

Tabled at Council Assessment Panel – 18 June 2026

Item 5.1 25000116 - Lot 202 Legoe Road, Buckland Park - Conventional land division creating four (4) allotments from one (1) fragmented allotment together with the construction of 12 residential flat buildings comprising 45 dwellings for the purpose of supported accommodation with associated earthworks and tree-damaging activity

Additional Attachment

With respect to the above agenda item, the applicant has upon request from Council, provided a letter of submission in response to the staff report recommending refusal of the application - 25000116.

Please find the attached letter for consideration.

ATTACHMENT FOR ITEM 5.1

15 June 2026

Mahmoud Hasaneen
Acting Manager – Planning Services
City of Playford
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Davoren Park, SA 5113

By email: MHasaneen@playford.sa.gov.au

Dear Mooda,

DA 25000116 - Windamere Park, Lot 202 Legoe Road, Buckland Park

This firm acts for the applicant in DA 25000116, Mr Theodoor de Lyster OAM. The application seeks planning and land division consent for a land division and construction of dwellings for the purposes of supported accommodation (**proposed development**) on land at Lot 202 Legoe Road, Buckland Park (**Land**).

We have now had the opportunity to review the staff report prepared for the upcoming meeting of the Council Assessment Panel. The Council's planning staff are generally supportive of the proposed land use and land division. However, a potential issue with access to the Land in the event of a 1% AEP flood event has been identified late in the assessment process. As a consequence staff have recommended that the Council Assessment Panel refuse the grant of planning consent at its meeting on 18 June 2026.

Our client wishes to provide a response to the recommendation for refusal, in advance of the Panel meeting scheduled for 18 June 2026.

To assist the Panel in its consideration of the proposed development we make these submissions on the correct approach to assessment of the application. For the reasons that follow:

1. The overlay policies relied upon to support the refusal have limited spatial application and are largely inapplicable;
2. Access to the Land by emergency vehicles will be available via neighbouring land unaffected by flooding;

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3. Any emergency vehicle access issues will be permanently resolved as the nearby land in the Master Planned Neighbourhood Zone is developed; and
 4. The risk to occupants is in any event low and appropriately mitigated.

Background

Windamere Park has been in operation since 1991 and is an accredited disability services provider with the National Disability Insurance Scheme (NDIS). It currently offers a range of education and training opportunities for participants and already includes limited supported independent living accommodation and overnight accommodation.

The Land is located in the Rural Horticulture Zone and, importantly, the Windamere Park Subzone. The proposed land use is expressly supported by the provisions of the Subzone.

Portions of the land lie within the Hazards (Flooding – General) Overlay and portions are within the Hazards (Flooding) Overlay. However, the proposed development is largely sited outside of the flooding overlays, with only a corner of one of the buildings located within the Hazards (Flooding – General) Overlay.

Flood modelling shows that in a 1% AEP flood event (previously what was known as a 1 in 100 year flood event) a portion of Carmelo Road is expected to flood to a height of 1-1.5m. The location of the flooding is approximately 1.8kms from the Land. There is estimated to be approximately 20 hours warning time between identification of a flood event and the flood levels eventuating.

Windamere Park conducts full site evacuation drills every three months. The drills have demonstrated that all residents can be evacuated from the site in no more than 12 minutes.

The land to the immediate east and north lies within the Master Planned Neighbourhood Zone (**MPN Zone**) and comprises the Riverlea estate, the largest residential development in the State. The land to the south-east of the Land, including Carmelo road is also within the MPN Zone.

The plans for the further stages of the Riverlea development are understood to include a new public road connecting the Riverlea Estate to Legoe Road. The Riverlea development includes flood mitigation works such that upon completion there will likely be multiple evacuation routes from the Land unaffected by flood impacts.

Recommended reasons for refusal

The following provisions of the Code are relied upon to support the recommendation for refusal of the proposed development:

- *Rural Horticulture Zone PO 2.1 – Development is provided with suitable vehicle access.*
- *Hazards (Flooding) Overlay DO 1 – Impacts on people, property, infrastructure, and the environment from high flood risk are minimised by retaining areas free from development, and minimising intensification where development has occurred.*

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- *Hazards (Flooding) Overlay PO 2.1 – Development sited and designed to minimise exposure of people and property to unacceptable flood risk.*
 - *Hazards (Flooding) Overlay PO 2.2 – Buildings housing vulnerable people, community services facilities, key infrastructure and emergency services are sited away from flood prone areas to enable uninterrupted operation of services and reduce likelihood of entrapment.*
 - *Hazards (Flooding) Overlay PO 6.1 – Development does not occur on land:*
 - (a) from which evacuation to areas not vulnerable to flood risk is not possible during a 1% AEP flood event.*
 - (b) which cannot be accessed by emergency services vehicles or essential utility service vehicles during a 1% AEP flood event.*
 - *Hazards (Flooding) Overlay PO 6.2 – Access driveways and tracks to a significant development (i.e. dwellings, places of work, etc.) consist of a safe, all-weather trafficable surface that is accessible during a 1% AEP flood event.*

Response to reasons for refusal

Respectfully, the majority of the reasons nominated do not apply or are not relevant to the proposed development.

Spatial application of Code policies

The first observation is that the flooding overlays have distinct spatial application and cannot be applied to land that is not within the overlay and part of the development site.

Part 1 – Rules of Interpretation of the Code deals with the application of spatially based policies and rules as follows:

Where a zone, subzone, overlay or technical and numeric variation (TNV) does not spatially apply to the whole of a site that is the subject of the development application, the spatially based rules of the zone (including assessment pathway exclusions), subzone, overlay or TNV are only applicable to the portion of the site to which the zone, subzone, overlay or TNV spatially covers. Reference to the South Australian Property and Planning Atlas of the SA planning database will be made to determine whether a zone, subzone, overlay or TNV is relevant to the site of the proposed development application.

(emphasis added)

Put simply, a policy will only apply to a piece of land to the extent that it spatially applies to that land as depicted on the South Australian Property and Planning Atlas (**SAPPA**).

A development, or portion of a development, cannot be assessed against the Flooding Overlay provisions if it falls outside of the Overlay.

Provisions generally met in any event

Leaving matters of spatial application aside, the policies, on their terms, are generally met by the proposed development:

Hazards (Flooding) Overlay DO 1 - A Desired Outcome may inform the interpretation of a Performance Outcome but is not an assessment provision in its own right¹. A DO cannot form the basis for refusal.

Hazards (Flooding) Overlay PO 2.1 – the development has been sited and designed to minimise exposure of people and property to unacceptable flood risk as the development is located outside of flood affected areas.

Hazards (Flooding) Overlay PO 2.2 – the buildings are sited away from flood prone areas to enable uninterrupted operation of services and reduce likelihood of entrapment. The corresponding DPF is also met in that the supported accommodation is not located within the Overlay area.

Hazards (Flooding) Overlay PO 6.1(a) – the development will not occur on land from which evacuation to areas not vulnerable to flood risk is not possible during a 1% AEP flood event.

Hazards (Flooding) Overlay PO 6.2 – the access driveways and tracks to the development consist of a safe, all-weather trafficable surface that is accessible during a 1% AEP flood event. PO 6.2 speaks only to access driveways and tracks, not to public roads.

None of these provisions provide a proper basis for refusal of the application.

The provisions that require further analysis include Zone PO 2.1 and Hazards Overlay PO 6.1(b).

Zone PO 2.1

Rural Horticulture Zone PO 2.1 seeks that “development is provided with suitable vehicle access”.

The corresponding DPF provides that the PO will be satisfied where “development is serviced by an all-weather public road”.

The Code gives limited guidance on what is an “all-weather public road”. In our submission, the reference to “all-weather” does not include extreme flood events, bushfires, cyclones or other natural disasters. A 1% AEP flood is not a “weather” event.

The fact that a road may become flooded during a 1%AEP flood does not mean that the road is not an “all-weather” road. Were the frequency of flooding a regular occurrence the position might be different.

The proposed development is provided with suitable vehicle access.

Hazards (Flooding) Overlay PO 6.1(b)

¹ *Adelaide Hills Council Assessment Manager v Parkins & Anor* [2023] SASCA 66

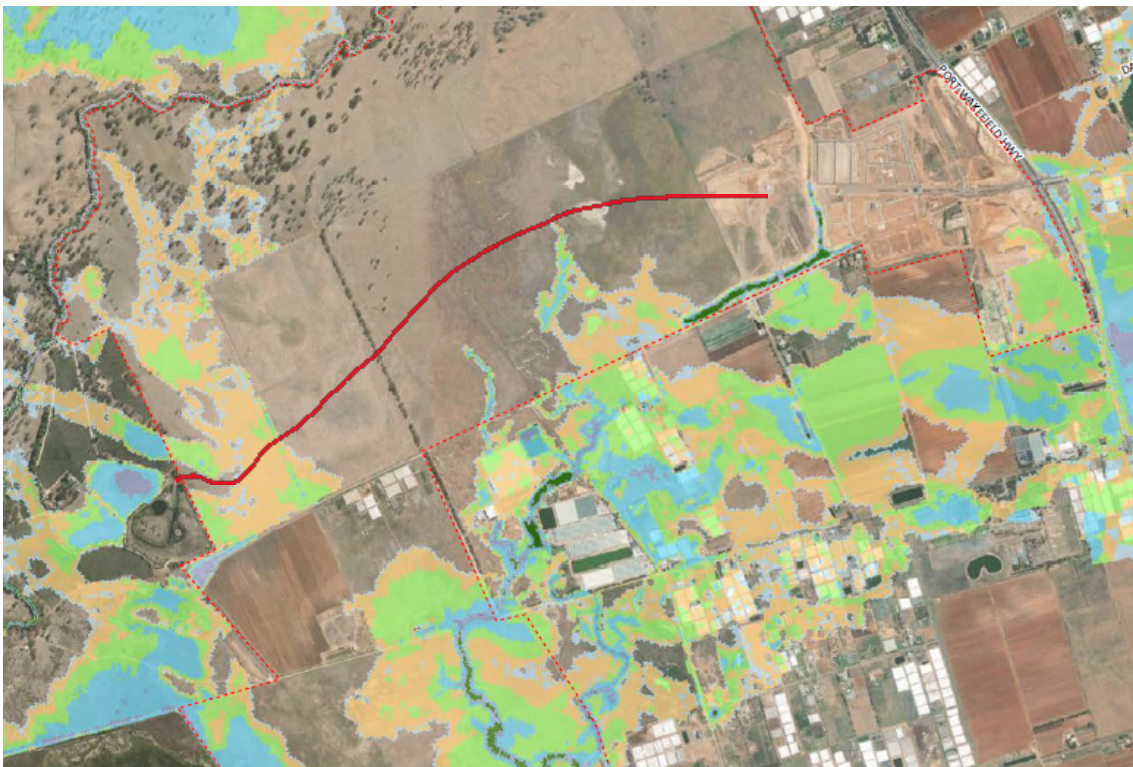
PO 6.1(b) seeks that:

Development does not occur on land:

- (b) *which cannot be accessed by emergency services vehicles or essential utility service vehicles during a 1% AEP flood event.*

Importantly, PO 6.1(b) does not require that access occur only by way of a public road.

The flood mapping prepared by Water Technology in 2022 shows that a pathway through the Riverlea site is presently accessible via land with a flood depth of not more than 0.25m (refer image below). That land is presently open farmland at the western edge of the Riverlea estate.



While public road access is plainly preferable, it is not uncommon for emergency service vehicles to gain access via neighbouring properties in an emergency. Indeed, the right for emergency services to access private property is protected at common law and under legislation².

The access over the vacant farmland will only be lost when Riverlea is developed, in which scenario there will be a permanent new public road access, not impacted by flood events.

Having regard to PO 6.1(b) the Land can be accessed by emergency services vehicles during a 1% AEP flood event.

² See for example *Fire and Emergency Services Act 2005*

Risk is low and appropriately mitigated

As noted above, emergency access clear of flood waters will be permanently resolved as part of development of adjacent MPN Zone, which is currently underway. Having regard to the current housing crisis it is reasonable to expect that the Riverlea development will be completed as quickly as the developer is able to.

Equally, the risk to occupants of the proposed Windamere Park development only arises once the residential flat buildings have been constructed, are ready for occupation and have a confirmed NDIS registered provider. That is likely to be some time away.

The NDIS providers will each be required to establish emergency and evacuation management plans and protocols around 24 hour on-site care.

Expert advice from Southfront and FMG has identified the risk and processes to appropriately manage the risk. Southfront, who are well qualified and experienced in this field have prepared a detailed Flood Emergency Access and Evacuation Management Plan which forms part of the proposal.

In the circumstances, the risk posed by the access issues is extraordinarily low. It would require not simply a 1% AEP flood but a confluence of other events and a failure of management.

In order for an occupant to be put at risk it would need a scenario where:

1. There is a 1% AEP flood event;
2. Windamere Park has been developed but the land in the adjacent MPN Zone has not been developed;
3. There is a failure to evacuate the site despite flood warnings (noting the 20 hour lead time) and the requirements of the Southfront Management Plan;
4. There is a medical episode requirement emergency attendance; and
5. The paths to the land outside of the flood waters are obstructed.

Even in this scenario, evacuation by the SES or helicopter remains an option. There are clearly options that would be available for an emergency medical evacuation.

The risk is not so significant or proportionate that it is reasonable to expect Windamere Park to implement a regional flooding solution or to delay approval of the proposed development.

No liability to Council for a decision made in good faith

The Council is excluded from liability for any decision it makes in good faith³. Plainly, a decision to approve the proposed development, supported as it is by expert reports and the Southfront Flood Emergency Access and Evacuation Management Plan is a decision in good faith. It cannot be said that the Council is being negligent in its assessment simply because there is a theoretical risk of flooding.

³ PDI Act s233, see also *Mortimer v DC Streaky Bay* [2014] SADC 75

The Panel can of course include relevant conditions on the planning consent to require compliance with the Southfront Management Plan until such time as the flood issues are resolved by completion of the Riverlea project.

Conclusion

Having regard to the above it is plainly open to the Panel to grant planning consent to the proposed development.

We ask that a copy of this letter be provided to all members of the CAP for their consideration in advance of the meeting scheduled for 18 June 2026.

Feel free to contact me to discuss.

Yours faithfully



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