The Court held that the proceedings were void because the second application did not contemplate "development" for two reasons. The first was that a Crown Lease may or may not be an "allotment" within the meaning of the *Development Act* 1993 ("the Act"). In this case the Land was not an "allotment" and therefore could not be divided under the Act. It is important whenever considering division of a Crown Lease that the land be verified to be an "allotment" under the Act.

The second reason was that (assuming the Crown Lease could be an "allotment") the application pertained only to *a portion* of an allotment. Therefore it did not propose division of an "allotment" and did not contemplate any "development" under the Act. An existing land division approval is insufficient to permit consideration of a further land division application. Each application for a staged land division cannot be assessed until the Plan of Division for the preceding stage had been deposited with the LTO.

The Court noted two further issues. The first was that land division affects the entirety of the land being divided. Even if new allotments will be created only within one zone, if the subject land straddles two or more zones, the Plan provisions for all affected zones will be relevant. The second issue was that, where a cross-boundary proposed development is non-complying within one zone, it will be a non-complying development in its entirety.

Jolly v District Council of Yankalilla [2006] SASC 53 - Court limits operation of Land Management Agreements (LMAs)

By Felicity Niemann (Solicitor – Norman Waterhouse)

Mr Jolly occupied a shack located at Lady Bay, Normanville, one of 21 shacks purchased from Council by Lady Bay Shores Pty Ltd. Each occupier was a shareholder in Lady Bay Shores and possessed a right for exclusive use created pursuant to memorandum and articles of the company. Prior to the purchase, Council and Lady Bay Shores entered into a Land Management Agreement ("the LMA") pursuant to Section 57 of the *Development Act* 1993 ("the Act"), which, inter alia, restricted the development "*to only allow or create buildings of a single storey*".

Despite the terms of the LMA, development approval for a second storey was granted to Mr Jolly. After its substantial commencement, Council became aware that the development contravened the approved plans. Council subsequently issued a Section 84 Notice requesting a variation application. Council refused to process the application because it was purely hypothetical, as Lady Bay Shores, the owner, had refused to consent to the application. Her Honour Judge Cole in agreeing with Council's approach, considered the Supreme Court decision of Justice Wells in *Hackney Hotel Pty Ltd v Corporation of the Town of St Peters, Bleechmore and Ors* (1983) 32 SASR 145.

On appeal the Supreme Court held that the application was not hypothetical and that the occupiers, due to their exclusive occupation of the shack, clearly had status to apply for planning consent. The Court considered that despite the existence of the LMA its application had no effect on Mr Jolly. The Court held that "*the fact that Mr and Mrs Jolly were shareholders of Lady Bay Shores, standing alone, neither made them a party to the agreement, nor had the effect of causing them to be bound by it.*" In contemplating Section 57(12) (that Council may take into account a Land Management Agreement when assessing an application) the Court also found that the existence of an LMA is of limited relevance "*where a third party, that is, a party other than the parties to the LMA, is in occupation of the Land.*"

These problems have now largely been dealt with under the new Section 57A provisions whereby a LMA can now bind not only the owner but also the person applying for development approval and any person who has the benefit of the development authorisation.