

Agenda Report for Decision

Meeting Date: 18 August 2022

Item Name	Decision Review Request – Refusal to proceed to assess Development Application 22005978
Presenters	Margaret Smith, Sarah Elding and Robert Kleeman
Purpose of Report	Decision
Item Number	5.2
Strategic Plan Reference	N/A
Work Plan Reference	N/A
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	N/A

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 Development Application (DA) 22005978 by Mr Steve Grace (the Applicant), C/- Future Urban, for the Torrens Title land division creating two allotments from one existing allotment at 9 Regano Road, Flagstaff Hill (**Appendix A**).
3. Note the Decision Review Request from the Applicant to the Commission (**Appendix E**).
4. Affirm the decision of the State Commission Assessment Panel (SCAP) to refuse to proceed to assess DA 22005978.
5. Authorise the Chair of the Commission to sign the letter to the Applicant advising him of the decision of the Commission not to proceed to assess DA 22005978 (**Attachment 1**).
6. Authorise the Chair to sign the letter to the Presiding Member of SCAP advising of the Commission's decision not to proceed to assess DA 22005978 (**Attachment 2**).
7. Authorise the Chair to make any minor or editorial amendments to the attachments as required to finalise.

Background

The proposed development seeks planning consent for a Torrens Title land division from one existing allotment to two allotments (**Appendix A**).

The subject land at 9 Regano Road, Flagstaff Hill is formally described as Allotment 9 in Deposited Plan 7945. The existing allotment has an irregular shape and is approximately 5.5 hectares in area with a frontage of approximately 90 metres to the north-eastern side of Regano Road (**Appendix B**).

Improvements to the subject land includes an existing single storey dwelling and ancillary outbuildings. Vehicle access is via an existing crossover from Regano Road.

The topography comprises an undulating terrain that gently falls away from Regano Road before descending at a steeper grade to the north and east. A water course traverses through a small area within the eastern corner of the site.

There is a redundant olive grove within the south-western corner of the property adjacent Regano Road along with a mix of native and non-native vegetation dispersed throughout the site.

Proposed Allotment 80 would have a site area of 3.98 hectares and a total frontage of 17.8 metres to Regano Road. Allotment 80 is to accommodate the existing dwelling and ancillary outbuildings and associated wastewater infrastructure.

Proposed Allotment 81 would have a site area of 1.44 hectares, a total frontage of 71.9 metres to Regano Road, and is intended for residential purposes. Proposed Allotment 81 currently contains the olive grove that will be felled to provide sufficient area for a future dwelling (**Appendix C**).

In accordance with Table 4 of the Hills Face Zone, the division of land is identified as a 'Restricted Development'.

In accordance with section 94(1)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act), SCAP, as delegate of the Commission, is the relevant authority for the 'Restricted Development' assessment pathway.

On 25 May 2022, in accordance with section 110(1) of the Act, SCAP resolved to refuse to proceed with assessing DA 22005978 for the Torrens Title land division creating two allotments from one existing allotment at 9 Regano Road, Flagstaff Hill.

A copy of the Minutes and Assessment Report from the 25 May 2022 SCAP Meeting are provided at **Appendix D** for the Commission's reference.

On 29 June 2022, Future Urban, on behalf of Mr Steve Grace (the Applicant), applied for a review of the decision made by SCAP, pursuant to section 110(15) of the Act (**Appendix E**).

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

Clause (5)(1) and (2) of *Practice Direction 4 – Restricted and Impact Assessed Development 2019* (Practice Direction 4) (**Appendix F**) stipulates that the Commission may (but is not bound to) proceed to assess an application for restricted development where the following are demonstrated:

- a. the proposal provides a social, economic or environmental benefit to the current or future community; and
- b. the development responds to a demonstrated need or demand for the proposed land use in the locality.

Pursuant to section 110(19) of the Act, there is no appeal to the Environment, Resources and Development Court (the Court) should the Commission affirm the decision of its delegate not to proceed to assessment.

Discussion

The two tests in Practice Direction 4 are broad and provide guidance to the Commission for consideration of the matter. The following information is provided to the Commission to assist in its determination of the review request.

Policy background

- A Metropolitan Hills Face Zone was established in the early 1970s to restrict new development opportunities within the zone (through subdivision controls), thereby reducing infrastructure and servicing costs, minimising (bushfire) hazard risks, and maintaining and enhancing the natural character of the hills face (when viewed from the plains).
- The State, in the form of the SA Planning Commission (*Planning Act 1982*), Development Assessment Commission (*Development Act 1993*) and State Planning Commission (*Planning, Development and Infrastructure Act 2016*) has retained an assessment role in the consideration of development applications seeking to create additional lots within the zone.
- Proposals seeking the creation of additional allotments within the zone were previously assigned as 'non-complying' developments (as defined by Council Development Plans) under the former *Development Act 1993*.
- Reviews have been conducted into the Hills Face Zone, both in the early 1980s and early 2000s, which considered both the adequacy of the zone boundaries themselves (as they stood at the time) and/or the suitability of the planning policies. No substantive changes to zone boundaries were made in either review, such that the zone boundaries, as replicated within the new Planning and Design Code (the Code), have played an important long-term role in restricting additional development opportunities within the zone.
- A review of EDALA records (the State's land division lodgement system) between 2003 and 2021 identified 21 development applications seeking to create one or more additional allotments in the Hills Face Zone.
- 11 applications were refused without proceeding to an assessment, five applications were withdrawn before a decision could be made (based on advice that the proposal would not be supported), and five applications were approved. Three of the approved divisions involved the creation of an additional allotment to accommodate one of two existing habitable dwellings on the land (constructed before modern planning controls), and the remaining two proposals created an additional allotment in another zone (with the balance of the Hills Face Zone remaining on a single lot). None of the applications resulted in an additional development opportunity through land division within the Hills Face Zone.

Location and demand

- The subject land is in Flagstaff Hill, approximately 19 kilometres south of Adelaide and currently contains a single detached dwelling, ancillary outbuildings and an olive grove.
- The suburb of Flagstaff Hill is characterised by its green, undulating topography and low-medium density residential settlement patterns.
- The subject land abuts a low-medium density residential development to the south-east, and very low-density, rural living allotments to the north, north-east, south and west. Allotments comprising 1.1 hectares to five hectares in size are generally located along or near Regano Road. A concentration of smaller allotments in the order of 1,000 square metres are located to the immediate east of the subject site, within the Hills Face Zone.

- The subject land is located between Main South Road and Flagstaff Road, both State controlled roads.
- In the development application documentation, the Applicant has referred to a growing demand for residential properties in the City of Onkaparinga (the Council) area. A single allotment (and dwelling) does not satisfy the long-term demand for housing diversity and choice. Infill development is best planned for at a strategic level, within appropriately zoned areas.

Infrastructure

- The applicant has stated that there are broad social benefits through the extension of existing power supply to Regano Road and increase in power supply capacity.
- The benefit of the additional power supply identified in the development assessment documentation is minimal and the documentation by the applicant does not provide any clear evidence that the infrastructure upgrade would benefit more than either the current landowners or those resulting from the proposed land division.

Economic benefit

- The following economic benefits have been put forward by the applicant:
 - Creation of additional economic stimulation and employment in the short-term through the construction phase of a future dwelling on proposed Allotment 81.
 - Increase to Council's rate revenue without generating demand for additional services at a cost to the local community.
 - An allotment arrangement that will organise the subject land into more attractive, valuable land holdings with reduced land maintenance obligations where the existing and/or future dwellings on the proposed allotments can be maintained in a more efficient manner.
- The scale of the proposal will not generate any significant employment opportunities. The economic outcomes will wholly benefit the current landowners through the sale of the additional allotment.

Environmental

- The subject land is sited wholly within the Hills Face Zone and is subject to the following Overlays (**Appendix G**):
 - Airport Building Heights (Regulated)
 - Hazards (Bushfire - High Risk)
 - Hazards (Flooding - Evidence Required)
 - Native Vegetation
 - Prescribed Wells Area
 - Regulated and Significant Tree
 - Traffic Generating Development
 - Water Resources.

- The Hills Face Zone aims 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 should be preserved, enhanced and re-established.
- The subject land also falls within the Water Resources overlay which aims to protect the quality of surface waters, consider water quality impacts associated with projected reductions in rainfall and warmer air temperatures, and maintain the function and natural flow paths of watercourses to assist in the management of flood waters and stormwater runoff. The water course extends either side of the subject land, intersecting it in the south-east corner.
- The applicant states that the land division will result in environmental benefit by removing olive trees from the subject site as they are acknowledged as harming the environment and community where they are no longer used and/or maintained, presenting a high risk of feral olive growth and an increase in bushfire risk. The clearance of the redundant olive grove is at the discretion of the current landowner; it can be cleared at any time, independent of any additional development, including a land division.

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(15)

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.

Conclusion

It is considered that the proposed land division of one lot into two lots serves no significant social, economic or environmental benefit to the current or future community. Managing population growth should occur at a much broader scale, such as infill development within appropriately zoned land and rezoning of appropriate land for subsequent greenfield development.

Benefits of the proposal are largely isolated to the current and future owners/occupiers of the land and will not provide any benefits to the current and future community more broadly.

It is also noted for completeness that Council's development assessment team does not support the proposal. On 26 July 2022, Council's development assessment team advised that the notion of an additional allotment for residential purposes in the Hills Face Zone is inappropriate, against the provisions of the Code, and would likely set a dangerous precedent and expectation of further developments (**Appendix H**).

The proposal is considered to be at serious variance with the intent of the Hills Face Zone. In addition, it does not achieve the Performance Outcomes prescribed in the Hills face Zone. It could also lead to further development at variance with other Code provisions, including the Zone Built Form and Character provisions once an additional dwelling is proposed with associated outbuildings.

It is apparent that a proposal of this scale and siting within the Hills Face Zone is inconsistent with the outcomes sought by the Code.

A draft letter to the Applicant advising them of the decision of the Commission not to proceed to assess DA 22005978 is provided at **Attachment 1** for consideration.

Further, a draft letter to the Presiding Member of SCAP advising of the Commission's decision not to proceed to assess DA 22005978 is provided at **Attachment 2** for consideration.

Attachments:

1. Suggested letter from the State Planning Commission to the Applicant (#19021952).
2. Suggested letter from the State Planning Commission to the Presiding Member, State Commission Assessment Panel (#19022051).

Appendices:

- A. Development Application documentation (#19012969)
- B. Site map and locality plan (#19012743).
- C. Proposed Plan of Division (#19012976).
- D. SCAP Meeting Minutes and Assessment Report, 25 May 2022 (#19012977).
- E. Request for Review of Decision form, 29 June 2022 (#19012978).
- F. *Practice Direction 4 – Restricted and Impact Assessed Development 2019* (#19012979).
- G. Hills Face Zone and Overlays policy (#19013181).
- H. Correspondence from the City of Onkaparinga, 26 July 2022 (#19059325).

Prepared by: Sarah Elding

Endorsed by: Margaret Smith

Date: 2 August 2022

19021952

23 August 2022

Mr Steve Grace
C/- Mr Jason Cattonar
Associate Director
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Dear Mr Cattonar

Decision Review Request – Development Application 22005978

I refer to your request dated 29 June 2022, on behalf of Mr Steve Grace (the Applicant), to review a decision of the State Commission Assessment Panel (SCAP) to refuse Development Application (DA) 22005978 without proceeding to make an assessment, pursuant to section 110(14) of the *Planning, Development and Infrastructure Act 2016* (the Act).

At its meeting of 18 August 2022, the Commission reviewed the decision by SCAP, taking into consideration the following from the Commission's *Practice Direction 4 – Restricted and Impact Assessed Development 2019*:

- (a) the proposal provides a social, economic or environmental benefit to the current or future community; and
- (b) the development responds to a demonstrated need or demand for the proposed land use in the locality.

As a result of the review, the Commission affirms the decision of SCAP not to proceed to assess DA 22005978.

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

Yours sincerely



Craig Holden
Chair

19022051

23 August 2022

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08 7109 7466
saplanningcommission@sa.gov.au

Ms Rebecca Thomas
Presiding Member
State Commission Assessment Panel

By email: scapadmin@sa.gov.au

Dear Ms Thomas

Decision Review Request – Development Application 22005978

On 29 June 2022, the State Planning Commission (the Commission) received a request from Future Urban, on behalf of Mr Steve Grace (the Applicant), to review a decision of the State Commission Assessment Panel (SCAP) to refuse Development Application 22005978 (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 of 18 August 2022, the Commission reviewed the decision by SCAP, taking into consideration the following from the Commission's *Practice Direction 4 – Restricted and Impact Assessed Development 2019*:

- (a) the proposal provides a social, economic or environmental benefit to the current or future community; and
- (b) the development responds to a demonstrated need or demand for the proposed land use in the locality.

As a result of the review, the Commission can advise that it affirms the decision of SCAP not to proceed to assess DA 22005978.

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

Yours sincerely



Craig Holden
Chair