



## Agenda Report for Decision

**Meeting Date: 20 June 2024**

<b>Item Name</b>	State Commission Assessment Panel (SCAP) Decision Review Request: 1 Bonneyview Road, Flagstaff Hill (Development Application 23038041)	
<b>Presenters</b>	Damon Huntley & Troy Fountain	
<b>Purpose of Report</b>	Decision	
<b>Item Number</b>	5.1	
<b>Strategic Plan Reference</b>	4. Discharging Statutory Obligations	
<b>Work Plan Reference</b>	4.3 Ensure the State Commission Assessment Panel continues to operate effectively	
<b>Confidentiality</b>	Not Confidential (Release Immediately)	
<b>Related Decisions</b>	N/A	
<b>Conflicts Declared</b>	Nil	
<b>Is the Report author aware of any potential undeclared conflict?</b>		NO

### Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Note the Decision Review Request from Ms Josephine Cavallo of Cavallo Forest (the Applicant) to the Commission (**Appendix A**).
3. Note Development Application DA 23038041 documentation by the Applicant for Restricted Development – Torrens-title land division comprising the division of one (1) allotment into two (2) allotments to create one (1) additional allotment at 1 Bonneyview Road, Flagstaff Hill (**Appendix B**).
4. Note the Assessment Report and Minutes from the SCAP meeting held on 28 February 2024 (**Appendix C**).
5. Affirm the decision of the SCAP to refuse to proceed to assess DA 23038041 under section 110 of the *Planning, Development and Infrastructure Act 2016* (the Act).
6. Authorise the Acting Chair of the Commission to sign the letter to the Applicant advising of the Commission's decision not to proceed to assess DA 23038041 (**Attachment 1**).

7. Authorise the Acting Chair of the Commission to sign the letter addressed to the Presiding Member of the SCAP, advising of the Commission's decision to not proceed to assess DA 23038041 (**Attachment 2**).
8. Authorise the Acting Chair to make any minor amendments to the letters as required.

## Background

On 11 January 2024, the Applicant lodged a development application (DA 23038041) seeking Planning Consent and Land Division Consent for the proposed division of one (1) existing allotment into two (2) allotments. The proposed additional allotment was intended for residential living purposes. The subject site is located at 1 Bonneyview Road, Flagstaff Hill and forms a rectangular shaped allotment situated on the eastern side of the intersection of Bonneyview Road and Warri Parri Drive, situated in a semi-rural residential area of Flagstaff Hill.

The application was categorised as Restricted Development for Land Division in the Hills Face Zone, according to Table 4 of the Planning and Design Code (the Code). Applications for Restricted Development are assessed by the Commission as the relevant authority, in accordance with section 110 of the *Planning, Development and Infrastructure Act 2016* (the Act). The decision was delegated to the SCAP in accordance with section 30(3) of the Act.

Pursuant to Section 110 (14) of the Act, the SCAP must first decide whether to proceed with an assessment of the Restricted Development application or to refuse the application without proceeding to an assessment.

Section 5 of the Commission's *Practice Direction 4 Restricted Development* (the Practice Direction) dated December 2022, prescribes the circumstances under which the Commission would assess restricted development:

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

The site is situated in the Hills Face Zone. As per Part 2 of the Code, the Desired Outcomes (DOs) of the Zone seek to maintain the western slopes of the South Mount Lofty Ranges as an important natural asset of Greater Adelaide by limiting development to low-intensity agricultural activities and public and private open space. The natural character of the zone will be preserved, enhanced and re-established to:

- a) Provide a natural backdrop to the Adelaide Plains and contrast to the urban area
- b) Preserve biodiversity and restore locally indigenous vegetation and fauna habitats close to metropolitan Adelaide
- c) Provide for passive recreation in an area of natural character close to the metropolitan area
- d) Provide a part of the buffer area between metropolitan districts and prevent the urban area extending into the western slopes of the Mount Lofty Ranges.

The SCAP considered the context of the locality which includes an established residential settlement pattern to the north and south of the subject site, the size of the established allotments along Warri Parri Drive and Bonneyview Road, and whether the proposed additional allotment would be fit-for-purpose to accommodate a future dwelling.

Whilst there was discussion regarding the appropriateness of the proposed development, the SCAP resolved that the application had no reasonable prospect of a favourable assessment, having regard to the relevant policies of the Hills Face Zone within the Code and similar previous decisions made.

Accordingly, on 28 February 2023 the SCAP refused the application without proceeding to an assessment (**Appendix C**). SCAP has consistently determined not to proceed with land division within the Hills Face Zone. SPC has also supported this position on previous occasions.

On 26 March 2024, the Applicant submitted a request for the Commission to review the SCAP decision as permitted under section 110(15) of the Act (**Appendix A**).

### Discussion

The Assessment Report that was presented to the SCAP on 28 February 2024 recommended that the application should not proceed to an assessment (refer to **Appendix C**). Following a review of the proposal the SCAP formed the view that the application should not proceed to an assessment for the following reasons:

- a) *The proposed additional allotment for future residential development is incompatible with the intent to limit development in the zone to low-intensity agricultural activities and public and private open space*
- b) *The future increase of development on the site through the division of the land will not preserve, enhance and re-establish the natural character of the Hills Face Zone; and*
- c) *Residential development will not be limited to maintain a pleasant natural and rural character and amenity.*

The applicant considers that the SCAP's decision, concluding that the proposal has no reasonable prospect of a favourable assessment against DO 1 and PO 14.1 (Land division does not result in the creation of an additional allotment) of the Hills Face Zone, could not be made accurately without a full assessment being undertaken. The applicant is of the opinion that the proposed division is appropriate given that the development will create an allotment that is of a size that is consistent with existing allotments within both the immediate and wider locality. In addition, the applicant has explained that the proposed division will not result in an adverse impact on the community for the provision of services, given that they already exist within the road reserve adjacent to the allotment frontage. The applicant's review of the SCAP's decision and reasons why they believe this decision should be overturned is contained in **Appendix A**.

Following consideration of the matters above, the SCAP determined that the proposed land division did not adhere to the to the relevant policies of the Hills Face Zone contained within the Code.

Pursuant to section 110(18) of the Act, the Commission may either affirm the decision of the SCAP or refer the matter back to the SCAP with a direction that the application for planning consent and land division consent be assessed.

In accordance with section 110(19) of the Act, no appeal to the Environment, Development and Resources Court lies against the decision of the SCAP to refuse the application without proceeding to an assessment or the review decision made by the Commission.

**Conclusion**

The SCAP, having regard to the Code, Practice Direction 4, and the Act, determined that the application to create one (1) additional allotment for residential purposes at 1 Bonneyview Road, Flagstaff Hill, had insufficient planning merit to have a reasonable prospect of a favourable assessment. In accordance with the Applicant's request, the Commission is tasked with the administrative review of this decision.

Staff support the decision and reasons included in the decision to not proceed with a decision and therefore suggests that the Commission affirm the recommendation of staff and the decision of the SCAP. Should the Commission affirm the decision of the SCAP to refuse to proceed to assess DA 23038041, draft letters to the Applicant and Presiding Member of the SCAP advising of the Commission's decision not to proceed to assess DA 23038041 are provided for consideration (**Attachments 1 and 2**).

Procedural matters

*Delegation*

Under section 110(15) of the Act, a review of a decision by the Commission's delegate must be undertaken 'by the Commission itself'.

*Procedures for a review*

Under section 110(17) of the Act, on an application for review, the Commission may adopt such procedures as the Commission thinks fit and is not bound by the rules of evidence and may inform itself as it thinks fit.

**Attachments:**

1. Suggested letter to the Applicant (#21501195)
2. Suggested letter to the Presiding Member, SCAP (#21501246)

**Appendices:**

- A. Decision Review Request by the Applicant to the State Planning Commission, dated 26 March 2024 (#21501077)
- B. Development Application 23038041 Documentation (#21501130)
- C. SCAP Assessment Report and Meeting Minutes 28 February 2024 (#21501135)

Prepared by: Damon Huntley

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Endorsed by: Troy Fountain and Marc Voortman

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Date: 14 June 2024

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21501195

Level 10  
83 Pirie Street  
Adelaide SA 5000

9 September 2024

GPO Box 1815  
Adelaide SA 50011800 752 664  
saplanningcommission@sa.gov.auMs Josephine Cavallo  
Cavallo ForestBy email: 

Dear Ms Cavallo

**Decision Review Request – Development Application 23038041 – Proposed Land Division of One Allotment into Two Allotments at 1 Bonneyview Road, Flagstaff Hill SA 5159**

I refer to your request dated 26 March 2024 for the State Planning Commission (Commission) to review a decision of the State Commission Assessment Panel (SCAP) to refuse Development Application (DA) 23038041 without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016* (the Act).

At its meeting held on 20 June 2024, the Commission reviewed the decision of the SCAP (from its meeting held on 28 February 2024), taking into consideration your decision review request, the original Development Application documentation, the SCAP Assessment Report and the Commission's *Practice Direction 4 – Restricted Development*:

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

Following this review, the Commission resolved to affirm the decision of the SCAP not to proceed to assess DA 23038041.

Pursuant to section 110(19) of the Act, there is no appeal to the Environment, Resources and Development Court against this decision to refuse the application without making an assessment, either against the initial decision by the SCAP or the subsequent decision by the Commission.

Yours sincerely

**Lisa Teburea**  
Acting Chair



21501246

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Adelaide SA 5000

GPO Box 1815  
Adelaide SA 5001

1800 752 664  
saplanningcommission@sa.gov.au

9 September 2024

Ms Rebecca Thomas  
Presiding Member  
State Commission Assessment Panel

By email: [REDACTED]

Dear Ms Thomas

**Decision Review Request – Development Application 23038041 – Proposed Land Division of One Allotment into Two Allotments at 1 Bonneyview Road, Flagstaff Hill SA 5159**

On 26 March 2024, the State Planning Commission (the Commission) received a request from Ms Josephine Cavallo of Cavallo Forest (the Applicant) to review a decision of the State Commission Assessment Panel (SCAP) to refuse Development Application 23038041 (DA) without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016* (the Act).

At its meeting held on 20 June 2024, the Commission reviewed the decision of the SCAP, taking into consideration the following from the Commission's *Practice Direction 4 – Restricted Development*:

*For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*

As a result of the review, the Commission can advise that it resolved to affirm the decision of the SCAP not to proceed to assess DA 23038041.

I have written to the Applicant to advise them of the Commission's decision.

Yours sincerely


A handwritten signature in black ink, appearing to read 'Lisa Teburea'.

**Lisa Teburea**  
Acting Chair

# APPLICATION TO THE STATE PLANNING COMMISSION

## Decision Review Request

Review of a decision of the State Commission Assessment Panel (as delegate of the State Planning Commission) to refuse a restricted development application without proceeding to make an assessment pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016*

<b>Applicant:</b>	ROBERT PHILIP GARDNER AND DIANA GARDNER
<b>Development Number:</b>	23038041
<b>Nature of Development:</b>	Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment
<b>Zone / Sub-zone / Overlay:</b>	Hills Face Zone
<b>Subject Land:</b>	1 BONNEYVIEW RD FLAGSTAFF HILL SA 5159 CT 5563/620 <b>Plan Parcel:</b> D8444 AL51
<b>Date development application lodged:</b>	22/12/2023
<b>Date of decision of the State Commission Assessment Panel (SCAP):</b>	28 Feb 2024
<b>Do you wish to make a verbal presentation (deputation) at the Commission Meeting?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes*  *A request for a deputation must be made in accordance with the State Planning Commission Deputation, External Meeting and Event Policy
<b>Date:</b>	18 March 2023
<b>Signature:</b>	

Submit form to [saplanningcommission@sa.gov.au](mailto:saplanningcommission@sa.gov.au) or via the relevant Application Record on the SA Planning Portal.



ROBERT PHILIP AND DIANA GARDNER  
C/O Cavallo Forest  
9 GEORGE STREET  
HINDMARSH SA 5007

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

[REDACTED]

18 March 2023

ATTN: Damon Huntley  
Planning Officer  
Planning & Land Use Services  
Department for Trade and Investment  
Level 10, 83 Pirie Street Adelaide

Dear Damon

**RE Development Application No 23038041 – Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment at 1 BONNEYVIEW RD FLAGSTAFF HILL.**

We write to apply for review by the State Planning Commission's (**Commission**) of the decision of its delegate, the State Commission Assessment Panel (**SCAP**), refusal to proceed with assessment of Development Application No 23038041 for a Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment (**Application**).

Our completed Application to the State Planning Commission form is attached at Attachment 1.

## **1. Summary of request for review**

We submit that it is fair, reasonable, and appropriate for the Commission to return the decision to SCAP for review to make a positive finding to proceed with proper assessment of the Application because:

### **1.1 Basic fit within "Restricted Development" classification**

The Application, **fairly and reasonably**, is of the nature and comprises the elements which are suitable for progression as an application in the "Restricted Development" classification for assessment by the Commission, when assessed objectively against the broader Planning and Design Code (**Code**) framework and its application to the local council area.



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## 1.2 Assessment of the merits

On application of publicly available guidance from the Commission, on balance the Application fits within the stated parameters which support the Application proceeding to an assessment, being:

- while the intent of the Zone and the Desired Outcomes of the Hills Face Zone **may**<sup>1</sup> inform the relevance of performance outcomes and assist in assessing the merits of the development, and consideration **might** be given to specified factors such as land use and site dimensions to assess the suitability of the site in context of the relevant Desired Outcomes, the parameters plainly state this is a possibility and not a rigid requirement, allowing assessment of the merits of the "Restricted Development" application which, by its nature, is not able to otherwise be assessed within the established requirements of development applications complying with the Code; and
- that the Application, due to consideration of matters outside of the Code, clearly demonstrates significant planning merit objectively on many levels, despite it not being recognised by the Code, including as set out in the original application (see Section 2(e) of Part B below and particularly:
  - the highly unique characteristics of the size and position of the Land itself (see Sections 2(a) and 2(c) in Part B below) and which, to the best of our knowledge, distinguish it on a virtually unprecedented level in the local council area (if not much more broadly) from other land within the Hills face Zone
  - the historical anomaly of residential allotments of a consistent size similar to what is being proposed in the immediate locality (further details are in Section 2(b) in Part B below); and

and, importantly, the Application does not contain any fundamental "*fatal flaw*" in terms of **its planning merit**"<sup>2</sup> that support being refused at first instance.

Also importantly, the Commission's published material is plain in highlighting that any fundamental "fatal flaw" is "planning merit" based, and not via strict application of the Desired Outcomes of the paramount Hills Face Zone. Supportive of this view is the fact that the revised and refined Practice Direction 4 (being Version 2) (**PD4**) does not expressly prohibit applications being made where such applications are, for instance, not in strict adherence to any Overlay or Zone.

Rather, the language of PD4 supports progression to assessment "*unless it appears to the delegate that there is no reasonable prospect of a favourable assessment*", which is also in keeping with the Commission's recent stated objective to "**provide a more flexible approach to the circumstances under which the Commission will proceed to assessment of a restricted development**"<sup>3</sup>.

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<sup>1</sup> See [Fact Sheet - Restricted Development \(plan.sa.gov.au\)](https://www.plan.sa.gov.au)

<sup>2</sup> See [Fact Sheet - Restricted Development \(plan.sa.gov.au\)](https://www.plan.sa.gov.au)

<sup>3</sup> See "Agenda Report for Decision" with Meeting Date 8 December 2022: [https://www.dit.sa.gov.au/\\_data/assets/pdf\\_file/0003/1174935/5.1-Request-to-amend-Practice-Direction-4-Restricted-Development-and-create-Practice-Direction-17-Impact-Assessed-Development\\_Redacted-with-attachments.pdf](https://www.dit.sa.gov.au/_data/assets/pdf_file/0003/1174935/5.1-Request-to-amend-Practice-Direction-4-Restricted-Development-and-create-Practice-Direction-17-Impact-Assessed-Development_Redacted-with-attachments.pdf)



### 1.3 The Commission's exercise of discretion

In the context of Restricted Development applications, the Commission's delegate has discretion as to following the Desired Outcomes as set out by the relevant overlay and zone.

By the common law and as captured in the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) ss 5(1)(e) and 5(2)(a) and (b), the fundamental rule of the lawful exercise of discretion is that the decision **must** be a result of a real exercise of discretion.

A decision-maker cannot fetter the decision-maker's discretion, and negate the decision-maker's authority, by taking into account something that ought not to be taken into account, or, failing to take into account something that should be taken into account.

By section 110(1) of the *Planning, Development, and Infrastructure Act 2016* (SA) (**Act**) for assessment of "Restricted Development":

the Commission, "*must, if it makes an assessment under this section in relation to any restricted development, take into account the relevant provisions of the Planning and Design Code (but is not bound by those provisions).*"

The words in **bold** establish that the Commission (through its delegate) is *not bound* by the relevant provisions of the Code, and to *act as if bound* falls afoul of Mason J's succinct summation of the relevant Australian law in this area in *Minister for Aboriginal Affairs v Peko Wallsend Ltd* (1986) 162 CLR 24 at 39-42, where His Honour states:

"a court will not find that the decision-maker is bound to take a particular matter into account unless an implication that he is bound to do so is to be found in the subject matter, scope and purpose of the Act."

This discretion is fundamentally important, as, by their very nature, "Restricted Development" applications do not for whatever reason, otherwise fit with the Code's requirements (and according, give rise to examples such as a dwelling in a Conservation Zone, or a Renewable Energy Facility<sup>4</sup> which would otherwise on their face not being in keeping with the Desired Outcomes of that zone). There is also no ability for an applicant to appeal the decision to a Court or Tribunal, so it is of crucial importance for SCAP as the Commission's delegate to be empowered to exercise its discretion in assessing the Application, as a "Restricted Development" application, without appearing to feel compelled to refuse the Application at first instance only on the basis of the Desired Outcomes of the Hills Face Zone not being met.

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<sup>4</sup> See page 2 of [Fact Sheet - Restricted Development \(plan.sa.gov.au\)](https://www.plan.sa.gov.au)

It also brings into question the availability of the “Restricted Development” process, and arguably seems circular reasoning, for the Commission’s delegate to appear to find that a sound reason for refusal to proceed is because the Application does not meet the Desired Outcomes of the relevant Hills Face Zone.

It is by that very issue of non-compliance with the Desired Outcomes that gives grounds for the making of this Application as a “Restricted Development” and not another type of development application under the Code.

Fairly and reasonably, this circular result must be outside the intention of the restricted development process which would otherwise seem to risk creating false hope for applicants whose proposals do not meet the relevant provisions of the Code. We do not believe that this could be the case.

#### **1.4 No fatal flaw on planning merit & Development outcomes for land division already in the zone are not met**

As the Relevant Authority, SCAP’s as the Commission’s delegate, exercise of discretion must be applied reasonably and impartially, and further, as a statutory function can only be found to be “discretionary” if there is no single outcome dictated by the relevant law and assessment on the merits of an application on a case by case basis. We respectfully submit that the reason given of not being within the Desired Outcome of the Hills Face Zone does not appear to encompass fair and reasonable weight being given to assessment of the strong merits of the Application.

To appear to not ascribe appropriate weight to the obvious merits of the Application in favour of the seemingly strict application of the Code, gives a result that is “*manifestly unreasonable*” (Mason J) when the peculiar characteristics and ongoing fragmentation (including as recently as 2021) of the Land are taken into account. For the Commission’s delegate to appear to fail to give the obvious merits of the Application fair and reasonable weight against a discretionary power to apply the Code gives rise to a decision that is “*so unreasonable that no reasonable person could have come to it*” (Mason J, *Minister for Aboriginal Affairs v Peko Wallsend Ltd*) opening the limited role of the Court in review of administrative discretion now expressed in ss.5(2)(g) and 6(2)(g) of the ADJR Act.

Accordingly, the Commission’s delegate’s discretion to only take guidance from the Hills Face Zone Desired Outcomes but not be bound by them is a fundamental part of the restricted development alternative pathway to approval. It is sound and appropriate for the Commission’s delegate to apply its discretion in this case, and allow the Application to proceed for assessment, because of the overwhelming merits of the Application (on a local, regional, and State level) and because, **on the planning merit**, the Application does not contain any fatal flaw<sup>5</sup>.

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<sup>5</sup> See [Fact Sheet - Restricted Development \(plan.sa.gov.au\)](https://www.plan.sa.gov.au)



The proposed land division reflects the strong residential character of the immediate locality. Because of the historical anomaly of the locality as mentioned above, coupled with the Land's unique characteristics, with respect, in practice means that the Desired Outcomes of this Land have already been fundamentally eroded, to the point where they arguably are defeated and apply in name only.

This discretion exercised in support of the Application progressing is also in keeping with the results of the performance audit and review by Planning and Land Use Services (**PLUS**) together with engagement with key industry stakeholders, which support that, in respect of the "Restricted Development" classification, a more flexible approach to the circumstances under which the Commission's delegate will proceed to assessment of a restricted development<sup>6</sup>, and we note that none of the recent changes to PD4 support the Commission's delegate refusal of this Application at first instance simply because of the Hills Face Zone's Desired Outcomes.

In fact, as the Commission is aware, the changes to PD4 have encouraged the Commission's discretion, due to the removal of the additional wording as to how the Commission's delegate needed to assess applications<sup>7</sup>. The revision of PD4 supports the Commission's discretion to, notwithstanding the Hills Face Zone Desired Outcomes, accept this Application for assessment.

In light of these four key elements, returning the Application to SCAP for the purpose of a positive finding to the Application proceeding is the only sound and appropriate outcome when the Commission's delegate applies the stated intentions, principles and requirements of the Restricted Development regime as a true exercise of discretion in its administrative capacity particularly where applicants have no prospect of appeal of the decision.

## **2 Detailed further evidence in support of request for review**

Our detailed further evidence in support of our request for review is set out below.

### **2.1 Reason for refusal to proceed**

#### **2.1.1 Reason notified**

By Decision Notification Form issued pursuant to section 126(1) of the *Planning, Development, and Infrastructure Act 2016* (SA) (**Act**) we were notified that the Application was refused by the Commission's delegate for the following reason:

*There is no reasonable prospect of a favourable assessment of the proposed development having consideration of the Hills Face Zone, specifically:*

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<sup>6</sup> See "Agenda Report for Decision" with Meeting Date 8 December 2022:

[https://www.dit.sa.gov.au/\\_data/assets/pdf\\_file/0003/1174935/5.1-Request-to-amend-Practice-Direction-4-Restricted-Development-and-create-Practice-Direction-17-Impact-Assessed-Development\\_Redacted-with-attachments.pdf](https://www.dit.sa.gov.au/_data/assets/pdf_file/0003/1174935/5.1-Request-to-amend-Practice-Direction-4-Restricted-Development-and-create-Practice-Direction-17-Impact-Assessed-Development_Redacted-with-attachments.pdf)

<sup>7</sup> See Section 5 of Part 2 of Practice Direction 4 (Version 2) in comparison to Section 5 of Part 2 of Practice Direction 4 (Version 1).



a. The proposed additional allotment for future residential development is incompatible with the intent to limit development in this zone to low-intensity agricultural activities and public and private open space; and

b. The future increase of development on the site through the division of the land will not preserve, enhance, and re-establish the natural character of the Hills Face Zone.

c. Residential development will not be limited to maintain a pleasant natural and rural character and amenity.

The "Desired Outcome" of the Hill Zone is as follows:

Desired Outcome	
DO 1	<p>To maintain the western slopes of the South Mount Lofty Ranges as an important natural asset of Greater Adelaide by limiting development to low-intensity agricultural activities and public and private open space. The natural character of the zone will be preserved, enhanced and re-established to:</p> <ul style="list-style-type: none"> <li>(a) provide a natural backdrop to the Adelaide Plain and a contrast to the urban area</li> <li>(b) preserve biodiversity and restore locally indigenous vegetation and fauna habitats close to metropolitan Adelaide</li> <li>(c) provide for passive recreation in an area of natural character close to the metropolitan area</li> <li>(d) provide a part of the buffer area between metropolitan districts and prevent the urban area extending into the western slopes of the Mount Lofty Ranges.</li> </ul> <p>'Natural character' refers to the natural topography, native vegetation and colours, such as greens and browns of non-reflective earthen tones, normally associated with a natural landscape. Additionally, natural character refers to the open character of the land in those areas of the zone where open grazing currently predominates.</p>
DO 2	Development ensures that the community is not required to bear the cost of providing services to and within the Zone.

Performance Outcome PO 1.1

Land Use and Intensity	
PO 1.1	DTS/DPF 1.1
Low-intensity, low-scale activities that complement the natural, rural and scenic qualities of the hills face landscape.	None are applicable.

## 2.2.2 Practice Direction 4

Practice Direction 4 (PD4) sets out the circumstances under which the Commission's delegate will assess a restricted development in Section 5 of Part 2, where it states:

*"For the purposes of section 109(1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment."*

We note that PD4 was revised and issued by the Commission on 15 December 2022 and note the comments in the Agenda Report for that meeting which state "As a result of the review and engagement with key industry stakeholders. [the wording of PD4 was proposed to be amended to] provide a **more flexible approach** to the circumstances under which the Commission will proceed to assessment of a restricted development."<sup>8</sup>

<sup>8</sup> See "Agenda Report for Decision" with Meeting Date 8 December 2022:

[https://www.dit.sa.gov.au/\\_data/assets/pdf\\_file/0003/1174935/5.1-Request-to-amend-Practice-Direction-4-](https://www.dit.sa.gov.au/_data/assets/pdf_file/0003/1174935/5.1-Request-to-amend-Practice-Direction-4-)



We respectfully submit to the Commission that it is fair, reasonable, and appropriate for the Commission in light of the newly revised PD4 to return to its delegate for review the decision to refuse to assess the Application because:

- (a) We understand from PD4 that the underlying presumption is for the Commission's delegate to proceed to assess an application ("*unless it appears to the delegate that there is no reasonable prospect of a favourable assessment*"), and the effect of this presumption in practice would reasonably mean that the Application should be granted permission to proceed for assessment for restricted development rather than be refused.
- (b) The qualification of "*unless it appears to the delegate that there is no reasonable prospect of a favourable assessment*" does not include reference to any specific documentation or rules. The Commission's delegate has then nominated that there is no reasonable prospect of a favourable assessment "*following consideration of the relevant Planning and Design Code policies*:"
- a. DO [desired outcome] 1 of the Hills Face Zone;
  - b. PO [performance outcome] 1.1 of the Hills Face Zone; and "
  - c. PO [performance outcome] 1.4 of the Hills Face Zone

which, with respect, adds additional requirements to those stated by PD4 which applicability we question, and which, we note, appears to run contrary to the Commission's stated intention to provide a more flexible approach to restricted developments.

- (c) When the unique characteristics of the Land when considered together, being its size, location, history, topography and given the development pattern in the immediate locality within the Hills Face Zone, and all relevant circumstances are considered by the Commission's delegate in totality, it is fair and reasonable for the Commission through its delegate to conclude that the delegate's decision that "*appears to the delegate that there is no reasonable prospect of a favourable assessment*" is not supported by the facts, and that it is appropriate for the Application to proceed for assessment.

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[Restricted-Development-and-create-Practice-Direction-17-Impact-Assessed-Development\\_Redacted-with-attachments.pdf](#)



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A: 200a Cross Road. Unley Park 5061

### 3 Planning merits of the Application appropriate for the Commission to take into account

As a non-complying development proposal, fairly and reasonably the Application stands to be assessed upon its merits as a matter of sound planning judgment. The merits of the application as set out below are appropriate for the Commission's delegate to take into account because they are "relevant to the assessment of the particular development application" as per the requirements of section 7(5)(g), PD4 providing a novel conjunction of facts and circumstance that support separate assessment and approval to proceed.

#### 3.1 Character of immediate locality

The immediate locality has a unique character which is more of a residential nature rather than a traditional Hills Face Zone setting as shown in the Figure 1 below.

The locality consists of both residential land uses within the Hills Face Zone and Hills Neighbourhood Zone to the south and south east of the subject land, surrounded by land located within a Conservation Zone.

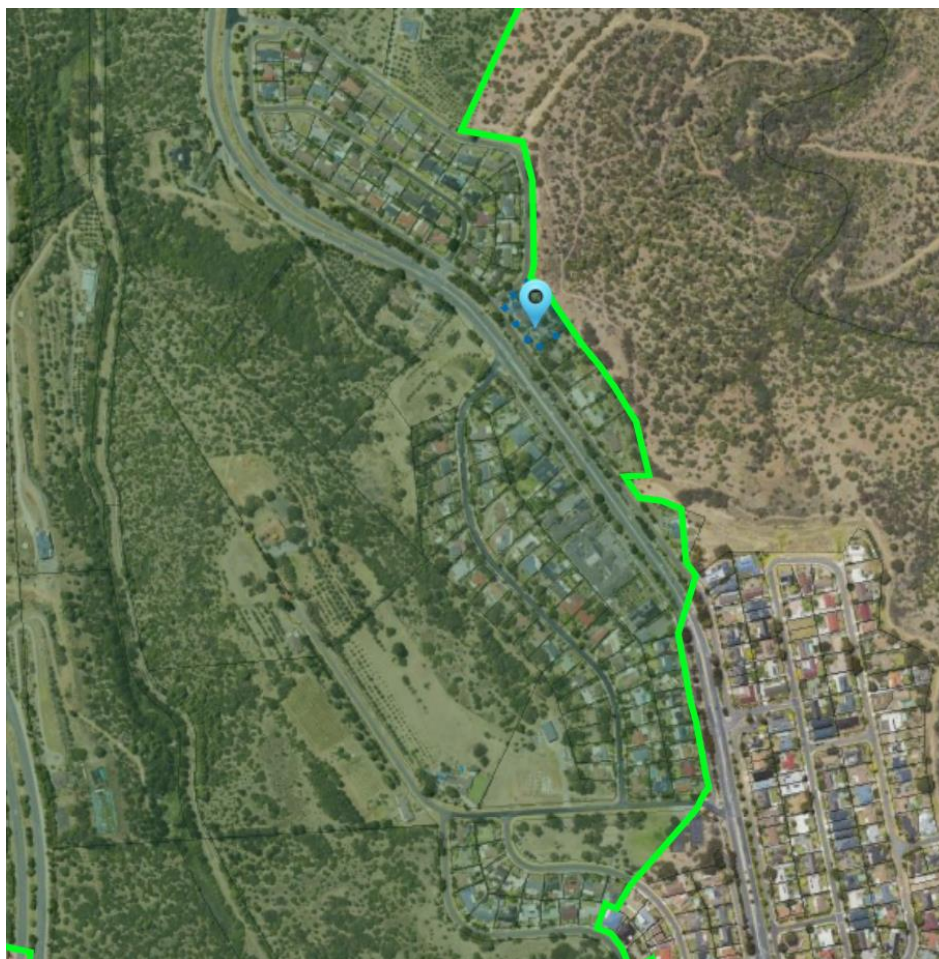


Figure 1 – allotment patterns within the immediate locality

A development pattern of residential allotments along either side of Flagstaff Road within the Hills Face Zone provides a consistent allotment pattern of residential type development which is clearly not used for low-intensity agricultural activities or public / private open space and does not reflect the traditional natural character of the Hills Face Zone.



The residential nature and character of development in the immediate locality provides its own unique character in this area with traditional detached dwellings on a range of allotment sizes (refer to section b - Allotment sizes within the immediate locality below).

Dwellings are typically single storey in height, on allotments ranging between 950m<sup>2</sup> and 1600m<sup>2</sup> in area with a regular allotment pattern of even, consistent street frontages. Of importance is the four dwellings to the south of the subject land, that all have allotment frontages similar to that proposed as part of this application. Most of the dwellings are located on the crest of the ridge, which minimises their impact to the backdrop of metropolitan Adelaide, given their limited visibility.

The proposed division in this instance will result in a development which is consistent with the prevailing character of development in the immediate locality within the Hills Face Zone which is not consistent with the general provisions of the Planning and Design Code as it relates to the Hills Face Zone.

### **3.2 Allotment sizes within the immediate locality**

The application seeks a Land Division – one into two allotments for residential purposes which in this instance is Restricted Development at 1 Bonneyview Road, Flagstaff Hill.

More specifically, the proposal includes:

- Allotment 1 maintaining the existing single storey dwelling (2135m<sup>2</sup> metres in area)
- Allotment 2 new residential allotment (1528 m<sup>2</sup>)
- No works (including the removal of any native vegetation or earthworks) are proposed to be undertaken in association with the land division.

The subject land is approximately three times the size of typical residential allotments within the locality (to the north) and 2.5 times the size of adjacent allotments fronting Warri Parri Drive to the south of the subject land. In this respect, the existing allotment is inconsistent with the predominant land division pattern, and is larger than other regular allotments within the zone; neither large enough to maintain the intent of the Hills Face Zone (as a scenic backdrop to metropolitan Adelaide / preserve biodiversity and restore locally indigenous vegetation and fauna or provide a passive recreation area), nor small enough to be efficiently used as a single residential allotment, given the maintenance requirements of a 3663m<sup>2</sup> allotment.

The proposed allotment sizes of 1529 sqm and 2135 sqm respectively results in allotment sizes which consistent (and larger) than the typical residential allotments within the immediate locality. This is clearly shown in Figure 2 below, which identifies the allotment sizes within the Hills Face Zone in the immediate locality.

It is considered that the proposed land division will meet the intent of the Objectives of the Hills Face Zone, in that it will provide allotments of a similar size to adjacent residential allotments and allows for a reasonably sized single storey dwelling to be established within a landscaped setting, consistent with the low scale residential development found in the locality and anticipated within the zone.



The proposal will not adversely impact on the viability of the land to the west within the Hills Face Zone, nor create a precedent for future land division to occur on adjacent sites, given the unique circumstances occurring on the subject land, which do not occur elsewhere within the locality.



Figure 2 – allotment sizes of allotments within the immediate locality

### 3.3 Future development area for dwelling

The new allotment provides an area of 1528 square metres with a site frontage of 29 metres to Warri Parri Drive. Any future development of the site would result in a residential development which would be designed to meet the quantitative and qualitative provisions of the Hills Face Zone and general Planning and Design Code provisions.

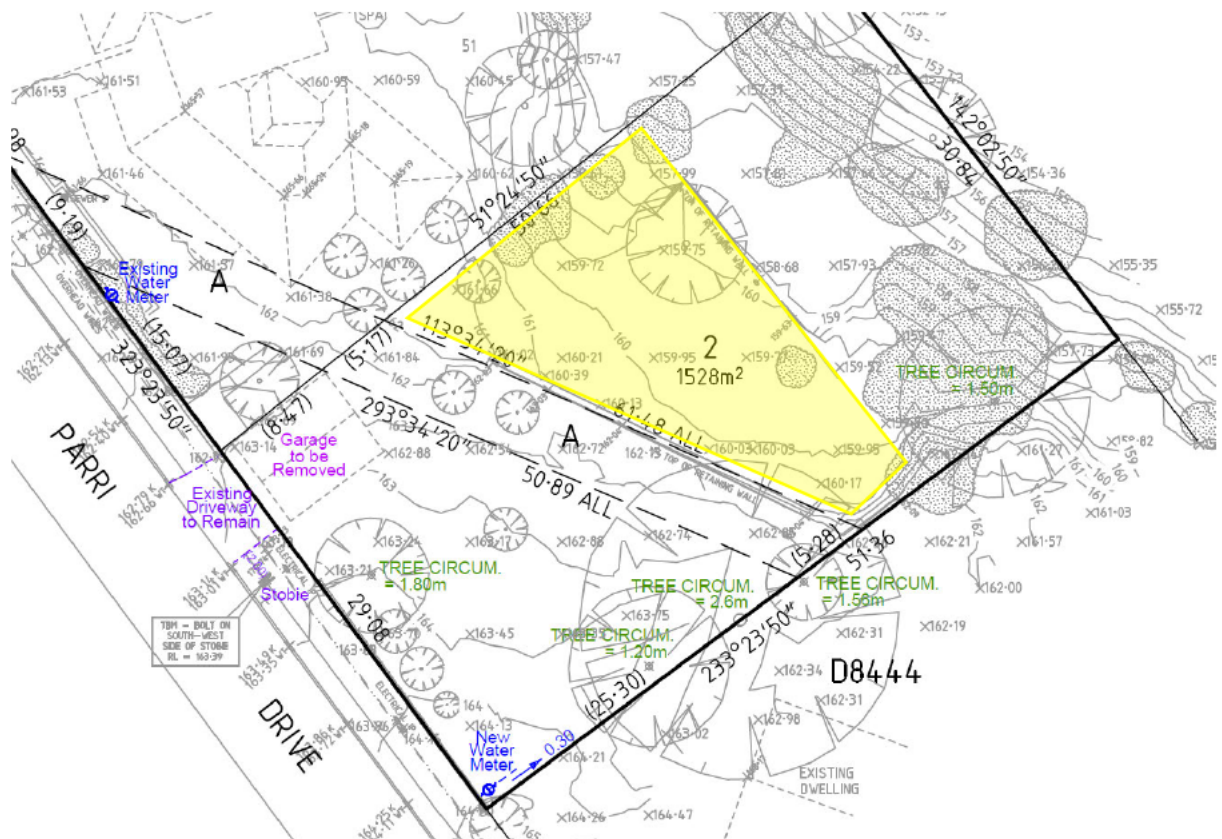
The existing allotment (allotment 1 with an area of 2135 sqm) will result in the existing dwelling meeting the quantitative and qualitative provisions of the Hills Face Zone and general Planning and Design Code provisions.

The proposed allotment with an area of 1528 sqm will maintain the two split levels on the site which will allow sufficient area for the construction of a detached dwelling on the site in the middle section of the site in an area which is void of any sufficient vegetation and the development would not require the need for additional cut and fill on the site.

An indicative development area is shown in figures 3 and 4 below.

Further, the proposal would utilise the existing access point to the site and services afforded to the site.

Further, the proposal would not impact on the easement which runs through the allotment.





## Social

- The proposal will provide an additional allotment within the locality providing more affordable housing options, while increasing the efficiency of public services.
- There are no aspects of the proposal that are likely to cause any further social effects.

## Environmental

- The proposal will have little impact on the environmental condition of the land and beyond.
- The proposed land division does not create the need to remove any vegetation for the creation of the allotments or to access to the site.
- There will be no further impact in terms of waste management the future dwelling will be connected to the existing waste system.
- The division will not result in the loss of any open space or recreational paths which traverse the land.
- The proposal facilitates the improved management and development of the land.
- The proposal does not prejudice the continuation of adjacent or existing land uses.
- The proposal does not involve the removal of native vegetation.
- The proposal does not increase the risk of landslip/erosion.
- The proposal does not cause or increase noise, fumes, odour, or traffic impacts.
- The proposal does not unreasonably impact upon the natural appearance and character of the area.
- Accordingly, the proposal is not considered to cause any adverse environmental impacts.

In summary, the proposed land division will not create negative effects whilst providing some economic, social, and environmental benefits.

## 4 Conclusion and Request for review

The application seeks a Land Division – one into two which in this instance is Restricted Development at 1 Bonneyview Road, Flagstaff Hill.

It is considered that whilst the proposal is creating an additional allotment within the Hills Face Zone, the proposed division is considered appropriate in that the proposed allotment size is consistent with existing allotments found within both the immediate and wider locality, while presenting minimal imposition on the community for the provision of services, given they already exist within the road reserve adjacent the allotment frontage.

The proposal will have an acceptable impact on the amenity of the adjoining residential development and will not adversely impact future development of the locality and/or detrimentally impact upon any surrounding development. Should the application be considered suitable for a further assessment, the provision of a detailed planning report with additional analysis of the impacts of the proposal will be provided to determine the development's suitability.



It is considered that the proposal is appropriate from a transportation and access perspective given the proposed allotments existing vehicle access arrangement, which is compliant with current code requirements and is able to be used by any future dwelling on the proposed allotment. An indicative dwelling footprint and levels will be provided, demonstrating the suitability of the proposal by meeting the relevant Overlays, Zone provisions and General Development Policies of the Code related to flooding, interface between land uses, setbacks, site coverage, landscaping and private open space should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.

After careful consideration of the proposed development and having regard to the relevant provisions of the Planning and Design Code, it is my opinion, that the application represents an appropriate form of development in the context of the Hills Face Zone (Code version 2023.15) and the unique circumstances of the subject land and locality.

For all the reasons outlined in this planning report, we consider the proposed development to satisfy the pertinent Code provisions and Practice Direction 4 to warrant a further full and proper assessment of the proposal in accordance with Section 5(2)(e) of Practice Direction 4.

On the basis of the reasons set out above we respectfully request the current decision to refuse the Application to proceed is reviewed, and this Application is returned to SCAP to proceed to assessment.

We look forward to your support to proceed to assess this proposal.

If you have any further questions regarding this application or require additional information, please contact me on 0499 933 311.

Yours Sincerely,



**Mark Kwiatkowski MPIA CPP**

**Director + Principal Urban Planner + Accredited Professional Level 1 – 4**

**Adelaide Planning & Development Solutions Pty Ltd - Town Planning Specialists - Planning Private  
Certifiers**



# PLAN OF PROPOSED DIVISION

PLAN SA APPLICATION NUMBER  
\*\*\*

SPC DEVELOPMENT NUMBER  
**ID /23**

SUBJECT LAND DETAIL  
ALLOTMENT 51 IN DP 8444  
HUNDRED OF NOARLUNGA

IN THE AREA NAMED  
**FLAGSTAFF HILL**

1 BONNEYVIEW ROAD  
FLAGSTAFF HILL SA 5159

TITLE REFERENCES  
C.T. VOL. 5563 FOL. 620  
/MAP REFERENCE: 6627/01/P

TORRENS DIVISION

TOTAL SITE AREA: 3663m<sup>2</sup>  
NO. OF EXISTING ALLOTMENTS: 1  
NO. OF PROPOSED ALLOTMENTS: 2  
NO. OF ADDITIONAL ALLOTMENTS: 1

**COUNCIL: ONKAPARINGA**

ANNOTATIONS / EASEMENTS

EXISTING DWELLING & STRUCTURES  
ON ALLOTMENT 1 ARE TO REMAIN.

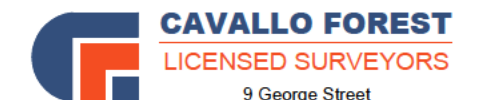
ALL STRUCTURES ON ALLOTMENT 2  
TO BE REMOVED AND SITE CLEARED.

DETAIL AND LEVELS SURVEY WAS  
PERFORMED OVER THE SUBJECT  
LAND AND COUNCIL VERGE.

EXISTING EASEMENTS

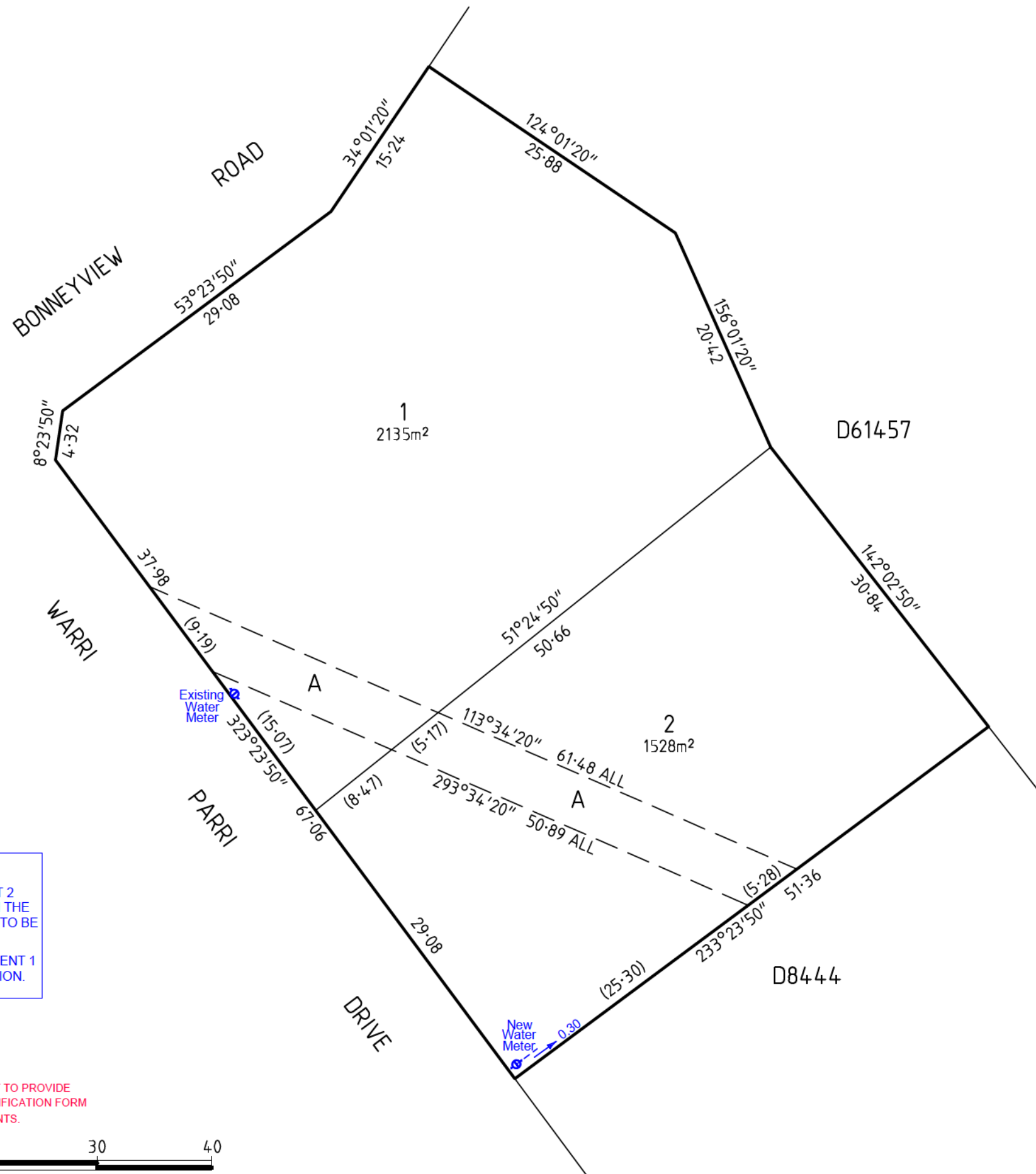
PORTION OF ALLOTMENTS 1 & 2 MARKED A  
IS SUBJECT TO EASEMENT(S) TO THE  
MINISTER FOR INFRASTRUCTURE (T 2886116).

ALL DATA IS APPROX ONLY  
SUBJECT TO SURVEY AND FINAL PLAN  
ALL DIMENSIONS IN METRES. DO NOT SCALE DRAWING.



9 George Street  
Hindmarsh SA 5007  
(08) 8346 0440  
surveying@cavalloforest.com.au

DATE	14/12/2023	FIELD	--	DRAWN	JC
REF No	23-220	CHK	RC	REV	01



**SA WATER NOTE:**  
NEW WATER METER FOR ALLOTMENT 2  
IS TO BE CONSTRUCTED 0.30M FROM THE  
EASTERN BOUNDARY AND ROTATED TO BE  
IN LINE WITH THE SIDE BOUNDARY.  
  
EXISTING WATER METER ON ALLOTMENT 1  
IS TO REMAIN IN ITS CURRENT POSITION.

**PLANNER NOTE:**  
PLEASE INSTRUCT YOUR RATES DEPARTMENT TO PROVIDE  
STREET NUMBERING WITH THE DECISION NOTIFICATION FORM  
AS PER SAPN AND NBN UTILITIES REQUIREMENTS.



# PLAN OF PROPOSED DIVISION

PLAN SA APPLICATION NUMBER  
\*\*\*

SPC DEVELOPMENT NUMBER  
**ID /23**

SUBJECT LAND DETAIL  
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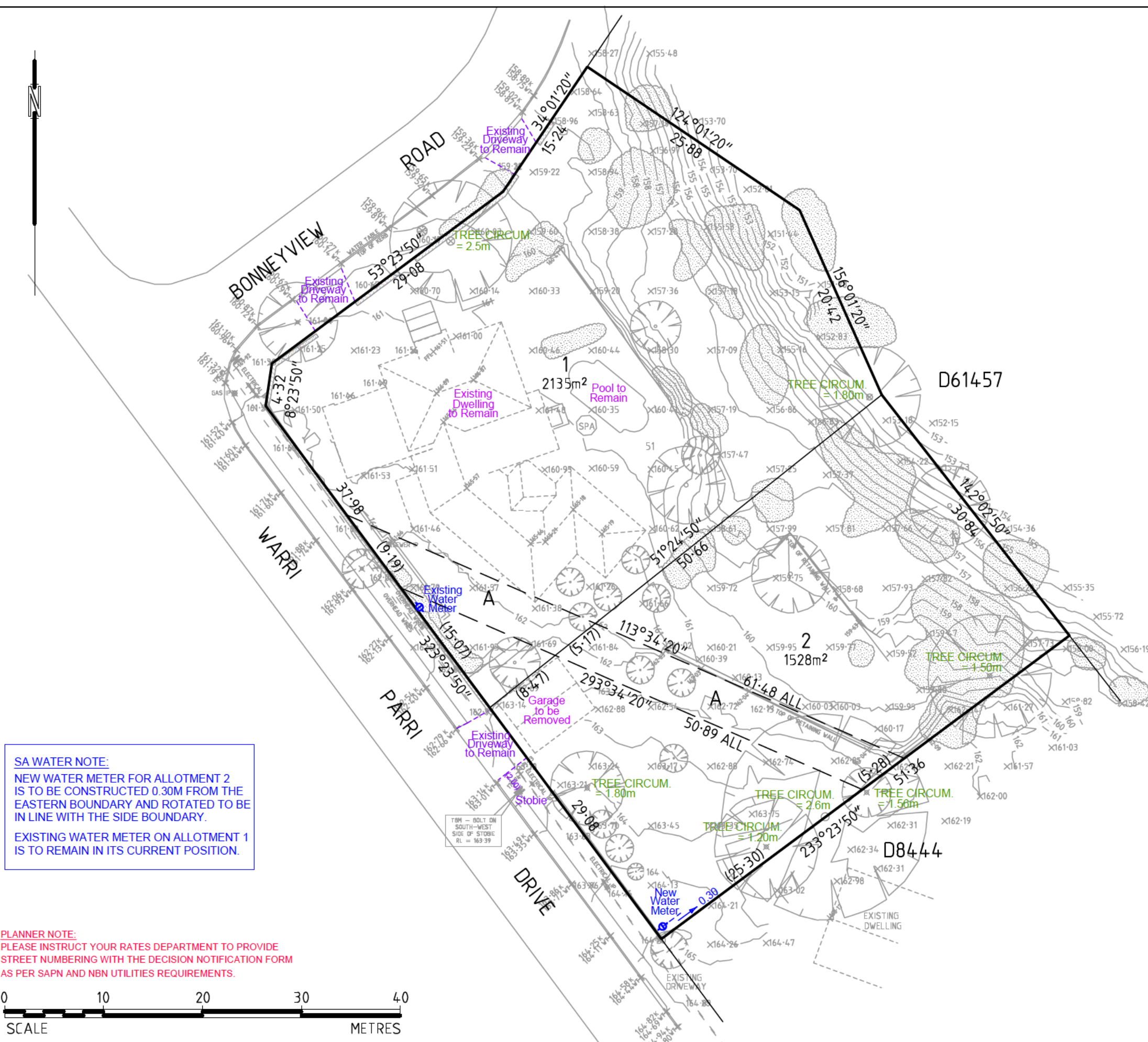
**CAVALLO FOREST**  
LICENSED SURVEYORS

9 George Street  
Hindmarsh SA 5007

(08) 8346 0440

surveying@cavalloforest.com.au

DATE	14/12/2023	FIELD	--	DRAWN	JC
REF No	23-220	CHK	RC	REV	01



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**PLANNER NOTE:**  
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STREET NUMBERING WITH THE DECISION NOTIFICATION FORM  
AS PER SAPN AND NBN UTILITIES REQUIREMENTS.



**Attachment 1: Request for review of decision not to proceed with assessment of a restricted development**




Adelaide Planning + Development Solutions Pty Ltd  
e: [hello@adelaideplanning.com.au](mailto:hello@adelaideplanning.com.au)  
w: [www.adelaideplanning.com.au](http://www.adelaideplanning.com.au)

ABN 55 289 434 618  
Ph: 0499933311  
A: 200a Cross Road. Unley Park 5061

# APPLICATION TO THE STATE PLANNING COMMISSION

## Decision Review Request

Review of a decision of the State Commission Assessment Panel (as delegate of the State Planning Commission) to refuse a restricted development application without proceeding to make an assessment pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016*

<b>Applicant:</b>	ROBERT PHILIP GARDNER AND DIANA GARDNER
<b>Development Number:</b>	23038041
<b>Nature of Development:</b>	Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment
<b>Zone / Sub-zone / Overlay:</b>	Hills Face Zone
<b>Subject Land:</b>	1 BONNEYVIEW RD FLAGSTAFF HILL SA 5159 CT 5563/620 <b>Plan Parcel:</b> D8444 AL51
<b>Date development application lodged:</b>	22/12/2023
<b>Date of decision of the State Commission Assessment Panel (SCAP):</b>	28 Feb 2024
<b>Do you wish to make a verbal presentation (deputation) at the Commission Meeting?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes*  *A request for a deputation must be made in accordance with the State Planning Commission Deputation, External Meeting and Event Policy
<b>Date:</b>	18 March 2023
<b>Signature:</b>	

Submit form to [saplanningcommission@sa.gov.au](mailto:saplanningcommission@sa.gov.au) or via the relevant Application Record on the SA Planning Portal.



**Attachment 2: Planning Statement dated 19 December 2023 prepared by Adelaide  
Planning and Development Solutions and land division plans**



Adelaide Planning + Development Solutions Pty Ltd  
e: [hello@adelaideplanning.com.au](mailto:hello@adelaideplanning.com.au)  
w: [www.adelaideplanning.com.au](http://www.adelaideplanning.com.au)

ABN 55 289 434 618  
Ph: 0499933311  
A: 200a Cross Road. Unley Park 5061

# Planning Statement

LAND DIVISION – ONE ALLOTMENT INTO TWO

(RESTRICTED DEVELOPMENT)

1 BONNEYVIEW ROAD, FLAGSTAF HILL SA 5159



Prepared for Phil Gardner

Adelaide Planning and Development Solutions

Contact Mark Kwiatkowski

Phone 0499 933 311

Email [mark@adelaideplanning.com.au](mailto:mark@adelaideplanning.com.au)



## PLANNING REPORT

Lead Consultant ADELAIDE PLANNING AND DEVELOPMENT SOLUTIONS (APDS)  
In association with CAVALLO FOREST

Project Manager Mark Kwiatkowski  
Ph 0499 933 311  
Email [mark@adelaideplanning.com.au](mailto:mark@adelaideplanning.com.au)

### Document History and Status

Version	Date	Author
Version 1.0	11 December 2023	Mark Kwiatkowski APDS
Version 2.0	19 December 2023	Mark Kwiatkowski APDS

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APDS – [www.adelaideplanning.com.au](http://www.adelaideplanning.com.au)



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ABN 55 289 434 618  
Ph: 0499933311  
A: 200a Cross Road, Unley Park 5061

## 1.0 Application Overview

<b>Applicant</b>	Phil Gardner
<b>Property Address</b>	1 Bonneyview Rd, Flagstaff Hill
<b>Description of land (CT)</b>	CT 5563/620
<b>Site area (total)</b>	3663 square metres
<b>Code Version</b>	2023.15 (published 26 October 2023)
<b>Zone</b>	Hills Face Zone
<b>Sub-zone</b>	NA
<b>Overlays</b>	Airport Building Heights (Regulated) (All structures over 30 metres) Overlay Hazards (Bushfire - High Risk) Overlay Heritage Adjacency Overlay Hazards (Flooding - Evidence Required) Overlay Native Vegetation Overlay Prescribed Wells Area Overlay Regulated and Significant Tree Overlay Traffic Generating Development Overlay Urban Transport Routes Overlay Water Resources Overlay
<b>Existing land use</b>	Residential land
<b>Development proposal</b>	Land Division – one into two
<b>Assessment pathway</b>	Restricted Development, public notification required
<b>Procedural matters - Notification</b>	Yes
<b>Referrals</b>	To be determined by the State Planning Commission
<b>Relevant Authority</b>	State Planning Commission
<b>Primary contact person</b>	Mark Kwiatkowski <a href="mailto:Mark@adelaideplanning.com.au">Mark@adelaideplanning.com.au</a> 0499 933 311



## 2.0 Introduction

This Planning Report has been prepared by Adelaide Planning and Development Solutions (APDS) on behalf of Phil Gardner.

Practice Direction 4 – Restricted and Impact Assessed Development provides guidance on how Restricted Development is to be processed by the State Planning Commission.

This Planning Report has been prepared in accordance with Section 6(1)(a) of Practice Direction 4.

Pursuant to the Planning and Design Code, the subject land is located within the Hills Face Zone.

Table 4 of the Hills Face Zone identifies classes of Development that are classified as Restricted subject to any 'Exclusions':

- *Land division*

Excluding any of the following:

- *Land division that is a boundary realignment*

The proposal does not satisfy the exclusions above and therefore is classified as Restricted Development.

The ERD Court provided the following guidance about non-complying developments in *Reichelt & Ors v City of Charles Sturt & Anor* [2016] SAERDC 38. This approach is also considered to be broadly applicable to the assessment of Restricted Developments:

The fact that a particular development is non-complying means that, procedurally, it is more difficult to gain development consent than it is to obtain a consent to a development which is complying or non-complying.

However, while a non-complying development stands to be assessed differently from a procedural standpoint, the development in other respects stands to be assessed upon its merits as a matter of planning judgment.

In addition, Section 6(5) of Practice Direction 4 states:

The Commission must take into account the relevant provisions of the Planning and Design Code but is not bound by those provisions.

Section 6(5) of Practice Direction 4 goes on to state that the Commission may take into account other legislation/guidelines/documents/matters including "any other document the Commission believes to be of relevant [sic] to the assessment of the particular development application."



In preparing this Statement of support, I can confirm that I have reviewed the proposed land division plan prepared by Cavallo Forest Surveyors along with the most pertinent provisions of the Planning and Design Code, version 2023.15.

I have also inspected the subject land and locality.



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ABN 55 289 434 618  
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A: 200a Cross Road. Unley Park 5061

## 3.0 Subject Land and Locality

### 3.1 Subject Land



**Figure 1 Subject land identified in blue**

The subject land is located at 1 Bonneyview Road, Flagstaff Hill, has a site area of 3663 square metres with a frontage to Bonneyview Road of 44.32 metres, and a secondary frontage to Warri Parri Drive of 67.06 metres.

The site contains a detached dwelling, swimming pool and outbuildings set amongst established mature landscaping. The site has a cross fall from south to north and east to west of up to 12.7 metres, away from Warri Parri Drive, with most of the fall contained in the last third of the allotment's width along the north eastern boundary.

The site has access points on both the primary and secondary frontages, with a primary access provided from Bonneyview Road, and a secondary access to an outbuilding provided on Warri Parri Drive.

Some of the vegetation on the allotment could be considered native vegetation, which includes two large, regulated trees, located at the north western and south eastern sides of the allotment.

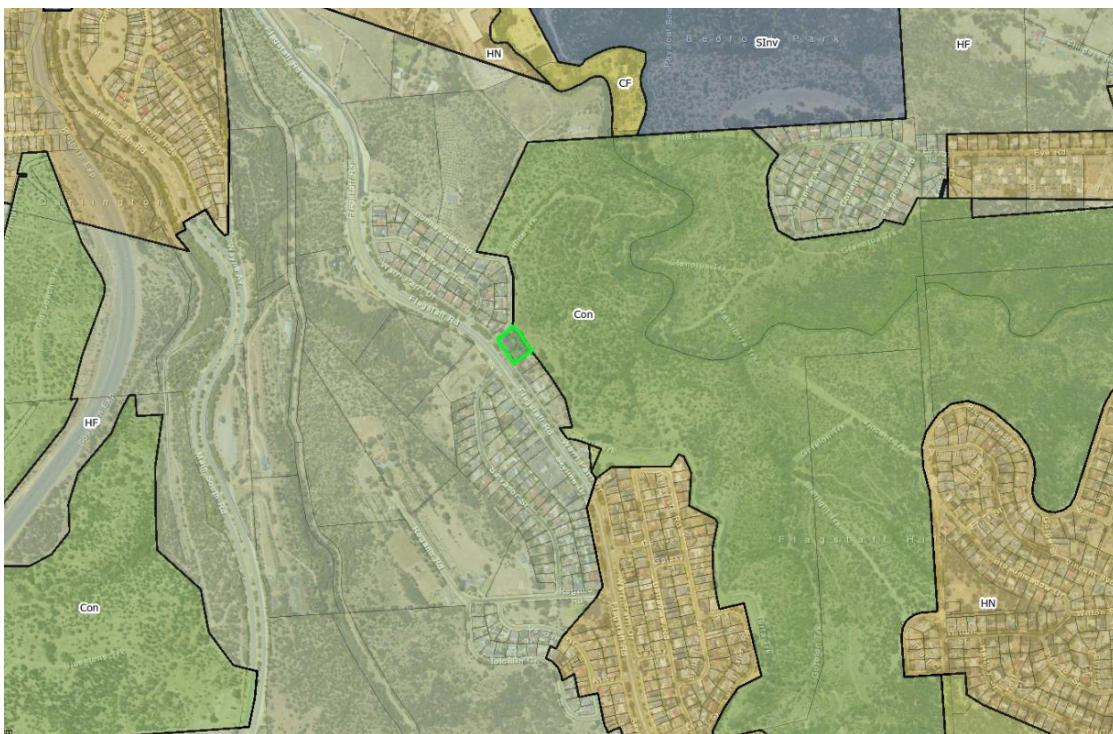


The site has an easement to the Minister for Infrastructure running across the site from east to west. Marked on the plan of division as (A).

The site has good connections to and from metropolitan Adelaide, as it is within close proximity to Flagstaff Road, which feeds into Marion Road and the Southern Expressway.

The subject land has connection capability to all services (power, water, gas, sewer, electricity, and telephone).

### 3.2 Locality



**Figure 2 Locality and Zoning Plan**

The locality consists of both residential land uses within the Hills Face Zone and Hills Neighbourhood Zone to the south and south east of the subject land, surrounded by land located within a Conservation Zone.

Dwellings are typically single storey in height, on allotments ranging between 950m<sup>2</sup> and 1600m<sup>2</sup> in area with a regular allotment pattern of even, consistent street frontages. Of importance is the four dwellings to the south of the subject land, that all have allotment frontages similar to that proposed as part of this application.

Most of the dwellings are located on the crest of the ridge, which minimises their impact to the backdrop of metropolitan Adelaide, given their limited visibility.



## 4.0 Planning Assessment

As aforementioned, the subject land is contained within the Hills Face Zone.

### 4.1 Nature of Development

The application seeks a Land Division – one into two allotments for residential purposes which in this instance is Restricted Development at 1 Bonneyview Road, Flagstaff Hill.

More specifically, the proposal includes:

- Allotments 1 maintaining the existing single storey dwelling (2135m<sup>2</sup> metres in area)
- Allotment 2 new residential allotment (1528 m<sup>2</sup>)
- No works (including the removal of any native vegetation or earthworks) are proposed to be undertaken in association with the land division.

Pursuant to the Planning and Design Code (Version 2023.15) the subject land is located within the Hills Face Zone.

Table 4 of the Hills Face Zone identifies classes of Development that are classified as Restricted subject to any 'Exclusions':

- *Land division*

Excluding any of the following:

- *land division that is a boundary realignment*

The proposal does not satisfy the exclusions above and therefore is a Restricted Development.

I have also inspected the subject land and locality.

In my view, whilst being Restricted Development the proposal is acceptable when balanced against all the relevant provisions of the Planning and Design Code, the adjoining land uses abutting the subject land and the intent of the relevant provisions of the Zone.

This will be explored within the content of this preliminary report.



## 4.2 Planning and Design Code Assessment.

We have considered the most relevant provisions of the Zone with respect to their intent as well as the relevant Overlay and General Development Policies. The following Code policy applies:

- Hills Face Zone

The following Overlays apply

- Airport Building Heights (Regulated) (All structures over 30 metres) Overlay
- Hazards (Bushfire - High Risk) Overlay
- Heritage Adjacency Overlay
- Hazards (Flooding - Evidence Required) Overlay
- Native Vegetation Overlay
- Prescribed Wells Area Overlay
- Regulated and Significant Tree Overlay
- Traffic Generating Development Overlay
- Urban Transport Routes Overlay
- Water Resources Overlay

No TNV's apply to the land.

No Subzone policy applies.

As noted previously, the subject land is located within the Hills Face Zone, which will form the key focus of the assessment.

The Hills Face Zone does not envisage additional allotments to be created, unless certain exceptions are satisfied which the proposal does not meet.

Therefore, given the above Restricted Development trigger, the primary consideration for this proposal is the potential impact on the Zone's Objectives, which seek to preserve and enhance the natural character of the zone, in order to provide a natural backdrop to the Adelaide Plain in contrast to the urban areas; preserve biodiversity and restore locally indigenous vegetation; provide opportunity for passive recreation in an area of natural character close to the metropolitan area, and provide part of the buffer area between urban areas and the western slopes of the Mount Lofty Ranges.

A further and more detailed assessment of all of the relevant provisions of the Code will be undertaken if the application is determined to have sufficient merit to proceed with a further assessment, however the following brief assessment will provide the merits of the proposal to proceed to the next stage of assessment.



## 4.2.1 Hills Face Zone

The Performance Outcomes of the Hills Face Zone seek to maintain low-intensity, low scale activities that complement the natural, rural and scenic qualities of the hills face landscape. This includes low intensity farming, and low scale residential land uses.

The subject land is approximately three times the size of typical residential allotments within the locality (to the north) and 2.5 times the size of adjacent allotments fronting Warri Parri Drive to the south of the subject land. In this respect, the existing allotment is inconsistent with the predominant land division pattern, and is larger than other regular allotments within the zone; neither large enough to maintain the intent of the Hills Face Zone (as a scenic backdrop to metropolitan Adelaide / preserve biodiversity and restore locally indigenous vegetation and fauna or provide a passive recreation area), nor small enough to be efficiently used as a single residential allotment, given the maintenance requirements of a 3663m<sup>2</sup> allotment. Furthermore, the allotment is over the highest point of the ridge (as detailed by the site survey) and presents no visibility as viewed from metropolitan Adelaide. As a result, the potential subdivision of the allotment and construction of a future dwelling presents no impact to the natural backdrop to the Adelaide Plain.

It is considered that the proposed land division will meet the intent of the Objectives of the Hills Face Zone, in that it will provide a residential allotment of a similar size to adjacent residential allotments and allows for a reasonably sized single storey dwelling to be established within a landscaped setting, consistent with the low scale residential development found in the locality and anticipated within the zone.

While it is noted that there will be a change to the appearance of the land when viewed from Flagstaff Road, Bonneyview Road and Warri Parri Drive, that visual change will not be at odds with the surrounding locality, given the predominant allotment pattern of regular allotments fronting Warri Parri Drive to the south of the subject land.

Given that existing vehicle access is provided to both proposed allotments, and the close proximity of services along Warri Parri Drive, the proposed land division will not create any unreasonable imposition for the provision of services on the community, rather the proposal will be able to connect to existing services conveniently placed in close proximity to the subject land.

The proposal will not adversely impact on the viability of the land to the west within the Hills Face Zone, nor create a precedent for future land division to occur on adjacent sites, given the unique circumstances occurring on the subject land, which do not occur elsewhere within the locality.

A further and more detailed assessment will be undertaken if the application is determined to have sufficient merit to proceed with a further assessment.



## 4.2.2 Heritage Adjacency

The subject site adjoins the Sturt Gorge Glaciation Geological Site, within Sturt Gorge Recreation Park (5235), a state heritage listed place, approximately 1.4 kilometres to the east. Given the significant distance from the site, the geological site, its setting and its surrounds is not considered to be impacted by the land division proposal.

## 4.2.3 Flooding

The proposed allotment is located within a Hazards (Flooding – Evidence Required) Overlay, which appears to be broadly applied to the surrounding locality with the exception of land within the adjacent Conservation Zone. Given the sites location on top of the hill, with topography that slopes away from the street frontage, there is limited potential for flooding to occur on site, and any potential for flooding can be resolved by either diverting floodwater back towards Warri Parri Drive further north along the site frontage, given the 1.78 metre fall along the sites frontage, or by providing a suitable freeboard level for any future dwelling, as outlined within the relevant Overlay, which can be demonstrated on indicative building footprint, and confirmed by a suitably qualified engineer at the next part of the assessment process, should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.

## 4.2.4 Bushfire Risk

The site is located within a Hazards (Bushfire - High Risk) Overlay, which requires a referral to the CFS as part of the assessment process. Due to the size and location of the proposed allotment adjacent a sealed all weather public road, much of the policy contained within the Overlay is able to be resolved relatively easily, with regard to evacuation and emergency vehicle access. Due to the larger size of the allotment's additional requirements (including rainwater storage) are able to be catered for on site.

It is also worth noting that much of the vegetation on the proposed allotment 2 (including the regulated tree) falls within the 20 metre buffer zone for both the existing dwelling on site and the adjacent dwelling to the south, which enables the vegetation to be cleared in accordance with the *Native Vegetation Act* and *PDI Regulations Schedule 4 part (1) (b)*.



#### 4.2.5 Land Division

The proposed configuration of the allotments has been designed to facilitate appropriate access to Warri Parri Drive while allowing for a suitable sized allotment to be created, consistent with adjacent allotments to the south, and large enough for a modern single storey home to be constructed.

While there is some mature vegetation (including regulated trees) on the subject land, as detailed above, the proposal does not significantly reduce the protections that these areas are afforded, as the likely location for a new dwelling is within the 20 metre buffer zones of the existing dwellings both on the subject land and adjacent allotments.

Should the State Planning Commission elect to proceed with a further assessment, an indicative dwelling footprint will be provided as part of the documentation, demonstrating the feasibility of the allotment to support the construction of a new dwelling, while meeting the requirements of the Zone, Overlays and General Development Policies, including those relating to Land Division.

The future allotments will be connected to all services and a more detailed assessment in relation to this will be provided at the next stage of assessment.

The proposal will not adversely impact on the viability of conservation land to the east on the adjacent side boundary, purposes and will complement the existing residential character of the locality to the north and south-west.

Again, a further and more detailed assessment will be undertaken if the application is determined to have sufficient merit to proceed with a further assessment.

#### 4.2.6 Interface between Land Uses

The interface policies seek for new development to protect existing land uses and also ensure existing land uses do not adversely impact on proposed development. Given the residential nature of the locality, and conservation land uses on adjacent land (to the east), the proposal is not considered to present any interface concerns beyond that typically experienced within a residential type of zone/locality. Should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment this issue will be thoroughly investigated.



## 4.2.8 Transportation, Access, and Parking

The speed limit on Bonneyview Road and is limited to 50 km/hr along the subject site frontage, and the proposed allotments new front boundary. Given that the proposed allotment has an existing vehicle access to Warri Parri Drive, it is not considered that any new dwelling on the proposed allotment will have difficulty meeting the movement, access and parking requirements of the code. If required, independent traffic advice can be obtained, should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.

## 5.0 Social, Economic and Environmental Effects

Section 6(1)(a) vi of Practice Direction 4 requires an assessment of the expected social, economic, and environmental effects of the development on its locality.

### 5.1 Economic

The proposal is unlikely to create any significant economic activity.

The land is currently used for residential purposes in a similar manner to land in the wider locality. The proposal does not prejudice the continuation of adjacent or existing land uses.

The proposed allotments will connect to the existing public infrastructure, and accordingly it is considered that the proposal will have minor economic effects during the construction process and ongoing economic benefits to the surrounding commercial precincts with additional residents purchasing from local shops.

### 5.2 Social

The proposal will provide an additional allotment within the locality providing more affordable housing options, while increasing the efficiency of public services.

There are no aspects of the proposal that are likely to cause any further social effects.

### 5.3 Environmental

The proposal will have little impact on the environmental condition of the land and beyond.

The proposed land division does not create the need to remove any vegetation for the creation of the allotments or to access to the site.

There will be no further impact in terms of waste management the future dwelling will be connected to the existing waste system.

The division will not result in the loss of any open space or recreational paths which traverse the land.

The proposal facilitates the improved management and development of the land.



The proposal does not prejudice the continuation of adjacent or existing land uses.

The proposal does not involve the removal of native vegetation.

The proposal does not increase the risk of landslip/erosion.

The proposal does not cause or increase noise, fumes, odour, or traffic impacts.

The proposal does not unreasonably impact upon the natural appearance and character of the area.

Accordingly, the proposal is not considered to cause any adverse environmental impacts.

In summary, the proposed land division will not create negative effects whilst providing some economic, social, and environmental benefits.

## 6.0 Conclusion

The application seeks a Land Division – one into two which in this instance is Restricted Development at 1 Bonneyview Road, Flagstaff Hill.

It is considered that whilst the proposal is creating an additional allotment within the Hills Face Zone, the proposed division is considered appropriate in that the proposed allotment size is consistent with existing allotments found within both the immediate and wider locality, while presenting minimal imposition on the community for the provision of services, given they already exist within the road reserve adjacent the allotment frontage.

The proposal will have an acceptable impact on the amenity of the adjoining residential development and will not adversely impact future development of the locality and/or detrimentally impact upon any surrounding development. Should the application be considered suitable for a further assessment, the provision of a detailed planning report with additional analysis of the impacts of the proposal will be provided to determine the development's suitability.

It is considered that the proposal is appropriate from a transportation and access perspective given the proposed allotments existing vehicle access arrangement, which is compliant with current code requirements and is able to be used by any future dwelling on the proposed allotment. An indicative dwelling footprint and levels will be provided, demonstrating the suitability of the proposal by meeting the relevant Overlays, Zone provisions and General Development Policies of the Code related to flooding, interface between land uses, setbacks, site coverage, landscaping and private open space should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.



After careful consideration of the proposed development and having regard to the relevant provisions of the Planning and Design Code, it is my opinion, that the application represents an appropriate form of development in the context of the Hills Face Zone (Code version 2023.15) and the unique circumstances of the subject land and locality.

For all the reasons outlined in this planning report, we consider the proposed development to satisfy the pertinent Code provisions and Practice Direction 4 to warrant a further full and proper assessment of the proposal in accordance with Section 5(2)(e) of Practice Direction 4.

We look forward to your support to proceed to assess this proposal.

If you have any further questions regarding this application or require additional information, please contact me on [REDACTED]

Yours Sincerely,



**Mark Kwiatkowski MPIA CPP**

Director + Principal Urban Planner + Accredited Professional Level 1 – 4

**Adelaide Planning & Development Solutions Pty Ltd - Town Planning Specialists - Planning Private Certifiers**



**Attachment 3: Decision Notification form.**



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w: [www.adelaideplanning.com.au](http://www.adelaideplanning.com.au)

ABN 55 289 434 618  
Ph: 0499933311  
A: 200a Cross Road. Unley Park 5061

## DECISION NOTIFICATION FORM

*Section 126(1) of the Planning, Development and Infrastructure Act 2016*

### TO THE APPLICANT(S):

Name: ROBERT PHILIP GARDNER AND DIANA GARDNER
Postal address: 9 GEORGE STREET HINDMARSH SA 5007
Email: surveying@cavalloforest.com.au

### IN REGARD TO:

Development application no.: 23038041	Lodged on: 11 Jan 2024
Nature of proposed development: Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment	

### LOCATION OF PROPOSED DEVELOPMENT:

<b>Location reference:</b> 1 BONNEYVIEW RD FLAGSTAFF HILL SA 5159		
<b>Title ref.:</b> CT 5563/620	<b>Plan Parcel:</b> D8444 AL51	<b>Council:</b> CITY OF ONKAPARINGA

### DECISION:

Decision type	Decision (granted/refused)	Decision date	No. of conditions	No. of reserved matters	Entity responsible for decision (relevant authority)
Planning Consent	Refused	28 Feb 2024			State Planning Commission
Land Division Consent	Refused	28 Feb 2024			State Planning Commission
Development Approval - Planning Consent; Land Division Consent					City of Onkaparinga

<b>FROM THE RELEVANT AUTHORITY:</b> Restricted - Section 94(1)(b) at State Planning Commission; Restricted - Section 94(1)(b) at State Planning Commission
Date: 1 Mar 2024

### REFUSAL REASONS

#### Planning Consent

There is no reasonable prospect of a favourable assessment of the proposed development having consideration of the Hills Face Zone, specifically:

- a. The proposed additional allotment for future residential development is incompatible with the intent to limit development in this zone to low-intensity agricultural activities and public and private open space; and
- b. The future increase of development on the site through the division of the land will not preserve, enhance and re-establish the natural character of the Hills Face Zone.

This form constitutes the form of a decision notification under section 126(1) of the Planning, Development and Infrastructure Act 2016, as determined by the Minister for Planning for the Purposes of regulation 57(1) of the Planning, Development and Infrastructure (General) Regulations 2017. Published: 7 July 2022.



c. Residential development will not be limited to maintain a pleasant natural and rural character and amenity.

## ADVISORY NOTES

### Planning Consent

If you are aggrieved by this decision, you have a right to seek a review of this decision by the State Planning Commission (the Commission). An application for review must be made in a manner and form determined by the Commission and must be made within **one (1) month** of this notice. The prescribed form is contained in Attachment 1 of Practice Direction 4.

Further information, including the appropriate form and submission instructions, can be found on the PlanSA website under the Decisions and Appeals Guide section.

### Land Division Consent

None

## CONTACT DETAILS OF CONSENT AUTHORITIES

Name: State Planning Commission	Type of consent: Planning and Land Division
Telephone: +611800752664	Email: spcapplications@sa.gov.au
Postal address: GPO Box 1815, ADELAIDE SA 5001	

# PLAN OF PROPOSED DIVISION

PLAN SA APPLICATION NUMBER  
\*\*\*

SPC DEVELOPMENT NUMBER  
**ID /23**

SUBJECT LAND DETAIL  
ALLOTMENT 51 IN DP 8444  
HUNDRED OF NOARLUNGA

IN THE AREA NAMED  
**FLAGSTAFF HILL**

1 BONNEYVIEW ROAD  
FLAGSTAFF HILL SA 5159

TITLE REFERENCES  
C.T. VOL. 5563 FOL. 620  
/MAP REFERENCE: 6627/01/P

TORRENS DIVISION

TOTAL SITE AREA: 3663m<sup>2</sup>  
NO. OF EXISTING ALLOTMENTS: 1  
NO. OF PROPOSED ALLOTMENTS: 2  
NO. OF ADDITIONAL ALLOTMENTS: 1

**COUNCIL: ONKAPARINGA**

ANNOTATIONS / EASEMENTS

EXISTING DWELLING & STRUCTURES  
ON ALLOTMENT 1 ARE TO REMAIN.

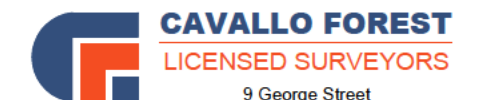
ALL STRUCTURES ON ALLOTMENT 2  
TO BE REMOVED AND SITE CLEARED.

DETAIL AND LEVELS SURVEY WAS  
PERFORMED OVER THE SUBJECT  
LAND AND COUNCIL VERGE.

EXISTING EASEMENTS

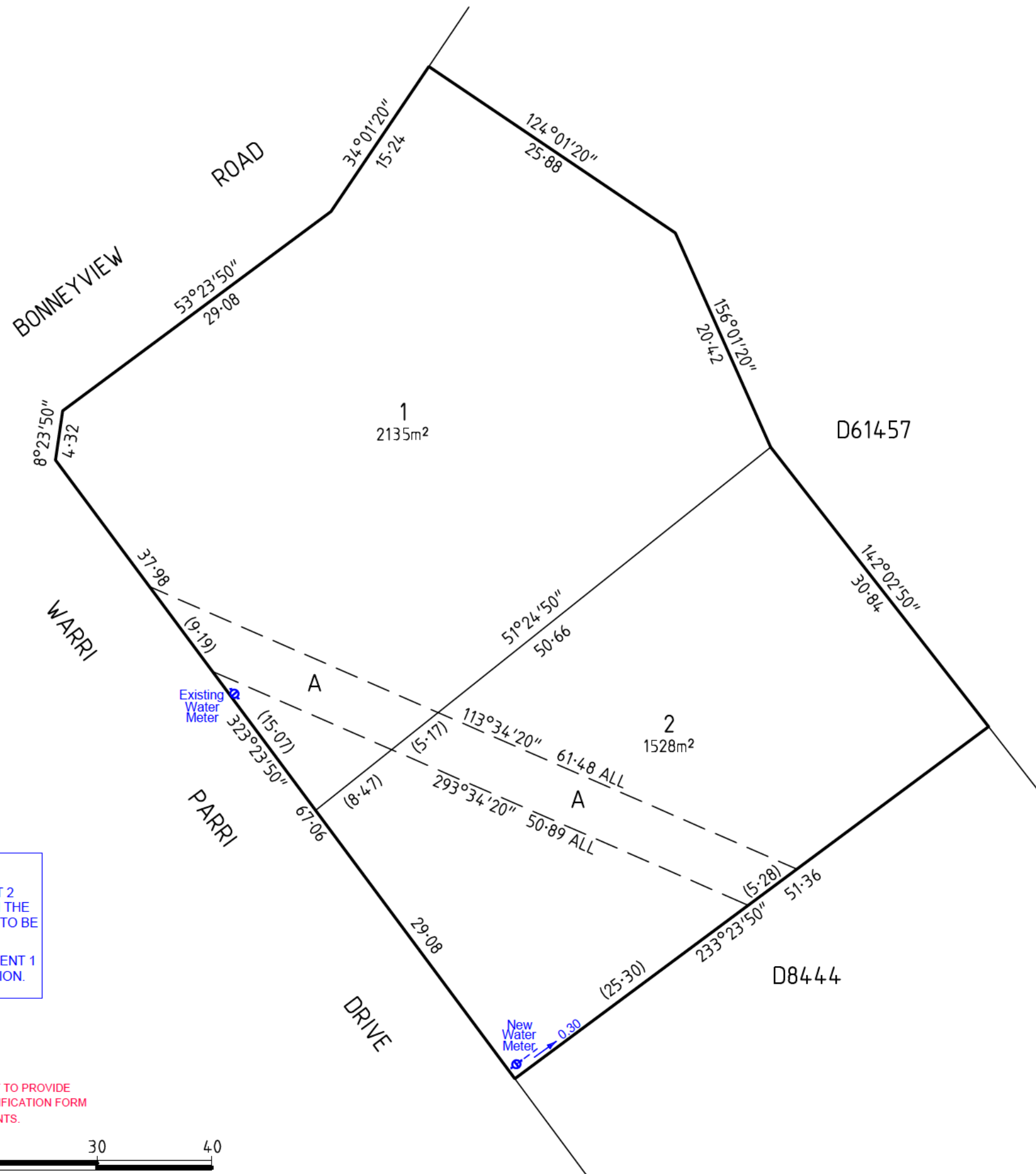
PORTION OF ALLOTMENTS 1 & 2 MARKED A  
IS SUBJECT TO EASEMENT(S) TO THE  
MINISTER FOR INFRASTRUCTURE (T 2886116).

ALL DATA IS APPROX ONLY  
SUBJECT TO SURVEY AND FINAL PLAN  
ALL DIMENSIONS IN METRES. DO NOT SCALE DRAWING.



9 George Street  
Hindmarsh SA 5007  
(08) 8346 0440  
surveying@cavalloforest.com.au

DATE	14/12/2023	FIELD	--	DRAWN	JC
REF No	23-220	CHK	RC	REV	01



**SA WATER NOTE:**  
NEW WATER METER FOR ALLOTMENT 2  
IS TO BE CONSTRUCTED 0.30M FROM THE  
EASTERN BOUNDARY AND ROTATED TO BE  
IN LINE WITH THE SIDE BOUNDARY.  
  
EXISTING WATER METER ON ALLOTMENT 1  
IS TO REMAIN IN ITS CURRENT POSITION.

**PLANNER NOTE:**  
PLEASE INSTRUCT YOUR RATES DEPARTMENT TO PROVIDE  
STREET NUMBERING WITH THE DECISION NOTIFICATION FORM  
AS PER SAPN AND NBN UTILITIES REQUIREMENTS.



# PLAN OF PROPOSED DIVISION

PLAN SA APPLICATION NUMBER  
\*\*\*

SPC DEVELOPMENT NUMBER  
**ID /23**

SUBJECT LAND DETAIL  
ALLOTMENT 51 IN DP 8444  
HUNDRED OF NOARLUNGA

IN THE AREA NAMED  
**FLAGSTAFF HILL**

1 BONNEYVIEW ROAD  
FLAGSTAFF HILL SA 5159

TITLE REFERENCES  
C.T. VOL. 5563 FOL. 620  
/MAP REFERENCE: 6627/01/P

TORRENS DIVISION

TOTAL SITE AREA: 3663m<sup>2</sup>  
NO. OF EXISTING ALLOTMENTS: 1  
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NO. OF ADDITIONAL ALLOTMENTS: 1

**COUNCIL: ONKAPARINGA**

ANNOTATIONS / EASEMENTS

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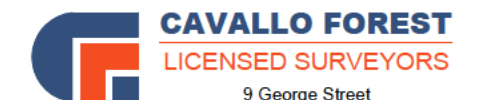
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ALL DIMENSIONS IN METRES. DO NOT SCALE DRAWING.



**CAVALLO FOREST**

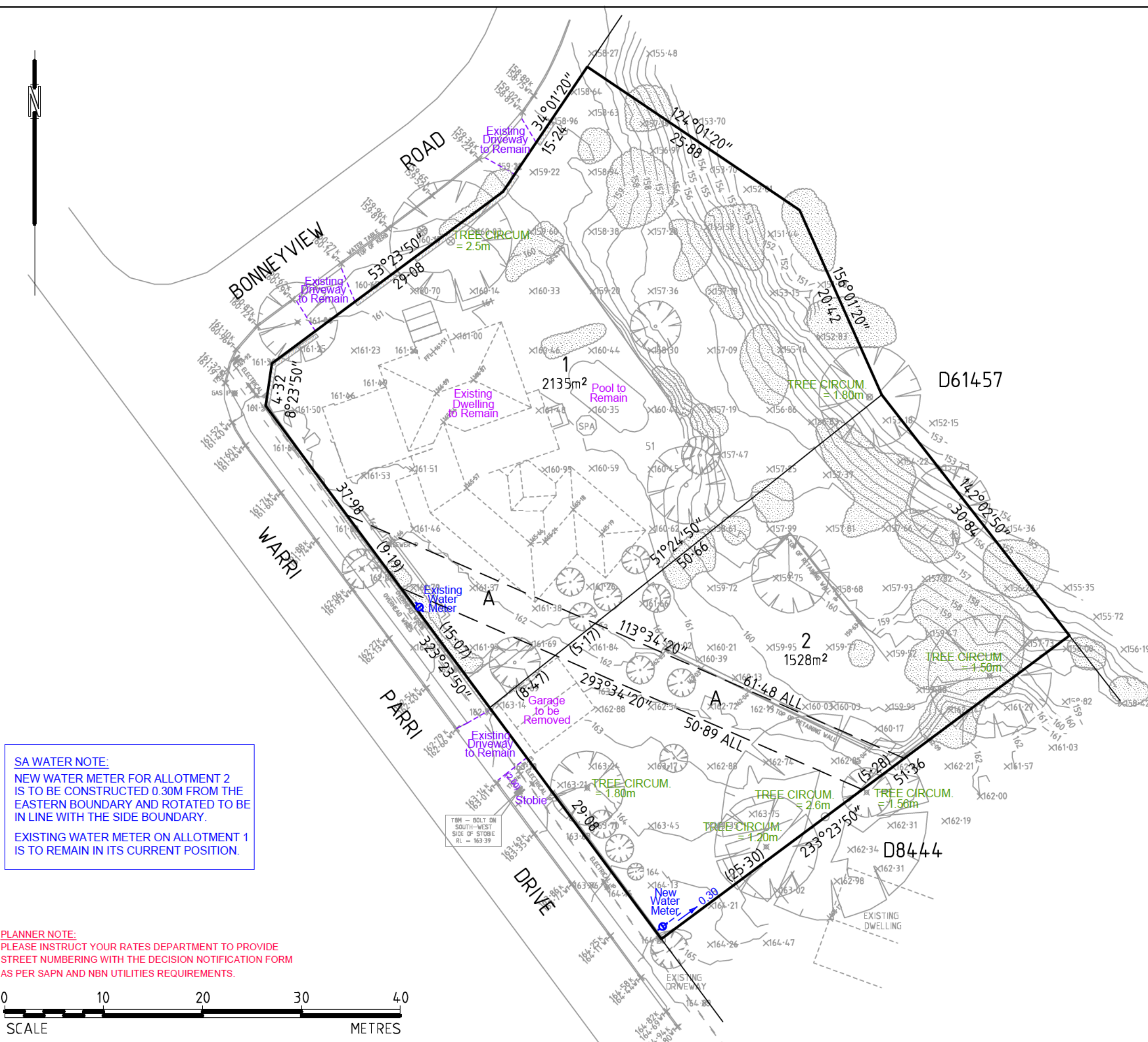
LICENSED SURVEYORS

9 George Street  
Hindmarsh SA 5007

(08) 8346 0440

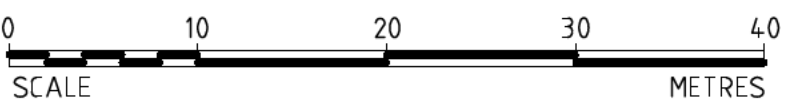
surveying@cavalloforest.com.au

DATE	14/12/2023	FIELD	--	DRAWN	JC
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**PLANNER NOTE:**  
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# Planning Statement

LAND DIVISION – ONE ALLOTMENT INTO TWO

(RESTRICTED DEVELOPMENT)

1 BONNEYVIEW ROAD, FLAGSTAF HILL SA 5159



Town Planning  
Specialists  
Planning Private Certifiers

Prepared for Phil Gardner

Adelaide Planning and Development Solutions

Contact Mark Kwiatkowski

Phone [REDACTED]

Email [REDACTED]



## PLANNING REPORT

Lead Consultant

ADELAIDE PLANNING AND DEVELOPMENT SOLUTIONS (APDS)

In association with

CAVALLO FOREST

Project Manager

Mark Kwiatkowski

Ph [REDACTED]

Email [REDACTED]

### Document History and Status

Version	Date	Author
Version 1.0	11 December 2023	Mark Kwiatkowski APDS
Version 2.0	19 December 2023	Mark Kwiatkowski APDS

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APDS – [www.adelaideplanning.com.au](http://www.adelaideplanning.com.au)



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Ph: 0499933311  
A: 200a Cross Road, Unley Park 5061

## 1.0 Application Overview

<b>Applicant</b>	Phil Gardner
<b>Property Address</b>	1 Bonneyview Rd, Flagstaff Hill
<b>Description of land (CT)</b>	CT 5563/620
<b>Site area (total)</b>	3663 square metres
<b>Code Version</b>	2023.15 (published 26 October 2023)
<b>Zone</b>	Hills Face Zone
<b>Sub-zone</b>	NA
<b>Overlays</b>	Airport Building Heights (Regulated) (All structures over 30 metres) Overlay Hazards (Bushfire - High Risk) Overlay Heritage Adjacency Overlay Hazards (Flooding - Evidence Required) Overlay Native Vegetation Overlay Prescribed Wells Area Overlay Regulated and Significant Tree Overlay Traffic Generating Development Overlay Urban Transport Routes Overlay Water Resources Overlay
<b>Existing land use</b>	Residential land
<b>Development proposal</b>	Land Division – one into two
<b>Assessment pathway</b>	Restricted Development, public notification required
<b>Procedural matters - Notification</b>	Yes
<b>Referrals</b>	To be determined by the State Planning Commission
<b>Relevant Authority</b>	State Planning Commission
<b>Primary contact person</b>	Mark Kwiatkowski [REDACTED]



## 2.0 Introduction

This Planning Report has been prepared by Adelaide Planning and Development Solutions (APDS) on behalf of Phil Gardner.

Practice Direction 4 – Restricted and Impact Assessed Development provides guidance on how Restricted Development is to be processed by the State Planning Commission.

This Planning Report has been prepared in accordance with Section 6(1)(a) of Practice Direction 4.

Pursuant to the Planning and Design Code, the subject land is located within the Hills Face Zone.

Table 4 of the Hills Face Zone identifies classes of Development that are classified as Restricted subject to any 'Exclusions':

- *Land division*

Excluding any of the following:

- *Land division that is a boundary realignment*

The proposal does not satisfy the exclusions above and therefore is classified as Restricted Development.

The ERD Court provided the following guidance about non-complying developments in *Reichelt & Ors v City of Charles Sturt & Anor* [2016] SAERDC 38. This approach is also considered to be broadly applicable to the assessment of Restricted Developments:

The fact that a particular development is non-complying means that, procedurally, it is more difficult to gain development consent than it is to obtain a consent to a development which is complying or non-complying.

However, while a non-complying development stands to be assessed differently from a procedural standpoint, the development in other respects stands to be assessed upon its merits as a matter of planning judgment.

In addition, Section 6(5) of Practice Direction 4 states:

The Commission must take into account the relevant provisions of the Planning and Design Code but is not bound by those provisions.

Section 6(5) of Practice Direction 4 goes on to state that the Commission may take into account other legislation/guidelines/documents/matters including "any other document the Commission believes to be of relevant [sic] to the assessment of the particular development application."



In preparing this Statement of support, I can confirm that I have reviewed the proposed land division plan prepared by Cavallo Forest Surveyors along with the most pertinent provisions of the Planning and Design Code, version 2023.15.

I have also inspected the subject land and locality.



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w: [www.adelaideplanning.com.au](http://www.adelaideplanning.com.au)

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## 3.0 Subject Land and Locality

### 3.1 Subject Land



**Figure 1 Subject land identified in blue**

The subject land is located at 1 Bonneyview Road, Flagstaff Hill, has a site area of 3663 square metres with a frontage to Bonneyview Road of 44.32 metres, and a secondary frontage to Warri Parri Drive of 67.06 metres.

The site contains a detached dwelling, swimming pool and outbuildings set amongst established mature landscaping. The site has a cross fall from south to north and east to west of up to 12.7 metres, away from Warri Parri Drive, with most of the fall contained in the last third of the allotment's width along the north eastern boundary.

The site has access points on both the primary and secondary frontages, with a primary access provided from Bonneyview Road, and a secondary access to an outbuilding provided on Warri Parri Drive.

Some of the vegetation on the allotment could be considered native vegetation, which includes two large, regulated trees, located at the north western and south eastern sides of the allotment.

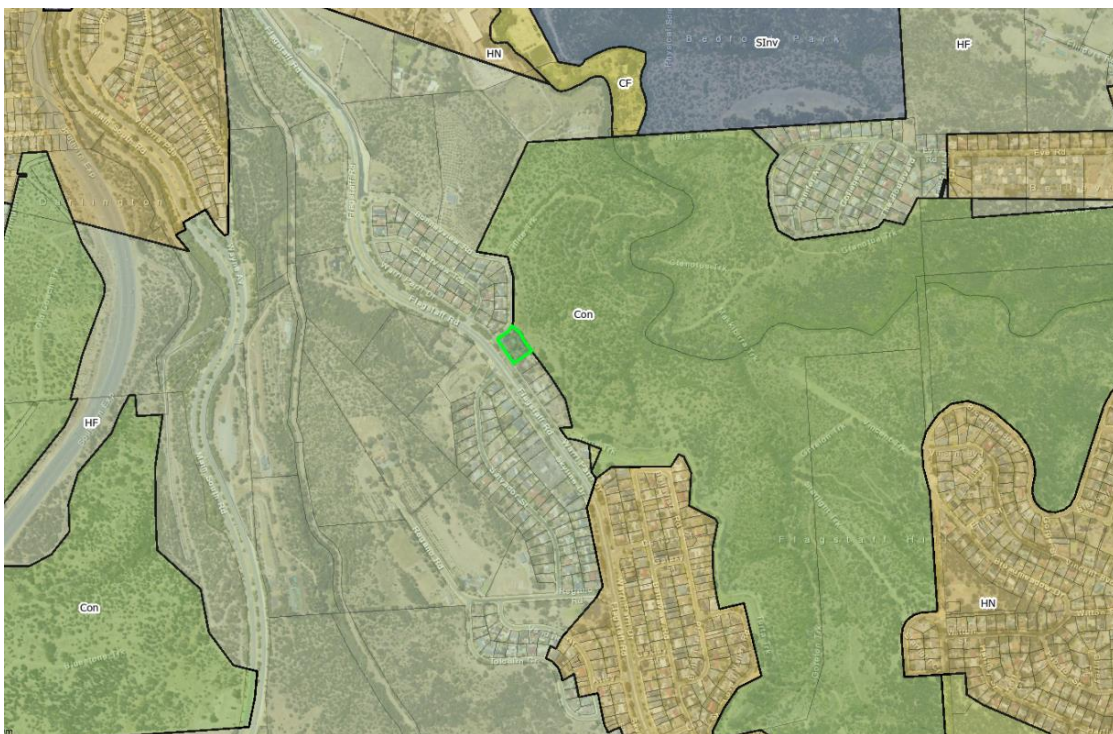


The site has an easement to the Minister for Infrastructure running across the site from east to west. Marked on the plan of division as (A).

The site has good connections to and from metropolitan Adelaide, as it is within close proximity to Flagstaff Road, which feeds into Marion Road and the Southern Expressway.

The subject land has connection capability to all services (power, water, gas, sewer, electricity, and telephone).

### 3.2 Locality



**Figure 2 Locality and Zoning Plan**

The locality consists of both residential land uses within the Hills Face Zone and Hills Neighbourhood Zone to the south and south east of the subject land, surrounded by land located within a Conservation Zone.

Dwellings are typically single storey in height, on allotments ranging between 950m<sup>2</sup> and 1600m<sup>2</sup> in area with a regular allotment pattern of even, consistent street frontages. Of importance is the four dwellings to the south of the subject land, that all have allotment frontages similar to that proposed as part of this application.

Most of the dwellings are located on the crest of the ridge, which minimises their impact to the backdrop of metropolitan Adelaide, given their limited visibility.



## 4.0 Planning Assessment

As aforementioned, the subject land is contained within the Hills Face Zone.

### 4.1 Nature of Development

The application seeks a Land Division – one into two allotments for residential purposes which in this instance is Restricted Development at 1 Bonneyview Road, Flagstaff Hill.

More specifically, the proposal includes:

- Allotments 1 maintaining the existing single storey dwelling (2135m<sup>2</sup> metres in area)
- Allotment 2 new residential allotment (1528 m<sup>2</sup>)
- No works (including the removal of any native vegetation or earthworks) are proposed to be undertaken in association with the land division.

Pursuant to the Planning and Design Code (Version 2023.15) the subject land is located within the Hills Face Zone.

Table 4 of the Hills Face Zone identifies classes of Development that are classified as Restricted subject to any 'Exclusions':

- *Land division*

Excluding any of the following:

- *land division that is a boundary realignment*

The proposal does not satisfy the exclusions above and therefore is a Restricted Development.

I have also inspected the subject land and locality.

In my view, whilst being Restricted Development the proposal is acceptable when balanced against all the relevant provisions of the Planning and Design Code, the adjoining land uses abutting the subject land and the intent of the relevant provisions of the Zone.

This will be explored within the content of this preliminary report.



## 4.2 Planning and Design Code Assessment.

We have considered the most relevant provisions of the Zone with respect to their intent as well as the relevant Overlay and General Development Policies. The following Code policy applies:

- Hills Face Zone

The following Overlays apply

- Airport Building Heights (Regulated) (All structures over 30 metres) Overlay
- Hazards (Bushfire - High Risk) Overlay
- Heritage Adjacency Overlay
- Hazards (Flooding - Evidence Required) Overlay
- Native Vegetation Overlay
- Prescribed Wells Area Overlay
- Regulated and Significant Tree Overlay
- Traffic Generating Development Overlay
- Urban Transport Routes Overlay
- Water Resources Overlay

No TNV's apply to the land.

No Subzone policy applies.

As noted previously, the subject land is located within the Hills Face Zone, which will form the key focus of the assessment.

The Hills Face Zone does not envisage additional allotments to be created, unless certain exceptions are satisfied which the proposal does not meet.

Therefore, given the above Restricted Development trigger, the primary consideration for this proposal is the potential impact on the Zone's Objectives, which seek to preserve and enhance the natural character of the zone, in order to provide a natural backdrop to the Adelaide Plain in contrast to the urban areas; preserve biodiversity and restore locally indigenous vegetation; provide opportunity for passive recreation in an area of natural character close to the metropolitan area, and provide part of the buffer area between urban areas and the western slopes of the Mount Lofty Ranges.

A further and more detailed assessment of all of the relevant provisions of the Code will be undertaken if the application is determined to have sufficient merit to proceed with a further assessment, however the following brief assessment will provide the merits of the proposal to proceed to the next stage of assessment.



## 4.2.1 Hills Face Zone

The Performance Outcomes of the Hills Face Zone seek to maintain low-intensity, low scale activities that complement the natural, rural and scenic qualities of the hills face landscape. This includes low intensity farming, and low scale residential land uses.

The subject land is approximately three times the size of typical residential allotments within the locality (to the north) and 2.5 times the size of adjacent allotments fronting Warri Parri Drive to the south of the subject land. In this respect, the existing allotment is inconsistent with the predominant land division pattern, and is larger than other regular allotments within the zone; neither large enough to maintain the intent of the Hills Face Zone (as a scenic backdrop to metropolitan Adelaide / preserve biodiversity and restore locally indigenous vegetation and fauna or provide a passive recreation area), nor small enough to be efficiently used as a single residential allotment, given the maintenance requirements of a 3663m<sup>2</sup> allotment. Furthermore, the allotment is over the highest point of the ridge (as detailed by the site survey) and presents no visibility as viewed from metropolitan Adelaide. As a result, the potential subdivision of the allotment and construction of a future dwelling presents no impact to the natural backdrop to the Adelaide Plain.

It is considered that the proposed land division will meet the intent of the Objectives of the Hills Face Zone, in that it will provide a residential allotment of a similar size to adjacent residential allotments and allows for a reasonably sized single storey dwelling to be established within a landscaped setting, consistent with the low scale residential development found in the locality and anticipated within the zone.

While it is noted that there will be a change to the appearance of the land when viewed from Flagstaff Road, Bonneyview Road and Warri Parri Drive, that visual change will not be at odds with the surrounding locality, given the predominant allotment pattern of regular allotments fronting Warri Parri Drive to the south of the subject land.

Given that existing vehicle access is provided to both proposed allotments, and the close proximity of services along Warri Parri Drive, the proposed land division will not create any unreasonable imposition for the provision of services on the community, rather the proposal will be able to connect to existing services conveniently placed in close proximity to the subject land.

The proposal will not adversely impact on the viability of the land to the west within the Hills Face Zone, nor create a precedent for future land division to occur on adjacent sites, given the unique circumstances occurring on the subject land, which do not occur elsewhere within the locality.

A further and more detailed assessment will be undertaken if the application is determined to have sufficient merit to proceed with a further assessment.



## 4.2.2 Heritage Adjacency

The subject site adjoins the Sturt Gorge Glaciation Geological Site, within Sturt Gorge Recreation Park (5235), a state heritage listed place, approximately 1.4 kilometres to the east. Given the significant distance from the site, the geological site, its setting and its surrounds is not considered to be impacted by the land division proposal.

## 4.2.3 Flooding

The proposed allotment is located within a Hazards (Flooding – Evidence Required) Overlay, which appears to be broadly applied to the surrounding locality with the exception of land within the adjacent Conservation Zone. Given the sites location on top of the hill, with topography that slopes away from the street frontage, there is limited potential for flooding to occur on site, and any potential for flooding can be resolved by either diverting floodwater back towards Warri Parri Drive further north along the site frontage, given the 1.78 metre fall along the sites frontage, or by providing a suitable freeboard level for any future dwelling, as outlined within the relevant Overlay, which can be demonstrated on indicative building footprint, and confirmed by a suitably qualified engineer at the next part of the assessment process, should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.

## 4.2.4 Bushfire Risk

The site is located within a Hazards (Bushfire - High Risk) Overlay, which requires a referral to the CFS as part of the assessment process. Due to the size and location of the proposed allotment adjacent a sealed all weather public road, much of the policy contained within the Overlay is able to be resolved relatively easily, with regard to evacuation and emergency vehicle access. Due to the larger size of the allotment's additional requirements (including rainwater storage) are able to be catered for on site.

It is also worth noting that much of the vegetation on the proposed allotment 2 (including the regulated tree) falls within the 20 metre buffer zone for both the existing dwelling on site and the adjacent dwelling to the south, which enables the vegetation to be cleared in accordance with the *Native Vegetation Act* and *PDI Regulations Schedule 4 part (1) (b)*.



#### 4.2.5 Land Division

The proposed configuration of the allotments has been designed to facilitate appropriate access to Warri Parri Drive while allowing for a suitable sized allotment to be created, consistent with adjacent allotments to the south, and large enough for a modern single storey home to be constructed.

While there is some mature vegetation (including regulated trees) on the subject land, as detailed above, the proposal does not significantly reduce the protections that these areas are afforded, as the likely location for a new dwelling is within the 20 metre buffer zones of the existing dwellings both on the subject land and adjacent allotments.

Should the State Planning Commission elect to proceed with a further assessment, an indicative dwelling footprint will be provided as part of the documentation, demonstrating the feasibility of the allotment to support the construction of a new dwelling, while meeting the requirements of the Zone, Overlays and General Development Policies, including those relating to Land Division.

The future allotments will be connected to all services and a more detailed assessment in relation to this will be provided at the next stage of assessment.

The proposal will not adversely impact on the viability of conservation land to the east on the adjacent side boundary, purposes and will complement the existing residential character of the locality to the north and south-west.

Again, a further and more detailed assessment will be undertaken if the application is determined to have sufficient merit to proceed with a further assessment.

#### 4.2.6 Interface between Land Uses

The interface policies seek for new development to protect existing land uses and also ensure existing land uses do not adversely impact on proposed development. Given the residential nature of the locality, and conservation land uses on adjacent land (to the east), the proposal is not considered to present any interface concerns beyond that typically experienced within a residential type of zone/locality. Should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment this issue will be thoroughly investigated.



## 4.2.8 Transportation, Access, and Parking

The speed limit on Bonneyview Road and is limited to 50 km/hr along the subject site frontage, and the proposed allotments new front boundary. Given that the proposed allotment has an existing vehicle access to Warri Parri Drive, it is not considered that any new dwelling on the proposed allotment will have difficulty meeting the movement, access and parking requirements of the code. If required, independent traffic advice can be obtained, should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.

## 5.0 Social, Economic and Environmental Effects

Section 6(1)(a) vi of Practice Direction 4 requires an assessment of the expected social, economic, and environmental effects of the development on its locality.

### 5.1 Economic

The proposal is unlikely to create any significant economic activity.

The land is currently used for residential purposes in a similar manner to land in the wider locality. The proposal does not prejudice the continuation of adjacent or existing land uses.

The proposed allotments will connect to the existing public infrastructure, and accordingly it is considered that the proposal will have minor economic effects during the construction process and ongoing economic benefits to the surrounding commercial precincts with additional residents purchasing from local shops.

### 5.2 Social

The proposal will provide an additional allotment within the locality providing more affordable housing options, while increasing the efficiency of public services.

There are no aspects of the proposal that are likely to cause any further social effects.

### 5.3 Environmental

The proposal will have little impact on the environmental condition of the land and beyond.

The proposed land division does not create the need to remove any vegetation for the creation of the allotments or to access to the site.

There will be no further impact in terms of waste management the future dwelling will be connected to the existing waste system.

The division will not result in the loss of any open space or recreational paths which traverse the land.

The proposal facilitates the improved management and development of the land.



The proposal does not prejudice the continuation of adjacent or existing land uses.

The proposal does not involve the removal of native vegetation.

The proposal does not increase the risk of landslip/erosion.

The proposal does not cause or increase noise, fumes, odour, or traffic impacts.

The proposal does not unreasonably impact upon the natural appearance and character of the area.

Accordingly, the proposal is not considered to cause any adverse environmental impacts.

In summary, the proposed land division will not create negative effects whilst providing some economic, social, and environmental benefits.

## 6.0 Conclusion

The application seeks a Land Division – one into two which in this instance is Restricted Development at 1 Bonneyview Road, Flagstaff Hill.

It is considered that whilst the proposal is creating an additional allotment within the Hills Face Zone, the proposed division is considered appropriate in that the proposed allotment size is consistent with existing allotments found within both the immediate and wider locality, while presenting minimal imposition on the community for the provision of services, given they already exist within the road reserve adjacent the allotment frontage.

The proposal will have an acceptable impact on the amenity of the adjoining residential development and will not adversely impact future development of the locality and/or detrimentally impact upon any surrounding development. Should the application be considered suitable for a further assessment, the provision of a detailed planning report with additional analysis of the impacts of the proposal will be provided to determine the development's suitability.

It is considered that the proposal is appropriate from a transportation and access perspective given the proposed allotments existing vehicle access arrangement, which is compliant with current code requirements and is able to be used by any future dwelling on the proposed allotment. An indicative dwelling footprint and levels will be provided, demonstrating the suitability of the proposal by meeting the relevant Overlays, Zone provisions and General Development Policies of the Code related to flooding, interface between land uses, setbacks, site coverage, landscaping and private open space should the State Planning Commission determine the proposal has sufficient merit to proceed with a further assessment.



After careful consideration of the proposed development and having regard to the relevant provisions of the Planning and Design Code, it is my opinion, that the application represents an appropriate form of development in the context of the Hills Face Zone (Code version 2023.15) and the unique circumstances of the subject land and locality.

For all the reasons outlined in this planning report, we consider the proposed development to satisfy the pertinent Code provisions and Practice Direction 4 to warrant a further full and proper assessment of the proposal in accordance with Section 5(2)(e) of Practice Direction 4.

We look forward to your support to proceed to assess this proposal.

If you have any further questions regarding this application or require additional information, please contact me on [REDACTED].

Yours Sincerely,



**Mark Kwiatkowski MPIA CPP**

Director + Principal Urban Planner + Accredited Professional Level 1 – 4

**Adelaide Planning & Development Solutions Pty Ltd - Town Planning Specialists - Planning Private Certifiers**

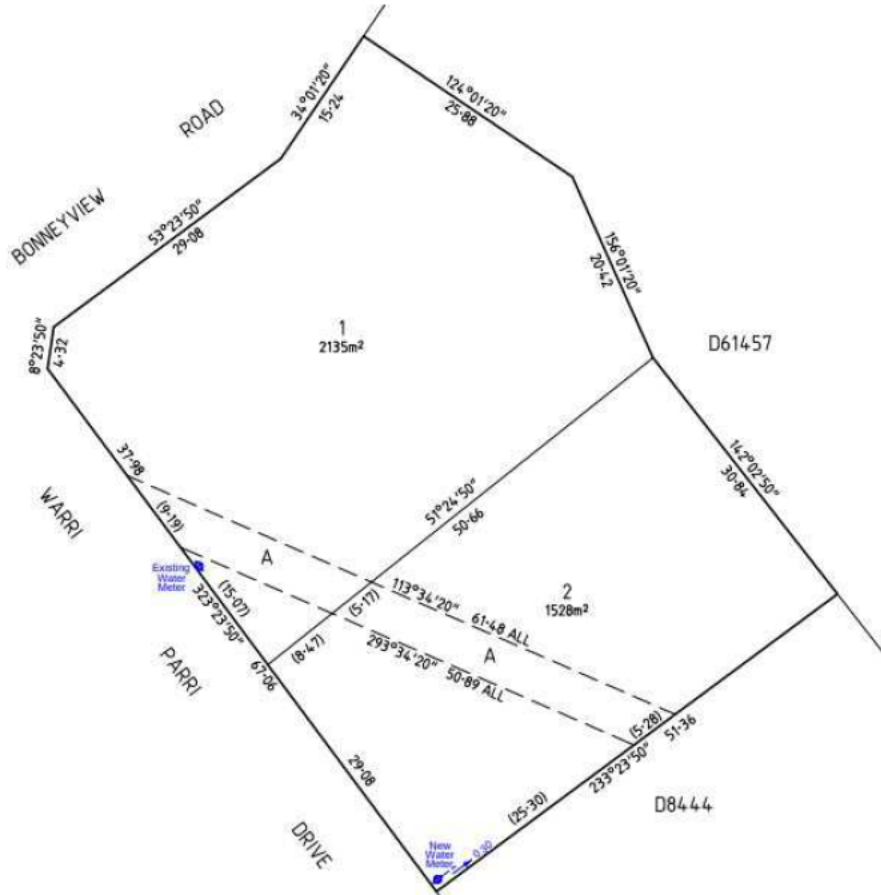


# Robert Philip Gardner and Diana Gardner C/- Cavallo Forest

Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment

**1 Bonneyview Road, Flagstaff Hill SA 5159**

Development Application 23038041



## OVERVIEW:

<b>DEVELOPMENT NO.:</b>	23038041
<b>APPLICANT:</b>	Robert Philip Gardner and Diana Gardner
<b>ADDRESS:</b>	1 Bonneyview Road, Flagstaff Hill SA 5159
<b>NATURE OF DEVELOPMENT:</b>	Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment
<b>ZONING INFORMATION:</b>	<b>Zones:</b>

	<ul style="list-style-type: none"> <li>• Hills Face</li> </ul> <b>Overlays:</b> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Hazards (Bushfire - High Risk)</li> <li>• Heritage Adjacency</li> <li>• Hazards (Flooding - Evidence Required)</li> <li>• Native Vegetation</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Traffic Generating Development</li> <li>• Urban Transport Routes</li> <li>• Water Resources</li> </ul>
<b>LODGEMENT DATE:</b>	11 Jan 2024
<b>RELEVANT AUTHORITY:</b>	State Planning Commission (the Commission) – Section 94(1)(b) of the <i>Planning, Development and Infrastructure Act 2016</i>
<b>DELEGATION:</b>	State Commission Assessment Panel (SCAP) Delegations Policy – Delegation 5.2.7
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) Version 2023.19 - 21 December 2023
<b>CATEGORY OF DEVELOPMENT:</b>	Impact Assessed – Restricted Development
<b>NOTIFICATION:</b>	No
<b>RECOMMENDING OFFICER:</b>	Damon Huntley Planning Officer

## CONTENTS:

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APPENDIX 1: Relevant P&D Code Policies

ATTACHMENT 1: Application Documents

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## EXECUTIVE SUMMARY:

Robert Philip Gardner and Diana Gardner C/- Cavallo Forest have applied for Planning and Land Division Consent for a proposed land division comprising one (1) allotment into two (2) allotments (Torrens Title) at 1 Bonneyview Road, Flagstaff Hill.

The subject site is located in the Hills Face Zone. Table 4 of the Hills Face Zone identifies that 'land division' is classified as Restricted Development.

The State Commission Assessment Panel (SCAP) must first decide whether to proceed with an assessment of the proposed development or refuse the application without proceeding to an assessment pursuant to Section 110(14) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The key planning matter related at this stage is the alignment of the proposal with the direction provided through the Desired Outcomes for the Hills Face Zone. The division of land for the purpose of a new

allotment for residential development will not preserve, enhance and re-establish the natural character of the Hills Face Zone.

It is considered that there is no reasonable prospect of the proposal receiving a favourable assessment. As such, it is recommended that the SCAP decline to proceed with an assessment of the proposal.

### **DETAILED DESCRIPTION OF PROPOSAL:**

The applicant seeks planning consent and land division consent for the proposed division of one (1) existing allotment into two (2) allotments, intended to be used for residential purposes. The subject site forms a rectangular shaped allotment situated on the eastern side of the intersection of Bonneyview Road and Warri Parri Drive, located in a semi-rural residential area of Flagstaff Hill.

Proposed Allotment 1 would comprise a site area of 2,135 square metres, retaining its existing 44.3-metre-wide primary street frontage to Bonnyview Road, with a secondary frontage measuring 37.9 metres to Warri Parri Drive. Allotment 1 is to accommodate the existing residence, and the swimming pool located on the eastern side of the dwelling.

Proposed Allotment 2 would comprise a site area of 1,528 square metres with a frontage to Warri Parri Drive measuring 29.08 metres. The proposal seeks to retain the existing vehicle access from Warri Parri Drive and the existing garage is proposed to be removed to provide space for a future driveway.

Existing easement marked A passes through the southern portion of the property. The easement is to the Minister for Infrastructure (T 2886116).

Table 4 of the Hills Face Zone identifies that 'land division' is classified as Restricted Development. The land division proposal does not meet an exclusion under Table 4.

### **SUBJECT LAND & LOCALITY:**

**Location reference:** 1 BONNEYVIEW RD FLAGSTAFF HILL SA 5159

**Title ref.:** CT 5563/620 **Plan Parcel:** D8444 AL51 **Council:** CITY OF ONKAPARINGA

### **Site Description:**

The subject land forms a rectangular shaped allotment situated within the Hills Face Zone, located on the eastern side of the intersection of Bonneyview Road and Warri Parri Drive in the suburb of Flagstaff Hill. The allotment has a depth of 75.5 metres and a frontage in the order of 44.3 metres, with a site area of 3,663 square metres. Land levels fall gently across the site from west to east, with a notable fall in levels in close proximity to the eastern side boundary.

The subject land is outlined in Figure 1 below.



**Figure 1:** Satellite aerial image of the subject site and surrounds (Source: SAPPA)



**Figure 2:** Streetview image towards the subject land facing southeast from Bonneyview Road (Source: Google Earth)



**Figure 3:** Streetview image towards the subject land from the southern end of Wookata Crescent facing south (*Source:* Google Street View dated April 2023)

As shown in Figures 1 and 2, the subject site hosts an existing single storey detached dwelling located at the northern portion of the property, set back approximately 7 metres from the front boundary facing Bonneyview Road.

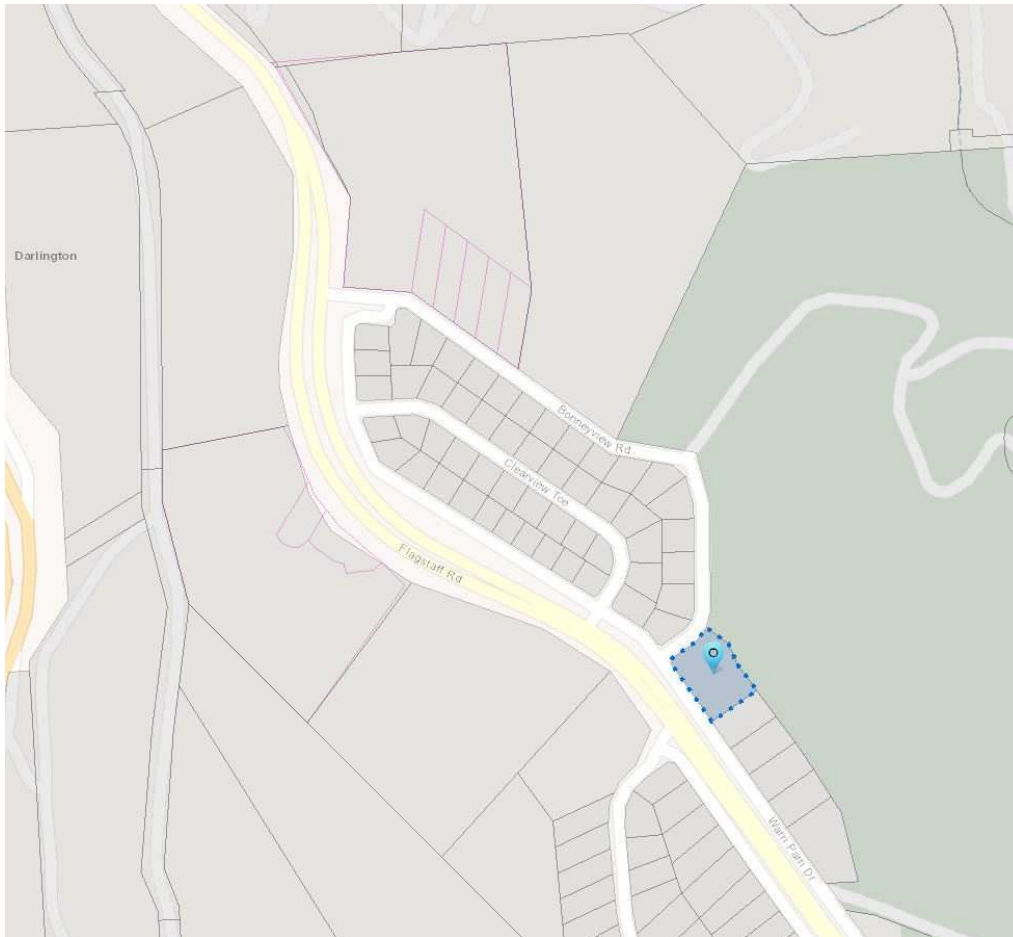
Access to the property is via two access points from Bonneyview Road. As shown in figure 3 above, an existing access point from Warri Parri Drive is centrally located along the western side of the property.

## Locality

The locality is characterised by sloping topography and influenced by the nature and function of Flagstaff Road and further to the west, Main South Road with its high volumes of traffic travelling north and south.

The locality is zoned Hills Face, wedged between substantial tracts of Conservation zoned land. The strategic relevance of this continued and substantial conservation / hills face land-holding is its proximity to the Sturt Gorge Recreation Park, and further afield, the planned Glenthorne National Park, a coordinated park across several significant parcels of land including the Glenthorne property, O'Halloran Hill Recreation Park, Marino Conservation Park, Hallett Cove Conservation Park, Happy Valley Reservoir and areas of the Field River Valley.

The immediate locality features a small network of residential streets (Warri Parri Drive, Bonneyview Road and Clearview Terrace) which form a historical pattern of suburban settlement. Further to the east of Bonneyview Road, the heavily treed and bush covered terrain falls in the direction of the Sturt Gorge Recreation Park. The allotment pattern in the immediate and wider locality has remained unchanged within the Hills Face Zone. Several land divisions have been refused or withdrawn in the broader locality including a proposal on Bonneyview Road that proposed similar sized allotments to those sought in the current division. Refer to figure 4 below:



**Figure 4:** Location of subject land and historical rural living subdivisions refused circa 2015 and 2023 (purple linework)

## RESTRICTED DEVELOPMENT PRINCIPLE

Section 5 of the State Planning Commission Practice Direction 4 Restricted Development (the Practice Direction), Version 2 dated 15 December 2022, prescribes the circumstances under which the Commission will assess restricted development:

1. *For the purposes of Section 109 (1)(a)(i) of the Act, the Commission, acting through its delegate under section 30(3) of the Act, will proceed to assess an application for restricted development unless it appears to the delegate that there is no reasonable prospect of a favourable assessment.*
2. *A decision to refuse to proceed with an assessment of a restricted development must include the reasons for refusal.*

The State Commission Assessment Panel (SCAP) must first decide whether to proceed with an assessment of the proposed development or refuse the application without proceeding to an assessment pursuant to Section 110 (14).

## DISCUSSION

The key planning matter related to the proposal at this stage, is the alignment of the proposal with the direction provided through the Desired Outcomes for the Hills Face Zone.

## Hills Face Zone

The site is located in the Hills Face Zone (Figure 2) of the Code.

The Desired Outcome (DO) 1 of the Hills Face Zone seeks to maintain the western slopes of the South Mount Lofty Ranges as an important natural asset of Greater Adelaide by limiting development to low-intensity agricultural activities and public and private open space. The natural character of the zone will be preserved, enhanced and re-established to:

1. Provide a natural backdrop to the Adelaide Plain and contrast to the urban area
2. Preserve biodiversity and restore locally indigenous vegetation and fauna habitats close to metropolitan Adelaide
3. Provide for passive recreation in an area of natural character close to the metropolitan area
4. Provide a part of the buffer area between metropolitan districts and prevent the urban area extending into the western slopes of the Mount Lofty Ranges.

The proposed creation of the additional allotment measuring 1,528 square metres to provide a parcel for new residential development, is contrary DO 1, which is explicit in limiting development to low-intensity agricultural activities and public and private open space. The division of the land through the creation of the newly proposed allotment will not preserve, enhance and re-establish the natural character of the Hills Face Zone.

In this circumstance, it is considered that the proposal cannot reasonably attain a favourable assessment. As such, it is recommended that the SCAP decline to proceed with an assessment of the proposal.

## **MATTERS IF THE DEVELOPMENT PROCEEDS TO ASSESSMENT**

Though the purpose of this report is to determine whether to proceed with an assessment of the proposed development, an overview of the key planning matters is provided should the SCAP determine to proceed with an assessment:

- Appropriateness of the division of land for future residential purposes within the Hills Face Zone and preservation of the natural character, topography and scenic qualities of the Hills Face Zone as a backdrop to the Adelaide Plains;
- The configuration of allotment boundaries considers the physical characteristics of the land (i.e., existing buildings, locally indigenous vegetation and fauna habitats, etc.);
- Allotments incorporate safe and convenient vehicle access to a trafficable public road;
- Allotments incorporate safe and convenient vehicle access to a trafficable public road including safe access and egress for CFS firefighting vehicles;
- Hazards (Bushfire – High Risk) Overlay: Future habitable buildings are located away from areas that pose an unacceptable bushfire risk to life and property;
- Minimise the need for inappropriate levels of excavation and filling of land outside townships and urban areas to preserve the natural form of the land;
- Future development avoids unacceptable risk of soil movement, landslip or erosion;

- Minimisation of right-of-way easements through the future rear garden spaces of proposed allotments; and
- Future residential development is serviced by appropriate essential infrastructure (i.e., water / sewer mains).

#### Agency Referrals Required

- City of Onkaparinga
- South Australian Country Fire Service

Restricted development must be publicly notified pursuant to Section 110 (2) of the Act.

#### **OFFICERS RECOMMENDATION**

Pursuant to Section 110 (14) of the *Planning, Development and Infrastructure Act 2016*, the State Commission Assessment Panel resolves to REFUSE TO PROCEED TO ASSESS Development Application 23038041 by Robert Philip Gardner and Diana Gardner C/- Cavallo Forest for the following reasons:

#### **REASONS FOR REFUSAL**

1. There is no reasonable prospect of a favourable assessment of the proposed development having consideration of Desired Outcome 1 of the Hills Face Zone, specifically:
  - a. The proposed additional allotment for future residential development is incompatible with the intent to limit development in this zone to low-intensity agricultural activities and public and private open space; and
  - b. The future increase of development on the site through the division of the land will not preserve, enhance and re-establish the natural character of the Hills Face Zone.
  - c. Residential development will not be limited to maintain a pleasant natural and rural character and amenity.

#### **Advisory Notes**

If you are aggrieved by this decision, you have a right to seek a review of this decision by the State Planning Commission (the Commission). An application for review must be made in a manner and form determined by the Commission and must be made within **one (1) month** of this notice. The prescribed form is contained in Attachment 1 of Practice Direction 4. [Practice Direction 4](https://plan.sa.gov.au/resources/planning/practice%20directions/practice%20direction%204%20restricted%20and%20impact%20assessed%20development%202019) [https://plan.sa.gov.au/resources/planning/practice directions/practice direction 4 restricted and impact assessed development 2019](https://plan.sa.gov.au/resources/planning/practice%20directions/practice%20direction%204%20restricted%20and%20impact%20assessed%20development%202019)

Further information, including the appropriate form and submission instructions, can be found on the PlanSA website under the Decisions and Appeals Guide section.



# STATE COMMISSION ASSESSMENT PANEL

**A COMMITTEE OF THE STATE PLANNING COMMISSION**

Minutes of the 174<sup>th</sup> Meeting of the  
State Commission Assessment Panel  
held on Wednesday 28 February 2024 commencing at 9:30am  
Level 9, 83 Pirie Street Adelaide / Microsoft Teams video conferencing

## 1. OPENING

### 1.1. ACKNOWLEDGEMENT OF COUNTRY

The Presiding Member acknowledged the traditional custodians of the land on which the State Commission Assessment Panel meets, and paid respect to Elders past and present.

### 1.2. PRESENT

Presiding Member	Rebecca Thomas
Members	Rebecca Rutschack (Deputy Presiding Member) John Eckert Paul Leadbeter David Altmann Jenny Newman Don Donaldson Jamie Botten (Occasional Member)
Secretary	Myles Graham, Governance Officer
DTI Staff	Troy Fountain Jeremy Wood (2.2.1) Hannah Connell (2.2.4) Nathan Grantham (2.2.4) Damon Huntley (2.2.1) Ben Scholes (2.2.2, 2.2.3)

### 1.3. APOLOGIES

Nil

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## 2. SCAP APPLICATIONS

### 2.1. DEFERRED APPLICATIONS

### 2.2. NEW APPLICATIONS

#### 2.2.1 Robert Philip Gardner and Diana Gardner 23038041

##### 1 Bonnyview Road, Flagstaff Hill

Torrens title land division comprising one (1) allotment into two (2) allotments for the creation of one (1) additional allotment.

The Deputy Presiding Member, Rebecca Rutschack, declared a conflict of interest due to working for the City of Onkaparinga in which this item is proposed. She was not present for this agenda item.

The Presiding Member welcomed all in attendance to the State Commission Assessment Panel hearing:

#### Applicant

- Phil Gardner
- Diana Gardner
- Mark Kwiatkowski

The State Commission Assessment Panel discussed the application.

#### RESOLVED

- 1) Pursuant to Section 110 (14) of the *Planning, Development and Infrastructure Act 2016*, the State Commission Assessment Panel resolves to REFUSE TO PROCEED TO ASSESS Development Application 23038041 by Robert Philip Gardner and Diana Gardner C/- Cavallo Forest for the following reasons:

#### REASONS FOR REFUSAL

1. There is no reasonable prospect of a favourable assessment of the proposed development having consideration of the Hills Face Zone, specifically:
  - a. The proposed additional allotment for future residential development is incompatible with the intent to limit development in this zone to low-intensity agricultural activities and public and private open space; and
  - b. The future increase of development on the site through the division of the land will not preserve, enhance and re-establish the natural character of the Hills Face Zone.
  - c. Residential development will not be limited to maintain a pleasant natural and rural character and amenity.

#### ADVISORY NOTES

If you are aggrieved by this decision, you have a right to seek a review of this decision by the State Planning Commission (the Commission). An application for review must be made in a manner and form determined by the Commission and must be made within **one (1) month** of this notice. The prescribed form is contained in Attachment 1 of Practice Direction 4.  
[https://plan.sa.gov.au/resources/planning/practice\\_directions/practice\\_direction\\_4\\_restricted\\_and\\_impact\\_assessed\\_development\\_2019](https://plan.sa.gov.au/resources/planning/practice_directions/practice_direction_4_restricted_and_impact_assessed_development_2019)

Further information, including the appropriate form and submission instructions, can be found on the PlanSA website under the Decisions and Appeals Guide section.

10. **NEXT MEETING**

- 10.1. Wednesday 6 March 2024 at Level 9, 83 Pirie Street, Adelaide SA 5000 / Via Microsoft Teams video conferencing.

11. **REVIEW OF SCAP INSTRUCTIONS TO STAFF AND UPCOMING AGENDA ITEMS**

12. **CONFIRMATION OF THE MINUTES OF THE MEETING**

13. **MEETING CLOSE**

- 13.1. The Presiding Member thanked all in attendance and closed the meeting at 1:40pm.

Confirmed 29/02/2024



.....  
Rebecca Thomas  
PRESIDING MEMBER



.....  
Rebecca Rutschack  
DEPUTY PRESIDING MEMBER (for items 2.2.2, 2.2.3 only)