residential Zone PDC 4(c) and PDC 6.

<sup>8</sup> General Section, Interface between Land Uses PDC 2.

<sup>9</sup> General Section, Interface between Land Uses PDC 1.

We further note that our client's property is located on the interface of the Community Zone where a broader range of development servicing the Community is anticipated. Given it is well settled that residents on the outer edge of a residential zone may expect diminished standards of amenity and should anticipate a level of conflicting land uses.<sup>10</sup>

### Siting and Visibility

Although there are no specific provisions regarding the siting and visibility of taxi services within the Development Plan, consideration has been given to the potential visual impact of the proposal upon adjoining land and the locality more broadly.

Dwellings along Bay Road have a range of views across the subject land, with some more direct than others. Views from the dwellings adjacent the land and directly opposite the land are screened by existing vegetation along the road verge of Bay Road as shown in Figure 1 and Figure 2 below.<sup>11</sup>



**Figure 1** - View of the land looking South-East subject land on the left.

<sup>10</sup> *Dowl Pty Ltd v Corporation of the City of Kensington and Norwood* [1994] EDLR 135; *Lanzilli Holdings v City of Campbelltown* (1982) 38 SASR 81.

<sup>11</sup> General Section, Siting and Visibility PDC 3(b) and PDC 8(b).





**Figure 2** - View of the immediate locality showing existing screening vegetation.

Given the level of screening along the Bay Road frontage and the setback of the vehicles from the road, the potential for visual impact is considered to be minimal.

### **Classification**

The proposal is neither complying or non-complying in the Development Plan. It stands to be assessed on the merits.

Given the development is effectively for the intermittent storage of motor vehicles consistent with the number of motor vehicles that may ordinarily be expected to be stored at a residential premises the proposed development is of a minor nature and will not unreasonably impact on the owners or occupiers of land in the locality. As such, pursuant to Clause 2(g) of Schedule 9 of the *Development Regulations 2008* the proposed development is for a Category 1 form of development.

### **Summary**

The proposed development has significant planning merit and is worthy of approval.

Our client's business provides a valuable public service for the community, particularly in the circumstances where this particular kind of business is rare in the Copper Coast community.

Given the limited scale of our client's business it is appropriate that the storage of vehicles occur at his residence. Without making this provision there is a risk to the commercial viability of our client's business which could jeopardise the continuation of this valuable community service.

Please contact me if you have any queries about this development application.

Yours faithfully

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

**James Roder**

**BOTTEN LEVINSON**

Mob: 0418 837 942

Email: [jl@bllawyers.com.au](mailto:jl@bllawyers.com.au)

Enc – Development Application Form  
Electricity Declaration  
Statements of Support

COUNTER



21 OCT 2020

*OUT & ABOUT TO SERVE YOU*ABN: 48 964 172 449  
84 Port Road,  
Kadina SA 5554Phone: (08) 8821 3444  
Fax: (08) 8821 3744  
Email

admin@coppertriangletaxis.com.au

*Mr Russell Peate  
Chief Executive Officer  
Copper Coast Council  
Taylor Street  
Kadina SA 5554*

*Your Ref No 340/369/20*

*Dear Sir,*

*I refer to the above mentioned reference number in relation to rezoning a residential home to accomodate a taxi service.*

*I run Copper Triangle Taxis in Kadina and I am based at 84 Port Road. When I started this business in 1995 I was advised by the CEO of the District Council at that time that this business must not under any circumstances be run or used as a storage facility for taxis at my home.*

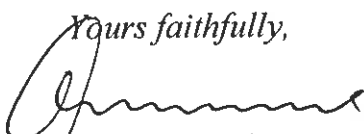
*To comply with this for the first couple of years of operation I rented a parcel of land in the Kadina Industrial Area. Since then our business has grown and we now have our office and storage facility at Port Road.*

*I therefore strongly oppose the application by Mr Love and any other individual that contemplates running a business from home.*

*I would have thought Mr love being an elected council member would have known all the council by laws relating to these sorts of applications.*

*If council approves this application I feel that I have put myself through unnecessary expense to set up my premises and business when I could have done it from home in the first place.*

*Yours faithfully,*

  
*Phil Dannenberg  
21/10/20*



DEVELOPMENT ACT, 1993

COPPER COAST COUNCIL

STATEMENT OF REPRESENTATION  
Pursuant to Section 38 of the Development Act, 1993

TO Chief Executive Officer  
Copper Coast Council  
PO Box 396  
KADINA SA 5554

DEVELOPMENT No. 340/369/20 - (Tim Love)

NAME OF PERSON(S) MAKING REPRESENTATION JOHN DENTE

POSTAL ADDRESS P.O. Box 289 Fullarton 5063

EMAIL ADDRESS john@exactcleaning.com.au

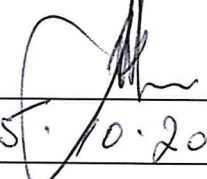
NATURE OF INTEREST AFFECTED BY DEVELOPMENT I OWN THE PROPERTY NEXT DOOR.  
(eg adjoining resident, owner of land in vicinity, or on behalf of an organisation or company)

REASONS FOR REPRESENTATION HOW MANY CABS ON SITE.  
ARE THEY COMING AN HOURS OF THE NIGHT/DAY  
ARE THEY PARKING AT THE FRONT OF THE DRIVEWAY  
HOW MANY EMPLOYEES  
IF PASTED, WILL THERE BE A TRIAL

MY REPRESENTATION WOULD BE OVERCOME BY  
(state action sought)

Please indicate in the appropriate box below whether or not you wish to be heard by Council in respect to this submission :-

- I DO NOT WISH TO BE HEARD
- I DESIRE TO BE HEARD PERSONALLY
- I WILL BE REPRESENTED BY .....   
(PLEASE SPECIFY)

SIGNED:   
DATE: 25.10.2020

*lifestyle location of choice*

# COUNTER

21 OCT 2020

Mr Adrian Irlam  
29 Ryan Street  
Moonta SA 5558

Chief Executive Officer  
Copper Coast Council  
51 Taylor Street  
Kadina SA 5554

Your Ref 340/369/20

Dear Sir,

I refer to the development application in the YP Country Times dated 13/10/20 with the above mentioned reference number.

As I am a resident of Moonta and a previous business owner I do not want to see any applications approved for any business purposes to be operated from a residential dwelling. Council has set aside land for business and Industrial purposes on Muddy Lane and therefore I oppose this application. A taxi service operating 24/7 or not should not be allowed to operate from home. If I lived next door to him I certainly would not want vehicles coming and going all hours.

Copper Triangle Taxis in Kadina have run a successful from there base in Kadina without running from home.

Mr Love, being an elected council member of the Copper Coast Council should already be aware that this is not allowed so why bother submitting in an application. I feel he has become a councillor just to look after his own interests instead of the ratepayers.

Please feel free to call me on 0439506719 if you wish to discuss anything with me.

Yours faithfully



Mr Adrian Irlam

17/10/20

# COUNTER

Gary Oliver

21 OCT 2020

22A May Street

Wallaroo SA 5556

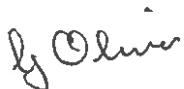
Russell Peate  
Chief Executive Officer  
Copper Coast Council  
Taylor Street  
Kadina SA 5554  
Your Ref 340 369 20

Dear Sir,

In reference to the above application number I strongly object to this application.

I personally know of several people in small businesses that were working from home that have gone into considerable debt to relocate or close down.

If Mr Love is successful in his application does this mean that individuals can start up a business and run from home. I can only see that this would open a can of worms because up until recently council inspectors were calling on business owners that were running from home advising them that this is not acceptable from council.



Yours faithfully

Gary Oliver

20/10/20

**COUNTER**

21 OCT 2020

Chief Executive Officer  
District Council of Copper Coast  
Taylor Street  
Kadina SA 5554

1 Cornwall Street  
Kadina 5554

Dear Sir,

I am writing this letter to you in regard to the application from Tim Love to be able to continue to operate his taxi business from his residential property – Case # 340-369-20

As a business owner on the Copper Coast I am strongly objecting to the approval of this application.

All businesses have to go through approvals and running costs to set up and remain in business and that is something that is understood and accepted as a requirement of operating a business in any industry or location. Mr Love is applying for special permission to run his taxi company from his home so he can avoid these approvals, costs, insurances etc.

By approving an application based on this you are potentially opening up the possibility for other business owners to consider similar requests. If people are unable to wreck cars, or collect scrap metal, have roadside shops or operate heavy machinery as examples from the comfort of their residence, why would it be ok for a taxi business to operate from theirs?

Also, I would like to say from a home resident point of view, I would also be objective to having a taxi base operating nearby to my home. There is a reason for council zoning and this is one of those examples of why they are needed.

I hope you put a lot of consideration into this application before considering any approvals that may open up a can of worms.

Thank you for your attention to this matter.

Kind regards



Carol Penney

**COUNTER**

To Chief Executive Officer  
District Council of Copper Coast  
Taylor Street  
Kadina SA 5554

21 OCT 2020

JCP Auto Wreckers  
16 Goldsworthy St  
Matta Flat 5554

Re: Application # 340-369-20

Dear Sir,

As a concerned resident I am writing to object about Tim Love being able to operate his business from a residential premises. As a business owner myself I know how costly it is to operate from a commercial property, but if you allow Tim Love to operate from his home it will allow anyone to operate a business from their own residence. This practice is not only unfair but also unethical.

It is my understanding that his reasoning for wanting to run his taxi service from home is to keep his operating costs low. All businesses would like to be able to do this but we try to do the right thing. Tim Love needs to be held accountable and operate from a base that is not his own premises.

Kind regards



John Plane

Our ref: JLR/220164

28 October 2020

Ms Kelly Rosenberg  
Copper Coast Council  
51 Taylor Street  
KADINA SA 5554

**By email: [development@coppercoast.sa.gov.au](mailto:development@coppercoast.sa.gov.au)**

Dear Ms Rosenberg

**Response to representations - Tim Love t/as Moonta Passenger Service – Partial Change of Use from Residential Dwelling to Residential Dwelling and Storage of Motor Vehicles Associated with a Taxi Service  
Property address: 36 Bay Road, Moonta Bay**

This firm acts for Tim Love trading as Moonta Passenger Service and this response to the representations is made on our client's behalf.

**Issues raised by the representations**

The representations raise the following issues being the perceived risk of a "precedent" effect if this without prejudice application is approved, issues of commercial competition and person animus towards the applicant. This response deals with those issues in turn.

**Representation of Mr Dente**

Mr Dente claims to own the property next door to the location of the proposed development. The balance of Mr Dente's representation asks a series of seemingly rhetorical questions as to the proposed development.

The Applicant would be pleased to meet with or communicate with Mr Dente with a view to overcoming his concerns and/or fashioning appropriate conditions of consent.

Notwithstanding this, given the without prejudice application is in effect "retrospective" given the proposed development only seeks consent for activities already operating from the site, that Mr Dente only asks questions rather than speaking from personal experience as to any adverse impacts from the property indicates that the development, if approved, would not detract from the amenity of neighbouring properties (given it would be identical to what is already occurring and no objections have been made).

With respect to Mr Dente's representation, his observations as a neighbouring property owner who has not experienced any adverse impacts from the existing activities on site speak in favour of the granting of consent to the proposed development.

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28 Franklin Street, Adelaide  
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f. 08 8212 8099  
e. [info@bllawyers.com.au](mailto:info@bllawyers.com.au)  
[www.bllawyers.com.au](http://www.bllawyers.com.au)

## **Planning Impact**

Respectfully, none of the representations identifies any relevant planning impact relevant to the determination of the Panel as to whether to grant development plan consent to the without prejudice development application.

Having regard to the consistent themes and near identical formatting of the representations the obvious inference is that the representations are being lodged for the improper purposes identified below by persons with a personal animus towards the applicant for consent.

Notwithstanding this, despite the seemingly coordinated campaign of representations against the proposed development it is, with respect telling that the representations do not identify any basis on which the proposed development has a detrimental affect on its locality nor any town planning reasons for its refusal. The obvious inference to be drawn given the organisation of objection to the application is that even in a coordinated campaign of opposition to the application no defensible nor plausible basis for refusing the applications could be identified.

## **Precedent Effect**

The balance of the representations appear to cast an irrational and mistaken concern that the approval of this application would “open a can of worms” and lead to an allegedly undesirable precedent binding the Council in the assessment of future applications.

This is, with respect, misconceived at fact and at law. The Council is obliged to assess each individual application it receives against the relevant factors identified in section 33 of the *Development Act 1993 (the Act)*. As a matter of law the Council is prohibited from considering a “precedent” of past approvals in determining future applications.

This has been identified in the Environment, Resources and Development Court which has repeatedly observed:<sup>1</sup>

*The Court is often urged not “to create a precedent” but as must be underlined yet once again the uniqueness of development sites and their localities in the physical world is such that the validity of the “precedent” argument is itself so rare as to be almost unique.*

## **Commercial Competition**

Representations with respect to the perceived impact that the approval of the proposed development would have on commercial competition should be disregarded by the Council. As set out above, the relevant considerations of the Panel are limited to the matters set out in section 33 of the Act and an exploration of other matters in the determination of the application is prohibited.

In any event, the statutory scheme is made perfectly clear in Part 11, Division 3 of the Act which places extremely onerous impacts on any person opposing a development who has a commercial competitive interest in the outcome of an application.

The reason for this is that the Act seeks as a fundamental objective to promote the orderly and economic development of the State and is not a tool to permit commercial competitors to intervene in the planning process.

---

<sup>1</sup> *Stuart v City of Charles Sturt* [1998] SAERDC 470.

The aspects of the representations that touch on this matter must be disregarded by the Panel.

**Conclusion**

The proposed development is deserving of approval. Our client requests an opportunity to appear at the CAP meeting when this application is considered to answer any questions from the members and respond the representations. Please advise of the date and time of the relevant meeting.

Please contact me if you have any questions about this matter.

Yours faithfully



**James Roder**  
**BOTTEN LEVINSON**  
Mob: 0418 837 942  
Email: [jl@bllawyers.com.au](mailto:jl@bllawyers.com.au)



### 6.1.1.2 Development Application 340/449/20 – Heather & Mark Leach

Assessing Officer:	Wendy Stevens
Applicant:	Heather & Mark Leach
Property Owners:	Heather & Mark Leach
Property Location:	28 Tank Road, Moonta
Proposed Development:	Change in Use from 'Gallery and Shop (maximum patronage of 20 persons) ancillary to existing detached dwelling' to 'Shop, Cafe and Gallery (maximum patronage of 80 persons) ancillary to existing detached dwelling'
Zone:	Primary Production
Certificate of Title:	Volume: 5597 Folio: 709
Category:	Category 3
Nature of Development:	Non-complying
Public Notification:	Yes
Auth Dev. Plan:	Copper Coast Council consolidated – 23 May 2019
Attachments:	<ol style="list-style-type: none"><li>1. Site, Elevation and Floor Plans **</li><li>2. DA 340/193/15 Decision Notification and Plans**</li><li>3. Statement of Effect</li><li>4. Representation</li></ol>

#### 1. REASON FOR REPORT

In accordance with the Development Plan of the Copper Coast Council consolidated 23 May 2019 (the “Development Plan”), and Section 38(2)(a) of the Development Act 1993 (the “Act”), the proposed development is a Non-complying Category 3 form of development which required public notification. During public notification one (1) submission was received in support of the application. Due to the Non-complying nature of the development a decision by the panel is required.

#### 2. BACKGROUND

On the 15<sup>th</sup> October 2020 an application was received by Council for a Change in Use from 'Gallery and Shop (maximum patronage of 20 persons) ancillary to existing detached dwelling' to 'Shop, Cafe and Gallery (maximum patronage of 80 persons) ancillary to existing detached dwelling'.

In May 2015 an application was lodged for a Gallery with associated shop, this application was a Category 3 form of development. Public notification was undertaken and no representations were received against the proposal and subsequently Development Approval granted subject to conditions. It was conditioned that the total capacity (excluding staff) shall not exceed 20 patrons at any one time (*refer Attachment 2*).

The land that is the subject of this application is located within the Primary Production Zone in which the proposed development (Shop and Café) is listed as a Non-complying form of development.

### 3. THE SUBJECT LAND

The subject land is located at 28 Tank Road, Moonta and is legally recognised as Section 172 Hundred of Wallaroo in Certificate of Title Volume 5597 Folio 709. The property is not encumbered by any easements or agreements affecting the proposal (refer to *Figure 1*).

The site is currently used as a residential dwelling with associated outbuildings. The previously approved Café and Gallery has not yet commenced operation.



**Figure 1 – Subject site**

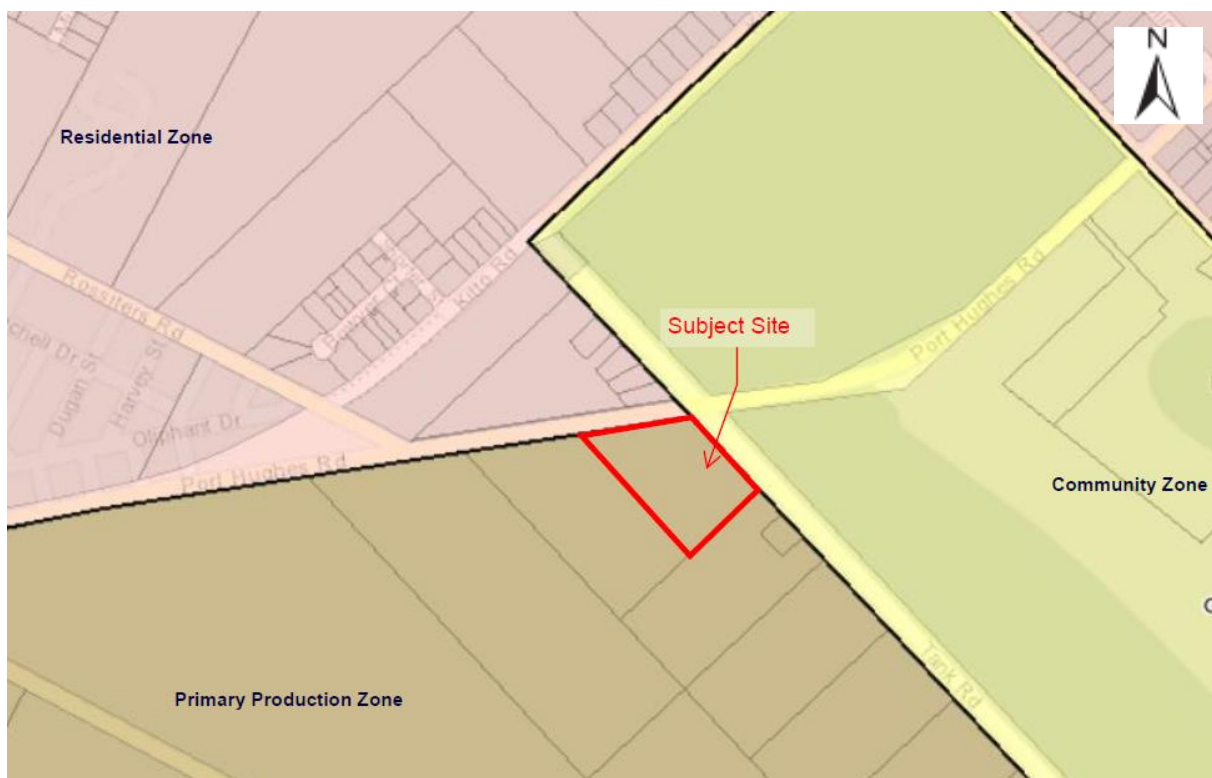
#### 4. LOCALITY

The site is approximately 1.2 hectares in area and located wholly within the Primary Production Zone. Immediately abutting the subject site is the Community Zone on the eastern boundary and the Residential Zone on the northern boundary. The immediate locality consists of a golf course, primary production land and single storey detached dwellings.

The main characteristics of the locality are described in *Table 1*.

<b>NORTH</b>	North of the subject site separated by Pt Hughes Road is a Single Storey detached dwelling and vacant residential land and to the north east the Moonta Golf Course.
<b>EAST</b>	To the east, separated by Tank Road, is the Moonta Golf Course that extends the whole way along Tank Road to the Retallick Road intersection.
<b>SOUTH</b>	Immediately to the south is farmland being used for primary production purposes.
<b>WEST</b>	West of the site is also farmland used for primary production purposes.

**Table 1:** *Main characteristics of the locality in which the subject site is located*



**Figure 2 – Zoning of the subject site and the land around the site.**





**Figure 3 – View of existing carpark and café/shop entrance**



**Figure 3 – View of carpark entrance**



**Figure 4 – View of south eastern side of carpark**





***Figure 5 – View of area for the proposed additional car parks and area for overflow car parking***



***Figure 6 – View of proposed development from Tank Road***





**Figure 7 – View of the café/shop and portion of the outdoor area**



**Figure 8 – Internal images of the Café/Shop**



**Figure 9 – Image of outdoor area**

## 5. DETAILS OF PROPOSAL

The development proposal seeks for the Change in Use from 'Gallery and Shop (maximum patronage of 20 persons) ancillary to existing detached dwelling' to 'Shop, Cafe and Gallery (maximum patronage of 80 persons) ancillary to existing detached dwelling'.

The Gallery/shop has a floor area of 84 square metres with an additional outdoor seating area of approximately 250 square metres.

The proposed opening hours are as follows:

Wednesday to Sunday	10.00am to 6.00pm
Public Holidays	10.00am to 6.00pm
Private bookings	10.00am to 11.30pm

Carparking is provided on the eastern side of the development.

## 6. AGENCY REFERRAL

As a result of the COVID-19 Amendment Act the need for concurrence to be obtained before a relevant authority may grant Development Plan consent to a non-complying application under the Act has been removed.

## 7. PUBLIC NOTIFICATION

Since the application represents a Non-complying Category 3, form of development, letters were sent to adjoining and adjacent property owners informing them of the proposal and inviting comment in addition to the proposal being advertised in the local newspaper. One response was received in support of the application during the public notification period (*see Attachment 4*).

The owners to whom letters were sent are depicted with stars on the map depicted in *Figure 10*.



**Figure 10 – Map of public notified properties**

## 8. ASSESSMENT OF THE PROPOSAL

The Copper Coast Council Development Plan Objectives and Principles of Development Control (PDC's) that were considered in the assessment of this application are listed in *Table 2*.

<b>Development Plan</b>	<i>Copper Coast Council Consolidated - 23 May 2019</i>	
<b>Zone</b>	<i>Primary Production</i>	
<b>Policy Area</b>	<i>Nil</i>	
<b>Section</b>	<b>Objectives</b>	<b>Principles of Development Control</b>
<b>General Section:</b> Crime Prevention	1	1, 5, 7
Hazards	1, 6	1
Interface between Land Uses	1, 3	1, 2, 6, 9, 10, 15, 16
Landscaping, Fences and Walls	1, 2	
Orderly and sustainable	1, 2, 3, 4, 6	1, 2, 3, 4, 7



Development		
Siting and Visibility	1	2, 3
Tourism Development	1, 3, 5, 6, 7, 8	3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 17
Transportation and Access	2	1, 9, 15, 23, 29, 30, 32, 33, 34, 36, 37, 38, 39, 40
Waste	1	1, 2, 5
<b>Zone:</b> Primary Production Zone	1, 4, 6	1, 2, 7, 9, 11, 12

**Table 2: Development Plan Objectives and Principles of Development Control (PDC's) that were considered in the assessment of this application**

It is considered that the proposal is generally consistent with the intent of the provisions of the Development Plan. A discussion of those matters relating to the objectives and the principles of development control (PDC) of the relevant sections of the Development Plan requiring further discussion and clarification follows.

### 8.1 Interface between Land uses

**Objective 1** states that:

*“Development located and designed to prevent adverse impact and conflict between land uses.”*

**Objective 3** states that:

*“Protect desired land uses from the encroachment of incompatible development.”*

#### Officer Comments

On review of the immediate locality it is considered to be a low amenity area, abutted by primary production land, a golf course, and a residential dwelling and vacant allotments separated by Port Hughes Road. Therefore, it is considered that the proposed development will not result in any adverse impact on the immediate locality, as explained in the following assessment.

**PDC 1** states that:

*“Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:*

*(b) noise*

*(e) light spill*

- (g) *hours of operation*
- (h) *traffic impacts*”

#### Officer Comments

The proposal seeks to increase the capacity of the existing approved use from 20 to 80 patrons and an additional use of a licensed cafe.

Within the Statement of Effect (*refer Attachment 3*) the Applicant has advised that they are seeking to provide some entertainment for events consisting of primarily recorded music or maybe a solo artist, small group.

It is considered that the Noise will not detrimentally affect the amenity due to the large separation between the proposed development and the two closest dwellings.

The dwelling located on Port Hughes Road immediately opposite the site is buffered from noise and light spill by the large amount of landscaping on the north western side of the site and by the existing dwelling. The other dwelling is located approximately 120 metres from the proposed development providing significant separation.

Traffic movements will obviously increase with the addition of 60 patrons, however, it is considered that the increase will have minimal impact on the adjoining landowners. The owners have provided additional and sufficient off-street carparking to accommodate the additional patrons.

It should be noted that since the original application was approved in 2015 for the ‘Shop and Gallery’ the intersection of Tank Road and Port Hughes Road has been substantially upgraded. The bitumen seal has been widened and flared to Port Hughes Road and the seal extends from Port Hughes Road along Tank Road to the access of the proposed development. As a result of this upgrade any concerns of excessive dust as a result of the increased traffic movement has been substantially mitigated as it is expected that most patrons will travel to the site via Port Hughes Road.

## **8.2 Orderly and Sustainable Development**

**PDC 2** states that:

*“Land outside of townships and settlements should primarily be used for primary production, conservation purposes.”*

#### Officer Comments

The site is located on the edge of the Moonta township abutting the Community and Residential Zones. Currently the existing use of the site is a residential dwelling and associated gallery and shop.

The proposed development is seeking for an increase in patrons but is not seeking for an increase in floor or site area of the already approved café and shop.

While the proposed development does not achieve the requirements of this PDC it is considered that it will not unreasonably impact on desired outcome for this locality.

### 8.3 Transportation and Access

**Objective 2** states that:

*“Development that:*

*(c) provides off street parking”*

#### Officer Comments

Refer to Officer’s Comments below in PDC 32.

**PDC 32** states that:

*“Development should provide off-street vehicle parking and specifically marked disabled car parking places to meet anticipated demand in accordance with Table CoCo/3 - Off Street Vehicle Parking unless all the following conditions are met:*

- (a) the site is located in a Town Centre Zone, the Coastal Marina Zone or in the Coastal Open Space Zone at Wallaroo*
- (b) an agreement is reached between the Council and the applicant for a reduced number of parking spaces*
- (c) a financial contribution is paid into the Council Car Parking Fund specified by the Council, in accordance with the gazetted rate per car park.”*

#### Officer Comments

Table CoCo/3 – Off Street Vehicle Parking Requirements within the Development Plan states the following:

<b>Commercial Shop</b>	7 per 100 square metres (Where not located with centre)
<b>Restaurant in the form of fast food/family restaurant</b> With dine-in facilities only but no drive through	1 per 5 square metres (internal and external seating) or 1 per 2 seats (internal seating) (whichever provides the greater number of spaces)

The shop portion of the development will require 6 car parks (calculated using 7 per 100 square metres) and the Café portion will require 12 carparks (calculated using 1 per 2 seats), totalling 18 on site car parks.

It is considered that it's appropriate to use the 1 per 2 seats (internal seating) calculation in this instance for the proposed developments external seating given there is ample space on site to accommodate overflow parking. Noting that the maximum patronage will generally only be reached when events are being held.

A total of 18 car parks are being provided on site and therefore meets the minimum requirements within Table CoCo/2.

During the set daily opening hours, the patronage will be significantly less with walk in customers coming and going, therefore, it is considered the proposed 18 car parks would be sufficient for the daily operating hours.

To accommodate for the additional cars at the time of events a condition will be placed on the approval that states 'a compacted rubble area must be provided for overflow parking equal in size to the existing car park on site.

To ensure there is no impact on the amenity of the streetscape a condition will be placed on the approval stating 'at no time shall vehicle parking occur within the Council Road Reserve'.

#### **8.4 Primary Production Zone**

**Objective 4** states that:

*"Protection of primary production from encroachment by incompatible land uses and protection of scenic qualities of rural landscapes."*

##### Officer Comments

Refer to comments in *section 8.1* of this report.

**PDC 2** states that:

*"Development listed as non-complying is generally inappropriate."*

##### Officer Comments

As per all of the above comments, it is considered that while the proposed development does not achieve all the requirements of the Development Plan it will not unreasonably impact on the desired outcome for this locality.

**PDC 7** states that:

*"A shop should be:*

- (a) *ancillary to primary production or processing uses, or tourist accommodation or other tourist development*
- (b) *located on the same site as the primary use.”*

Officer Comments

The subject site is not being used for primary production and has not been used for this purpose for a number of years. The proposed development is an expansion of an already approved shop & gallery with existing residential dwelling on the site.

**PDC 9** states that:

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

Officer Comments

The desired character of the zone states that the zone should principally be used for agricultural production and that land holdings are not significantly reduced.

The subject site is a small land holding of approximately 1.2 hectares and is not of a size appropriate for primary production purposes and subsequently does not reducing the land holding.

However, the desired character for the zone does warrant little intensification of the present extent of the settlement, therefore it is considered the proposed development achieves this requirement.

## 9. SUMMARY

When assessed against the relevant provisions of the Copper Coast Council Development Plan and having regard to the context of the locality and the nature and intensity of the proposed development, it is considered that the proposal is consistent with the intent of the relevant provisions of the Development Plan.

## 10. RECOMMENDATION

That following consideration and having regard to all relevant matters concerning the proposed Change in Use from 'Gallery and Shop (maximum patronage of 20 persons) ancillary to existing detached dwelling' to 'Shop, Cafe and Gallery (maximum patronage of 80 persons) ancillary to existing detached dwelling' Development Plan Consent be **GRANTED** subject to the following conditions:

**Conditions:**

10.1 The applicant/developer shall proceed strictly in accordance with the approved plans and other information submitted in support of the development and conditions imposed by this consent, except where otherwise specified by any condition of this approval or where minor changes are required to comply with the Building Code of Australia or any other relevant act. Where there is a conflict between the Plan of Development and a written condition, the written condition shall apply.

**Advertising**

10.2 No signs that are not shown on the approved Plan of Development are to be erected or displayed or around the building without the prior consent from Council.

**Capacity**

10.3 Total capacity (excluding staff) shall not exceed 80 patrons at any one time.

**Carparking**

10.4 A compacted rubble area must be provided on site for overflow car parking equal in size to the existing car park on the site.

10.5 Prior to first occupation of the premises (additions) all carparking spaces, driveways and associated manoeuvring areas must be constructed in accordance with the approved Plan of Development as follows:

- a) It must be constructed and drained in accordance with Australian Standards for off-street car parking (AS/NZS 2890).
- b) All car parking spaces and manoeuvring areas must be sealed as follows:
  - (i) Compacted blue metal; or
  - (ii) Gravel sealed; or
  - (iii) hot-sealed with a 25mm minimum thickness asphalt concrete; or
  - (iv) Brick pavers; or
  - (v) Concreted.
- c) All carparking spaces shall be line-marked with continuous white lines or wooden or concrete sleepers along the whole of each side of each carparking space prior to first occupation of the site. The line marking shall be maintained in a clear and visible state at all times.
- d) One (1) disabled car parking space must be provided to Australian Standards.
- e) Wheel stopping devices constructed of concrete, metal or wood shall be placed at the end of each parking bay so as to prevent overhang and damage to adjoining landscaped areas, grassed areas and footpaths by motor vehicles.

All carparking spaces, driveways and associated manoeuvring areas must be maintained in a good condition at all times and shall not be used for the storage or display of any materials or goods.

10.6 All vehicles entering and leaving the site must do so in a forward gear.

10.7 At no time shall vehicle parking occur within the Council Reserve.

#### **Driveway**

10.8 The driveway access must be sealed from the property boundary to the edge of the road carriageway to Council's Specifications within 3 months of the date of issue of Full Development Approval (Please contact Council for these specifications).

#### **Effluent**

10.9 The developer/owner must obtain approval from council for the installation of a Waste Control system and Grease Arrestor prior to first occupation of the premises.

#### **Lighting**

10.10 All security lights and floodlights associated with the proposed development shall be shielded and adjusted so it does not create nuisance to adjacent or nearby properties and road users as a result of the light it emits either directly or by reflection. Lighting to comply with the Australian Standard for the control of the obtrusive effects of outdoor lighting (AS 4282).

#### **Damage to Council Infrastructure**

10.11 The developer/owner must ensure that the proposed development does not impact on any Council infrastructure in any way. In the event that Council infrastructure is affected by the proposed development the developer/owner must rectify all damage at no cost to Council.

#### **Hours of Operation**

10.12 The approved use shall only be allowed to operate within the following hours:

<b>Day</b>	<b>Operating Hours</b>
Wednesday to Sunday	10.00am to 6.00pm
Public Holidays	10.00am to 6.00pm
Private bookings	10.00 am to 11.30pm

#### **Refuse collection**

10.13 Appropriate facilities must be provided for the storage removal of refuse/waste material to the satisfaction of Council.

10.14 No off-site storage of refuse bins will be allowed at any time. All waste shall be collected in commercial bins which shall be stored on site and screened from public view at all times. Waste is to be collected directly from the site by an appropriately licensed waste collection company.

- 10.15 Prior to the occupation of the approved development the developer/owner shall provide evidence that an agreement has been signed with an appropriately qualified local service provider that the service provider agrees to collect refuse from the commercial bins.



# Statement of Effect

Pursuant to Section 39(2)(d) of the Development Act 1993

For:

Heather and Mark Leach  
P O Box 40  
MOONTA SA 5558

Council:

District Council of the Copper Coast  
P O Box 396  
KADINA SA 5554

Development Application:

DA 340/0XXX/2020

Proposed Development:

To vary Development Application 340/0193/2015

To change the use of a Gallery and associated shop to a Café, shop and gallery on the site of an existing detached dwelling, including an increase in patrons from 20 to 80 at any one time.

12<sup>th</sup> October, 2020



## INTRODUCTION

This Statement of Effect has been produced in accordance with section 39(2)(d) of the Development Act 1993. The relevant authority has deemed the proposed development to be a non-complying form of development, in accordance with the non complying forms of development within the Primary production Zone, as contained within the Copper Coast Council Development Plan – consolidated 23 May 2019.

Information contained within this Statement of Effect has been provided in accordance with Regulation 17(5) of the Development Regulations 2008.

The proposed development involves a change of use of an existing gallery and associated shop to a Café, shop and gallery on the site of an existing detached dwelling, including an increase in patrons from 20 to 80 at any one time.

## THE SUBJECT SITE

The proposed development is located at Lot 28 Tank Road, Moonta, South Australia.

As illustrated on the map below, the subject property is located on the corner of Port Hughes Road and Tank Road, with street frontage to both roads.



The subject site is approximately 13901 square metres in area and irregular in shape. Vehicular access to the subject site is via Tank Road. An existing carparking area is also accessed via Tank Road.

A detached dwelling and a gallery and associated shop is located within the north eastern corner of the subject site.

The balance of the land remains vacant.

The subject site is located on the edge of the township of Moonta and is directly adjoining the Community Zone and the Residential Zone. Nearby developments include a golf course and park area, residential dwellings to the north and north west and land used for primary production to the south and east.

## **BACKGROUND**

The District Council of Copper Coast by Decision Notification Form dated 5 January 2016 granted Development Approval for a Gallery and Associated Shop to be established on the subject site subject to 32 Conditions of Development Approval.

Condition number 16 specifically identified:

*"Total capacity (excluding staff) shall not exceed 20 patrons at any one time."*

The gallery/garage has a floor area of 84 square metres, with the yard area to the east of the gallery/garage having an area of approximately 250 square metres. This yard area is used for outdoor seating.

The existing residence is the private residence of the owner/operators of the gallery and shop.

## **THE PROPOSED DEVELOPMENT**

The proposed development is seeking to change of use of an existing gallery and associated shop to a Café, shop and gallery on the site of an existing detached dwelling, including an increase in patrons from 20 to 80 at any one time.

Wrecks N Relics is a unique and distinctive eclectic collection of rare and exclusive items from a by-gone era. Some years ago the vision was to create a one of a kind tourist attraction utilising a personal collection of artefacts and memorabilia with a 'transport' theme.

It is envisaged the development will provide adequate space to:

- Hold art exhibitions;
- Cater for events associated with car clubs, antique collector clubs, artists and exhibitors and motorcycle enthusiasts
- Local patrons and tourists

The development is a great destination for people on foot walking from Moonta to Port Hughes and will provide a cycling traffic refreshment stop.

There is ample space on site to provide car parking, including space within the vicinity of the proposed development.

The proposed hours of operation at to be:

Wednesday to Sunday	10.00am to 6.00pm
Public Holidays	10.00am to 6.00pm

The maximum number of employees on site during normal operating hours will be four people.

It is proposed that there will be a number of events held throughout the year catering for up to 80 people. These events are for private bookings only and the venue will be open when an event is being held until 11.30pm at night

The maximum number of employees on site during a private event will be seven people. There may be music associated with a private event, it is anticipated this music will be either recorded music or a solo artist, duo or small group. It is not anticipated to have amplified bands.

## **ZONE**

The subject site is located within the Primary Production Zone as identified within the Copper Coast Council Development Plan consolidated 23 May, 2019.

## **DEVELOPMENT PLAN PROVISIONS**

A Café is defined within Schedule 1 of the Development Regulations as a shop. Within the Primary Production Zone

A "Shop or group of shops, except where it achieves both of the following:

- (a) *it is ancillary to and in association with primary production or tourism development*
- (b) *the gross leasable area is less than 40 square metres"*

Is identified as a form of land use which is a non-complying form of development.

Whilst the proposed development is ancillary to and in association with a tourism development, the gross leasable floor area of the shop will be greater than 40 square metres. On this basis the development as proposed is a non-complying form of development.

## **DEVELOPMENT ACT – NON COMPLYING PROVISIONS**

### **Regulation 17**

Regulation 17 (1) identifies that if a person applies for a non-complying development, the Applicant must provide a brief statement in support of the application.

As a first step of the assessment of a Development Application for a non-complying development, the relevant authority may:

- (a) refuse the application; or
- (b) resolve to proceed with an assessment of the application.

If the relevant authority resolves to proceed with an assessment of the application, the relevant authority must obtain a statement of effect from the applicant.

The statement of effect must include:

- (a) a description of the nature of the development and the nature of its locality
- (b) a statement as to the provisions of the Development Plan which are relevant to the assessment of the proposed development
- (c) an assessment of the extent to which the proposed development complies with the provisions of the Development Plan
- (d) an assessment of the expected social, economic and environmental effects of the development on its locality

(e) any other information the relevant authority considers necessary.

## **ASSESSMENT AGAINST THE PROVISIONS OF THE DEVELOPMENT PLAN**

The Development Plan relevant to the consideration of this proposal is the Development Plan Copper Coast Council, consolidated on 23 May 2019.

The provisions of the Development Plan relevant to the consideration of this proposal include the following Objectives and Principles of Development Control. Comments and a response to these provisions is also included.

Copper Coast Council

General Section

Centres and Retail Development

Objective 1: Shopping, administrative, cultural, community, entertainment, educational, religious and recreational facilities located in integrated and mixed use zones.

### Comment

*The gallery and café currently exists. Being able to hold private functions for more than 20 people is considered to be ancillary to the existing land use and will not detract from the existing township centre.*

*The proposed development may contribute towards attracting people to the locality which may have a flow over effect and benefit onto other shops, accommodation businesses in the region.*

Crime Prevention

Objective 1: A safe, secure, crime resistant environment where land uses are integrated and designed to facilitate community surveillance.

Principle 5: Development, including car park facilities should incorporate signage and lighting that indicate the entrances and pathways to, from and within sites.

Principle 7: Site planning, buildings fences, landscaping and other features should clearly differentiate public, communal and private areas.

### Comment

*The proposed development is considered to activate and increase the use of the subject site which will help to create natural community surveillance through the movement of people within the locality.*

Interface between Land Uses

Objective 1: Development located and designed to prevent adverse impact and conflict between land uses.

Objective 3: Protect desired land uses from the encroachment of incompatible development.

**Principle 1:** Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:

- (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants
- (b) noise
- (c) vibration
- (d) electrical interference
- (e) light spill
- (f) glare
- (g) hours of operation
- (h) traffic impacts

**Principle 2:** Development should be sited and designed to maximise negative impacts on existing and potential future land uses desired in the locality.

**Principle 6:** Non residential development on land abutting a residential zone should be designed to minimise noise impacts to achieve adequate levels of compatibility between existing and proposed uses.

**Principle 9:** Outdoor areas (such as beer gardens or dining areas) associated with licenced premises should be designed or sited to minimise adverse impacts on adjacent existing or future noise sensitive development.

**Principle 10:** Development proposing music should include noise attenuation measures that achieve the following desired noise levels:

Noise Level Assessment Location	Desired Noise Level
Adjacent existing noise sensitive development property boundary	<p>Less than 8dB above the level of background noise (L90, 15min) in any octave band of the sound spectrum</p> <p>And</p> <p>Less than 5dB(A) above the level of background noise (LA90, 15min) for the overall (sum of all octave bands) A-weighted level</p>
Adjacent land property boundary	<p>Less than 65dB(Lin) at 63Hz and 70dB(Lin) in all other octave bands of the sound spectrum</p> <p>And</p> <p>Less than 8dB above the level of background noise (L90, 15min) in any octave band of the sound spectrum and 5dB(A) overall (sum of all octave bands) A-weighted level</p>

**Principle 15:** Existing primary production uses and mineral extraction should not be prejudiced by the inappropriate encroachment of sensitive uses such as urban development.

Principle 16: Development that is adjacent to land used for primary production (within either the zone or adjacent zones) should include appropriate setbacks and vegetative plantings designed to minimise the potential impact of chemical spray drift and other impacts associated with primary production.

#### Comment

*When considering the existing nature and siting of the gallery, café and dwelling it is not anticipated the development will create any further impact and conflict between land uses. This is further reinforced by the nature of the existing land uses and built form within the subject locality.*

*The service of alcohol is required to be undertaken in accordance with requirements pursuant to the Liquor Licence Act including the provision for the responsible service of alcohol. The service of alcohol is not a primary function of the gallery and café and would be available in limited circumstances, namely associated with the events and in accordance with SA Liquor Licensing will only be sold with the consumption of food..*

*There may be some entertainment provided at the time of an event, primarily being recorded music, or perhaps a solo artist, small group and as such would not be readily audible for significant distances off site where it would detract upon the amenity of the adjoining properties.*

*The development is designed and sited in such a manner that it will not negatively impact of the existing and potential future land use of both the subject site and the locality. The development is considered to be small in nature and scale and should not detrimentally affect the amenity of the locality or cause unreasonable interference to adjoining property owners.*

#### Landscaping, Fences and Walls

Objective 1: The amenity of land and development enhanced with appropriate planting and other landscaping works, using locally indigenous plant species where possible.

Objective 2: Functional fences and walls that enhance the attractiveness of development.

#### Comment

*There is no proposal to change or alter the existing fences on the subject site and over time it is envisaged the landscaping will be appropriately managed so as to improve the amenity of the gallery and cafe.*

#### Orderly and Sustainable Development

Objective 1: Orderly and economical development that creates a safe, convenient and pleasant environment in which to live.

Objective 2: Development occurring in an orderly sequence and in a compact form to enable the efficient provision of public services and facilities.

Objective 3: Development that does not jeopardise the continuance of adjoining authorised land uses.

- Objective 4: Development that does not prejudice the achievement of the provisions of the Development Plan.
- Objective 6: Urban development contained within existing townships and settlements and located only in zones designated for such development.
- Principle 1: Development should not prejudice the development of a zone for its intended purpose.
- Principle 2: Land outside of townships and settlements should primarily be used for primary production, conservation purposes.
- Principle 3: The economic base of the region should be expanded in a sustainable manner.
- Principle 4: Urban development should form a compact extension to an existing built up area.

Comment

*The gallery and associated café already exists on the subject land and is able to accommodate up to a maximum of 20 people, who are not the employees.*

*The proposed development is not seeking to expand on the existing land uses on the subject site in terms of the site area to be used but rather seek an ability to hold a private function when a booking is sought. These occasions is where the business operator is primarily seeking the ability to be able to accommodate 80 people on the subject site.*

*On this basis the proposed development is considered to be of a minor nature only and will not unreasonably impact or prejudice the achievement of the provisions of the Development Plan.*

*The proposed development is considered to be ancillary to the existing use of the subject land and will facilitate the better enjoyment of the existing facility.*

*It is also noted that the development is not sited on land currently being used for primary production purposes, but is sited on land that was associated with the residential use of the existing dwelling on the subject site. In particular the siting of the proposed development was designed and sited so as to minimise any impact of the development of the zone for it's intended purpose.*

*It is also highlighted that the proposed development also offers opportunities to expand upon the economic base of the region through the operation of a successful business that will attract people to the area.*

**Tourism Development**

- Objective 1: Environmentally sustainable and innovative tourism development.
- Objective 3: Tourism development that sustains or enhances the local character, visual amenity and appeal of the area.
- Objective 5: Tourism development in rural areas that does not adversely affect the use of agricultural land for primary production.



- Objective 6:** Tourism development that contributes to local communities by adding vitality to neighbouring townships, regions and settlements.
- Objective 7:** Increased opportunities for visitors to stay overnight.
- Objective 8:** Ensure new development, together with associated bushfire management minimise the threat and impact of bushfires on life and property while protecting the environment.
- Principle 3:** Tourism development should ensure that its scale, form and location will not overwhelm, over commercialise or detract from the intrinsic natural values of the land on which it is sited or the character of its locality.
- Principle 4:** Tourism development should, where appropriate, add to the range of services and accommodation types available in an area.
- Principle 5:** Any upgrading of infrastructure to serve tourism development should be consistent with the landscape and the intrinsic natural values of the land and the basis of its appeal.
- Principle 7:** Tourist facilities developed on the site of a dwelling should not detrimentally affect residential amenity.
- Principle 9:** Tourist developments should demonstrate excellence in design to minimise potential impacts or intrusion on primary production activities and on areas of high conservation, landscape and cultural value.
- Principle 10:** Tourism developments in rural areas should be sited and designed to minimise impacts and have a functional or locational link with either of the following:  
(a) the surrounding agricultural production or processing  
(b) the natural, cultural or historical setting of the area.
- Principle 11:** Tourism developments in rural areas should primarily be developed in association with one or more of the following:  
(a) agricultural, horticultural, viticultural or winery development  
(b) heritage places and areas  
(c) public open space and reserves  
(d) walking and cycling trails  
(e) interpretive infrastructure and signs.
- Principle 12:** Where appropriate, tourism developments in areas outside townships should:  
(a) adapt and upgrade existing buildings of heritage value  
(b) seek to improve conditions in disturbed or degraded areas on the site.
- Principle 13:** Advertisements associated with tourism developments should:  
(a) not exceed 0.5 square metres in area for each display  
(b) be limited to no more than two per site  
(c) be located on the same site as the tourist development  
(d) not be internally illuminated.
- Principle 14:** Tourism development in rural areas should occur only where it:

- (a) incorporates a separation distance or buffers to avoid conflict with existing rural industries or agriculture or otherwise is designed to overcome the potential impacts associated with the adjoining land use (such as noise, dust, spray drift, odour and traffic)
- (b) will not give rise to demands for infrastructure and services, especially on public lands, that are inappropriate to the primary purpose of the zone and/or policy area.

Principle 17: The visual and ambient impact of vehicles should be minimised by placing roadways and parking areas in unobtrusive locations.

Comment

*The proposed development is a form of development that provides additional value to the tourism experience to both Moonta and the region. It provides a tourism experience which is unique to the subject land in the form of the collection kept within the gallery.*

*Being able to hold private functions within the subject land will build upon the tourism experience offered by the subject site. In particular it will provide choice and increase opportunities to the local community, which will result in adding vitality to the area. Being able to hold functions will promote the locality as a destination which will help to draw people to the region.*

*As the proposed development will be contained within the existing portion of the site already being used for the gallery and café it will not adversely affect the use of land currently used for agricultural and primary production purposes.*

*The proposed development is also owned and operated by the occupiers of the dwelling, and as such will not be adversely affected by the proposed development.*

*The nearest residential dwelling is located to the north of the subject site, on the other side of Port Hughes Road. As the proposed development is located to the east of the existing dwelling on the subject land, it is anticipated that this dwelling will act as a buffer to screen the development from the nearest adjacent residential property. The development and associated carparking is also located on Tank Road and is kept away from the nearest adjacent dwelling.*

*It is not anticipated that the development as proposed will detract from the amenity and character of the subject locality nor detrimentally impact upon the nearest neighbouring residential property.*

*It is not proposed to erect any further signage on the subject land as part of this proposed development.*

*When considering the siting of this development on the corner of the allotment it is not anticipated the development will be adversely impacted upon by land uses associated with land being used for primary production. The location of the development on the allotment acts as a buffer to the nearest land used for primary production.*

Transportation and Access

Objective 2: Development that:

- (a) provides safe and efficient movement for all transport modes
- (c) provides off street parking

- Principle 1: Land uses arranged to support the efficient provision of sustainable transport networks and encourage their use.
- Principle 9: Development should provide safe and convenient access for all anticipated modes of transport.
- Principle 23: Development should have direct access from an all weather public road.
- Principle 36: Vehicle parking area that are likely to be used during non daylight hours should provide floodlit entry and exit points and site lighting directed and shaded in a manner that will not cause a nuisance to adjacent properties or users of the car park.
- Principle 37: Vehicle parking areas should be sealed or paved in order to minimise dust and mud nuisance.
- Principle 39: Vehicle parking areas should be line marked to indicate parking bays, movement aisles and direction of traffic flow.

### Comment

*The gallery and associated café already exists and operates on the subject land and is able to accommodate up to a maximum of 20 people.*

*A carparking area has been established on the subject site to be used in association with the gallery and café with access and egress via Tank Road, which is an all weather public road.*

*The existing road network currently provides the safe and efficient vehicle movement to and from the subject site. It is not anticipated that any upgrade will be required to the public road network to accommodate for the proposed development.*

### Waste

- Objective 1: Development that, in order of priority, avoids the production of waste, minimises the production of waste, reuses waste, recycles waste for reuse, treats waste and disposes of waste in an environmentally sound manner.
- Principle 1: Development should be sited and designed to prevent or minimise the generation of waste (including wastewater) by applying the following waste management hierarchy in order of priority as shown below:
- (a) avoiding the production of waste
  - (b) minimising waste production
  - (c) reusing waste
  - (d) recycling waste
  - (e) recovering part of the waste for reuse
  - (f) treating waste to reduce the potentially degrading impacts
  - (g) disposing of waste in an environmentally sound manner.
- Principle 2: The storage, treatment and disposal of waste materials from any development should be achieved without risk to health or impairment of the environment.
- Principle 5: Development should include appropriately sized area to facilitate the storage of receptacles that will enable the efficient recycling of waste.

### Comment

*Waste generated from the subject site will be collected in bins and disposed of in accordance with Council requirements.*

*It is anticipated waste will be stored in a screened holding place and will be removed from the site on a regular basis.*

### Table Co/Co/3 – Off Street Vehicle Parking Requirements

Dwelling	2 or 3 per dwelling dependent upon the number of bedrooms
Shop	7 per 100 square metres (where not located within a centre)

### Comment

*When calculating the number of carparks required to be provided on site when considering the proposed development as a shop 'Café and restaurants' are also defined as shops within the Schedule 1 of the Development Act 1993. The Development Plan requires another 7 car parks which will easily be achieved. Being a gallery and a small café on the site of an existing dwelling, with the proposal to hold events, where a private booking has been made these parks will be available.*

*The dwelling, gallery and café already exists, and has approval to accommodate up to a maximum of 20 people on site.*

*When considering the subject land, and the surrounding locality, there is sufficient room to accommodate for any carparking needs expected to be generated by the proposed development. The existing carparking area is considered appropriate for the proposed development, with the ability to accommodate for overflow carparking if needed during an event. It is considered that to formalise additional carparks on the subject site to accommodate for events, the carpark will itself detract from the visual character and amenity of the subject locality. It is not anticipated there will be events held regularly every week.*

### Primary Production Zone

Objective 1: The long term continuation of primary production.

Objective 2: Economically productive, efficient and environmentally sustainable primary production.

Objective 4: Protection of primary production from encroachment by incompatible land uses and protection of scenic qualities of rural landscapes.

Objective 6: Development that contributes to the desired character of the zone.

## Desired Character

This zone comprises the bulk of the Council area and is used principally for agricultural production and the grazing of stock on relatively large holdings.

The climate, soil and landform characteristics of this zone favour the continuance of agricultural production and livestock grazing and it is desirable not only that these activities continue, but also that good land management techniques be encouraged to control proclaimed pest plants, vermin, and soil erosion.

Little intensification of the present extent of settlement is warranted. In many ways, a proliferation of intensive development and occupation of the zone would threaten its proper function and render the rural landscape susceptible to competing demands and undesirable change.

To maintain the agricultural importance and stability of the zone, it is vital that the size of land holdings is not significantly reduced, unless specifically required for the more intensive agricultural use of the land, and that future pressures for development in the zone will not result in the conversion of agricultural land to less productive uses.

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

- bulk handling and storage facility
- commercial forestry
- farming
- horticulture (other than the growing of olives)
- intensive animal keeping
- tourist accommodation (including through the diversification of existing farming activities and
- conversion of farm buildings)
- wind farm and ancillary development
- wind monitoring mast and ancillary development.

Principle 2: Development listed as non-complying is generally inappropriate.

Principle 7: A shop should be:

- (a) ancillary to primary production or processing uses, or tourist accommodation or other tourist development
- (b) located on the same site as the primary use.

Principle 9: Development should not be undertaken unless it is consistent with the desired character for the zone.

## Non-complying Development

Development (including building work, a change in the use of land, or division of an allotment) for the following is non-complying:

Shop or group of shops except where it achieves both of the following:

- (a) it is ancillary to and in association with primary production or tourism development
- (b) the gross leasable area is less than 40 square metres.

### Comment

*A gallery, café, shop and entertainment facility is not a form of land use envisaged to occur within the Primary production Zone.*

*The primary Production Zone is a zone for economically productive, efficient and environmentally sustainable primary production and the protection of primary production from encroachment by incompatible land uses and protection of scenic qualities of rural landscapes. The Desired Character Statement further identifies the zone comprises the bulk of the Council area and is used principally for agricultural production and the grazing of stock on relatively large holdings. The zone also recognises that Little intensification of the present extent of settlement is warranted. In many ways, a proliferation of intensive development and occupation of the zone would threaten its proper function and render the rural landscape susceptible to competing demands and undesirable change.*

*It is highlighted that the gallery and café already exists on the subject land and is located adjacent to the existing dwelling also located on the land. The gallery and café is owned and operated by the residents within the dwelling. This land is not actively used for primary production and is designed and sited in such a manner that it will not prevent the agricultural importance and stability of the land. It is noted that land within the Primary Production Zone within the subject locality is also not held in large scale land holdings. On this basis it is not anticipated the proposed development will erode the stability of the zone by preventing land within the locality being readily used and viable for agricultural and primary production purposes.*

*It is noted that shops can occur within the Primary production Zone if it is associated within other tourist development, which in this case would be the gallery. It is noted that within Schedule 1 of the Development Regulations a café is also defined as a shop. It is not intended that the floor area of the development will need to be increased as part of this development, but instead would be a more efficient use of the existing site.*

## CONCLUSION

A gallery and associated café with associated carparking and landscaping currently existing on the subject site, along with a detached dwelling. The gallery and associated café is owned and operated by the owner/occupiers of the existing dwelling.

The ability to be able to hold private planned functions on the subject site, with up to 80 people, on the subject site, outside of the gallery and cafés existing operating hours will facilitate the better enjoyment of the existing facilities on the subject land. When considering the size, scale, design and siting of the existing development and the subject land, the proposed development is considered to be of a minor nature and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.

When considering the character and form of the development within the subject locality, the development makes a positive contribution to the character and amenity of the area. The size, scale, built form and siting of the existing development facilitates the ability for the property to be used for private functions and will contribute positively to the economy of the region.

Most importantly the development as proposed will not prejudice the further development of the Primary Production Zone for agricultural or primary production purposes. It is noted that the development builds upon the use of the property for a tourism development, which is envisaged to occur within the Zone.

The proposed development is considered to be an appropriate form of development, is not seriously at variance to the provisions of the Development Plan and warrants the granting of Development Plan Consent.

DEVELOPMENT ACT, 1993  
COPPER COAST COUNCIL

Ref. No. FORM 3  
05 NOV 2020  
File No.

**STATEMENT OF REPRESENTATION**  
Pursuant to Section 38 of the Development Act, 1993

TO Chief Executive Officer  
Copper Coast Council  
PO Box 396  
KADINA SA 5554

DEVELOPMENT No. 340/449/20 – (Heather & Mark Leach)

NAME OF PERSON(S)  
MAKING REPRESENTATION

L. E. SUNDSTROM

POSTAL ADDRESS

62 DUNBAR TCE  
GLENELG EAST 5045.

EMAIL ADDRESS

\_\_\_\_\_

NATURE OF INTEREST  
AFFECTED BY DEVELOPMENT

(eg adjoining resident, owner of land in vicinity, or on behalf of an organisation or company)

ADJOINING LAND OWNER (LOT 173)

REASONS FOR REPRESENTATION

NO OBJECTIONS TO THE PROPOSAL.

MY REPRESENTATION  
WOULD BE OVERCOME BY

(state action sought)

\_\_\_\_\_

Please indicate in the appropriate box below whether or not you wish to be heard by Council in respect to this submission :-

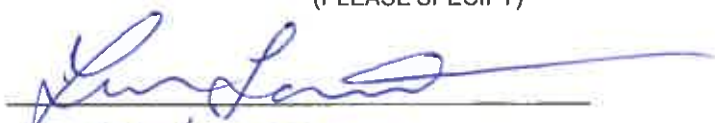
I DO NOT WISH TO BE HEARD

I DESIRE TO BE HEARD PERSONALLY

I WILL BE REPRESENTED BY .....

(PLEASE SPECIFY)

SIGNED:



DATE:

3/11/2020

*lifestyle location of choice*



**6.1.1.3 Development Application 340/224/20 – Kristy McMillan – Hodgkison Architects**

Assessing Officer:	Rebecca Moyne
Applicant:	Kristy McMillan – Hodgkison Architects
Property Owners:	The Salvation Army
Property Location:	4 Drain Road, Kadina
Proposed Development:	Change in use from Hall (Men’s Shed) to Community Centre with associated Office, Consulting Rooms and Construction of a Store (Shed)
Zone:	Residential Zone
Certificate of Title:	Volume: 5084 Folio:725
Category:	Category 3
Nature of Development:	Non-Complying
Public Notification:	Yes
Auth Dev. Plan:	Copper Coast Council consolidated – 23 May 2019
Attachments:	1. Application Plans and Documentation ** 2. Commissioner of Highways Referral Response

**1. REASON FOR REPORT**

In accordance with the Development Plan of the Copper Coast Council consolidated 23 May 2019 (the “Development Plan”), and Section 38(2)(c) of the *Development Act 1993* (Act), the proposed development is a non-complying Category 3 form of development which required public notification. Due to the non-complying nature of the development a decision by the Panel is required.

**2. BACKGROUND**

In summary, the key aspects pertaining to the assessment of this application are:

- Council staff have had preliminary discussions with the Salvation Army (land owners) regarding the lodgement of an application for a change of land use on the subject site. The Salvation Army sought an understanding of the required process and discussed the merits of their proposal. The Salvation Army was informed that the application may represent a non-complying form of development within the Residential Zone.
- A development application 340/224/20 was lodged on the 23 June 2020. The application was for the Change of Use from Hall (Men’s

Shed) to Community Centre with associated Office, Consulting Rooms and Construction of a Store (Shed).

- The change of use represents a non-complying form of development. The proposal includes a number of aspects (Office, Consulting Room and Store) which are listed as non-complying forms of development within the Residential Zone of the Copper Coast Council Development Plan Consolidated 23 May 2019.
- Non-complying development applications area a two-stage process where the relevant authority (Council), after a preliminary examination of the proposal, has the ability to elect whether or not proceed to undertake a comprehensive assessment of the non-complying application.
- Council's Chief Executive Officer (CEO) and Director Development Services resolved to proceed to a full and thorough assessment of the application on the 15<sup>th</sup> September 2020.
- Council requested additional information as part of the assessment process in order to determine the exact use and intensity of the Community Centre and associated Office and Consulting Rooms and the proposed Store (shed) and elevation plans for the proposed Store (shed).
- The additional information and amended plans were all received on the 19 October 2020. The application was subsequently placed on Category 3 public notification 3 November 2020. The subject application was also referred to the Commissioner of Highways on the 27 October 2020 for comment.

### **3. THE SUBJECT LAND**

The subject land is located at 4 Drain Road, Kadina and is legally recognised as allotment 100 of Filed Plan 34710 of Certificate of Title Volume 5084 and Folio 725. The property is not encumbered by any easements or agreements affecting the proposal.

The subject site is located on the corner of Drain Road and Port Road. The site has a frontage to Drain Road of 63.66 metres and a frontage to Port Road of 50.29 metres. The total area of the site is approximately 3,035 m<sup>2</sup>. The site is a very flat parcel of land with no discernible surface slope. The subject site

contains a Place of Worship, shed and Thrift Shop, Hall and associated carparking and landscaping.



**Figure 1 – Subject site**

#### 4. LOCALITY

The site is located wholly within the Residential Zone. The immediate locality consists of mainly single storey detached dwellings and associated residential structures (i.e. outbuildings, carports, verandahs etc.), Hockey Grounds, Country Fire Service (CFS) and portion of the Mixed Used Zone. The main characteristics of the locality are as follows:

<b>NORTH</b>	North of the subject site is a mix of residential allotments (size and shape). The dwellings are mainly single storey in nature and is a mix of contemporary and character homes.
<b>EAST</b>	To the east on the other side of Drain Road is the Community Zone where the Hockey Grounds and CFS is located.
<b>SOUTH</b>	Residential Zone also extends south of the subject site. To the south west there is also portion of the Mixed Use Zone which starts at the corner of Port Road and Downer Road and runs west down Port Road.
<b>WEST</b>	West of the site, continues the Residential Zone up to Olive Parade. The land to the west of Olive Parade is located within the Mixed Use Zone.

**Table 1 – Main Characteristics of Locality**

A locality plan and photographs from various points in the locality are provided below:



**Legend**

- Subject Site – 
- Residential Zone – 
- Mixed Use Zone – 
- Community Zone – 

**Figure 2 – Locality Plan**





**Figure 3 – Subject site from Port Road, Kadina**



**Figure 4 – Subject site from Drain Road, Kadina**





**Figure 5 – Existing Bins which the proposed Store (shed) will be located behind**



**Figure 6 – Dwellings to the south of the subject site**



**Figure 7 – Dwellings to the South of the subject site**



**Figure 8 – Hockey Grounds adjacent subject site on Drain Road, Kadina**

## 5. DETAILS OF PROPOSAL

The development proposal seeks for the Change in use from Hall (Men's Shed) to Community Centre with associated Office, Consulting Rooms and Construction of a Store (Shed). Copies of the plans and documentation relating to this application are contained within **Attachment 1**.

## 6. AGENCY REFERRALS

A referral to the Commissioner of Highways was required in accordance with Section 37 of the Act and Schedule 8 of the *Development Regulations 2008*. The Department of Infrastructure and Transport (DIT) supported the proposed application. Please refer to **Attachment 2** to see DIT's full response.

As a result of the COVID-19 Amendment Act, the need for concurrence to be obtained before a relevant authority may grant Development Plan consent to a non-complying application under the Act has been removed.

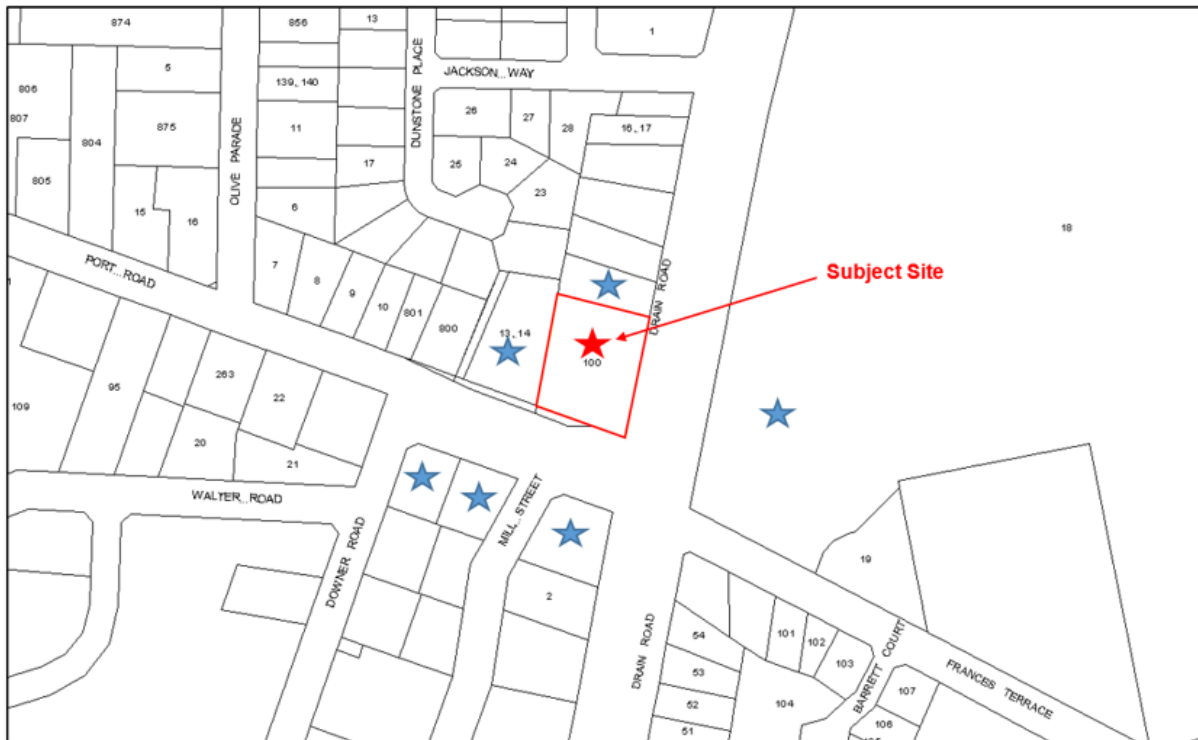
## 7. PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 38 (2)(c) of the Act, as a Category 3 application for public notification.

Six (6) properties were notified during the public notification process as well as a notice in the local paper (Country Times). The map below depicts the properties that were notified as part of the process.

No representations were received in support or in opposition of the application during the ten (10) day notification period.





**Legend**

- Subject Site –
- Notified Properties - ★

**Figure 9 – Map of publicly notified properties**

**8. ASSESSMENT OF THE PROPOSAL**

The following Copper Coast Council Development Plan Objectives and Principles of Development Control (PDC's) were considered in the assessment of this application:

<b>Development Plan</b>	<i>Copper Coast Council Consolidated - 03 May 2019</i>	
<b>Zone</b>	<i>Residential Zone</i>	
<b>Policy Area</b>	<i>Nil</i>	
<b>Section</b>	<b>Objectives</b>	<b>Principles of Development Control</b>
<b>General Section:</b> Community Facilities	1	1,2,3

Design and Appearance	1,2	1,2,3,7,14,15,16,17
Interface Between Land Uses	1,2,3	1,2,4,6
Orderly and Sustainable Development	1, 2, 3, 4	1
Transportation and Access	2,	9,10,11,12,24,26,27,29,30,31,32,33,34,37,38,39,40
<b>Zone:</b> Residential Zone	3	1,2,4,6

**Table 2 – Objectives and Principles of Development Control considered in the assessment**

It is considered that the proposal is generally consistent with the intent of the provisions of the Development Plan. A discussion of those matters relating to the objectives and the principles of development control (PDC) of the relevant sections of the Development Plan requiring further discussion and clarification follows.

### **8.1 Community Facilities**

**Objective 1** states that:

*“Location of community facilities including social, health, welfare, education and recreation facilities where they are conveniently accessible to the population they serve.”*

#### **Officer Comments**

The proposed development seeks for a Change in use from Hall (Men’s Shed) to Community Centre with associated Office, Consulting Rooms and Construction of a Store (Shed). The applicant has advised Council that the Community Centre and associated Consulting Rooms will be used to offer a wide range of programs for the community such as Emergency Relief, various forms of counselling services, Positive Lifestyle Programs, shower and laundry facilities (existing) for homeless and disadvantaged people just to name a few. The proposed store (shed) is to be used to temporarily house the overflow of donations which are received at the existing Salvation Army bins. This store will assist in keeping the footpaths and streets clean by providing extra storage.

The proposed development will serve the public in many ways and is situated in a location which is easily accessible and not located far from the Kadina Town Centre which satisfies PDC 1 of the Community Facilities Section.

**PDC 2** states that:

*“Community facilities should be integrated in their design to promote efficient land use.”*

#### Officer Comments

The subject site currently consists of an existing Worship building, Shop (thrift shop), Shed (store), Hall (Men’s Shed) and associated car parking. The site has been developed in a way that integrates different land use types which are compatible with one another and all serve the local community in different ways. The proposed change of use from Men’s Shed to Community Centre and associated Office and Consulting Rooms will integrate well with the existing land uses on site and is not anticipated to cause any significant land use conflicts/issues. It is considered that the impact of the proposed use on the locality will be similar to the impact caused by the existing uses.

### **8.2 Design and Appearance**

**PDC 1** states that:

*“1 Buildings should reflect the desired character of the locality while incorporating contemporary designs that have regard to the following:*

- (a) building height, mass and proportion*
- (b) external materials, patterns, colours and decorative elements*
- (c) roof form and pitch*
- (d) façade articulation and detailing*
- (e) verandas, eaves, parapets and window screens.”*

#### Officer Comments

The only building proposed as part of this application is the Store (Shed). The proposed Store is located behind the existing donation bins which face Drain Road. The proposed building is small scale with a total floor area of 11.9 metres squared and a wall height of 2.3 metres. The proposed store will not detract from the character and amenity of the immediate locality. The proposed building is to be constructed from materials and colours that will blend with the existing buildings on site thus reducing the visual dominance of the structure.

### **8.3 Interface Between Land Uses**

**PDC 1** states that:

*“Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:*

*(a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants*

*(b) noise*

*(c) vibration*

*(d) electrical interference*

*(e) light spill*

*(f) glare*

*(g) hours of operation*

*(h) traffic impacts.”*

#### **Officer Comments**

The Community Centre will operate Monday to Friday 8:30am to 5:30pm, with occasional small youth group meetings on the weekend associated with the Place of Worship (Church). The proposed operating hours are not deemed to impact on the residential properties which adjoin the subject site. The operation hours of all the other approved uses on the site will remain as previously approved and do not form part of the assessment of the application.

The applicant has advised Council that the maximum number of staff on site will be two staff members with two volunteers. In addition, a Core Officer (based in a different building on site) is required to oversee all activities on the premises. The maximum number of clients/ patrons at any time should not exceed 16. These numbers are not anticipated to impact on the adjoining residential land uses or cause significant traffic impacts to the existing road network. The proposed development is not considered to cause unreasonable interference through the following reasons listed in PDC 1 above.

### **8.4 Transportation and Access**

**PDC 27** states that:

*“Development with access from arterial roads or roads as shown on Overlay Maps - Transport should be sited to avoid the need for vehicles to reverse on to the road.”*

### Officer Comments

As part of the assessment of the application, a referral to the Commissioner of Highways was required pursuant to Section 37 of the *Development Act 1993* and Schedule 8 of the *Development Regulations 2008* as the subject site gains access from a Primary Arterial Road. The access and egress point from the subject site to Port Road is two way and allows vehicles to enter and exit the site in a forward manner at the same time. The Department for Infrastructure and Transport supports the proposed development. Please refer to **Attachment 2** for DIT's full response.

**PDC 32** states that:

*“Development should provide off-street vehicle parking and specifically marked disabled car parking places to meet anticipated demand in accordance with Table CoCo/3 - Off Street Vehicle Parking unless all the following conditions are met:*

- (a) the site is located in a Town Centre Zone, the Coastal Marina Zone or in the Coastal Open Space Zone at Wallaroo*
- (b) an agreement is reached between the Council and the applicant for a reduced number of parking spaces*
- (c) a financial contribution is paid into the Council Car Parking Fund specified by the Council, in accordance with the gazetted rate per car park.”*

### Officer Comments

Table CoCo/3 in the Development Plan outlines the Off-Street Vehicle Parking requirements. Within the table a Community Centre requires 10 car parking spaces per 100 metres squared, Office requires 4 spaces per 100 metres squared and the Consulting Room requires 10 per 100 metres squared.

The subject site has a total of 18 existing car parks on site. The existing Men's Shed had a total of 13 car parks. The proposed change in use to Community Centre with associated Office and Consulting Rooms requires 11 car parking spaces in accordance with Table CoCo/3. The number of spaces required for the proposed change of use does not exacerbate the existing number of onsite car parks and meets the minimum requirements outlined within Table CoCo/3.

## **8.5 Residential Zone**

**Objective 3** states that:

*“Development that contributes to the desired character of the zone.”*

### Officer Comments

The desired character of the zone seeks for a pleasant, safe and convenient living environment for residents together with an appropriate range of recreation, education, community and aged care facilities. The proposed development is consistent with the desired character of the zone in so far as the proposed use seeks for a community centre which will serve the general public.

**PDC 4** states that:

*“Non-residential development should be of a nature and scale that:*

*(a) serves the local community*

*(b) is consistent with the character of the locality*

*(c) does not detrimentally impact on the amenity of nearby residents.”*

### Officer Comments

Although the Residential Zone should be developed primarily for residential purposes e.g. dwellings and associated residential structures, an appropriate range of community facilities is desired. PDC 4 of the Residential Zone seeks for Non-residential development to be of a nature and scale that serves the local community, is consistent with the character of the immediate locality and does not detrimentally impact on the amenity of nearby residents. The proposed additional uses are considered to be ancillary and of a supportive nature to the uses that have been operating from the site for an extended period of time.

## **9. CONCERNS RAISED BY OBJECTORS**

There was no representation received as part of this public notification process for this application.

## **10. SUMMARY**

When assessed against the relevant provisions of the Copper Coast Council Development Plan and having regard to the context of the locality and the nature and intensity of the proposed development, it is considered that on balance the proposal satisfies the relevant provisions and intention of the Development Plan and will not adversely impact the immediate locality.

## **11. RECOMMENDATION**

That following consideration and having regard to all relevant matters concerning the proposed Change in use from Hall (Men’s Shed) to Community

Centre with associated Office, Consulting Rooms and Construction of a Store (Shed) at Allotment 100, 4 Drain Road, Kadina be **GRANTED** Development Plan Consent subject to the following conditions:

**Conditions:**

1. The applicant/developer shall proceed strictly in accordance with the approved plans and other information submitted in support of the development and conditions imposed by this consent, except where otherwise specified by any condition of this approval or where minor changes are required to comply with the Building Code of Australia or any other relevant act. Where there is a conflict between the Plan of Development and a written condition, the written condition shall apply.
2. Any person performing building work on the subject land shall at all times provide and maintain an enclosed waste receptacle on the subject land. All builders' waste, hard building material and litter shall be contained and stored in the receptacle at all times in a manner satisfactory to Council. The receptacle must be on site for the duration of the construction period. The receptacle shall be emptied when full. If necessary the receptacle shall be fitted with a lid to be closed during windy conditions.
3. The approved uses shall only be allowed to operate within the following hours:

<b>Day</b>	<b>Operating Hours</b>
Monday to Friday	8:30am to 5:30pm
Saturday, Sunday and Public Holidays	9am to 5pm

4. There shall only be a maximum of 20 staff/ patrons on the site at anyone time unless otherwise approved by Council.
5. Site falls and gradings are to be directed away from the building perimeter and adjacent sites and all roof water is to be directed to the street drainage (or storage tank) to the satisfaction of Council. The drainage system shall be completed by the finish of the construction of the building.
6. The developer/owner must ensure that the proposed development does not impact on any Council infrastructure in any way. In the event that Council infrastructure is affected by the proposed development the developer/owner must rectify all damage at no cost to Council.

7. The developer/owner shall ensure that adequate onsite toilet facilities are provided for the duration of the construction of the approved development for use of workers involved with the development. All such facilities must comply with the applicable health legislation in place at the time of the construction of the development.

**Department for Infrastructure and Transport Conditions:**

1. Access to Port Road shall be gained as shown on Hodgkison Architects, Proposed Site Plan, Project No. 20024, Drawing No. PL-01, Amendment A dated April 2020.
2. All vehicles shall enter and exit the site in a forward direction.
3. Stormwater run-off shall be collected on-site and discharged without impacting the safety and integrity of the road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's expense.



In reply please quote: 2020/00366, Process ID: 646697  
 Enquiries to: Reece Loughron  
 Telephone: 08 7109 7876  
 E-mail: dit.landusecoordination@sa.gov.au



Government of South Australia

Department for Infrastructure  
and Transport

**TRANSPORT PLANNING AND  
PROGRAM DEVELOPMENT**

**Transport Assessment**

GPO Box 1533  
ADELAIDE SA 5001

ABN 92 366 288 135

13 November 2020

Ms Rebecca Moyne  
 District Council of Copper Coast  
 51 Taylor Street  
 KADINA SA 5554

Dear Ms Moyne

### SCHEDULE 8 - REFERRAL RESPONSE

<b>Development No.</b>	340/224/20
<b>Applicant</b>	Kristy McMillan (Hodgkison Architects)
<b>Location</b>	4 Drain Road (Cnr Port Road), Kadina(CT 5084/725)
<b>Proposal</b>	Internal renovations to existing hall

I refer to the above development application forwarded to the Commissioner of Highways (CoH) in accordance with Section 37 of the *Development Act 1993*. The proposed development involves development adjacent a main road as described above. The following response is provided in accordance with Section 37(4)(b) of the *Development Act 1993* and Schedule 8 of the *Development Regulations 2008*.

### CONSIDERATION

The subject site abuts Port Road (Copper Coast Road) and Drain Road. Port Road is identified as a Primary Freight Route and a Direct Tourist Route under Department for Infrastructure and Transport's 'A Functional Hierarchy for South Australia's Land Transport Network' and is a gazette route for PBS Level 3A vehicles (up to 36.5 metres in length). At this location Port Road carries approximately 9,600 vehicles per day (8% commercial vehicles) and has a posted speed limit of 60 km/h. Drain Road is a local road with a default urban speed limit of 50km/h.

### Access and Road Safety

The subject development involves minor internal alterations to an existing hall. The hall forms part of an existing church and thrift store operated by the Salvation Army.

The internal refit will allow the hall to offer other community facilities by way off offices for emergency relief and other programs. DIT considers the change in use will have negligible impacts to the operation of Port Road. With regards to the existing access, an existing fence and gate are located across the access and DIT would recommend that the gate be of sufficient width to allow two-way vehicle movements.

Council should be satisfied that the access/gate can cater for simultaneous two-way movements and that sufficient on-site parking is being provided.

**ADVICE**

The Department for Infrastructure and Transport's supports the proposed development and advises the planning authority to attach the following conditions to any approval:

1. Access to Port Road shall be gained as shown on Hodgkison Architects, Proposed Site Plan, Project No. 20024, Drawing No. PL-01, Amendment A dated April 2020.
2. All vehicles shall enter and exit the site in a forward direction.
3. Stormwater run-off shall be collected on-site and discharged without impacting the safety and integrity of the road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's expense.

Yours sincerely



**MANAGER, TRANSPORT ASSESSMENT**  
for **COMMISSIONER OF HIGHWAYS**

A copy of the decision notification form should be forwarded to [dpti.developmentapplications@sa.gov.au](mailto:dpti.developmentapplications@sa.gov.au)