

Our ref: THG/220326

18 December 2020

Mr Michael Lennon
Chair
State Planning Commission
GPO Box 1815
ADELAIDE SA 5001

By email: DIT.planningreformsubmissions@sa.gov.au

Dear Mr Lennon,

Phase 3 (Urban Areas) of the Planning & Design Code – 18-58 Beadell Street, Burton – Tony Marrone Nominees Pty Ltd

Our firm acts for Tony Marrone Nominees Pty Ltd, the owner of land at 18-58 Beadell Street, Burton¹ (**the subject site**).

Our client has instructed us to lodge, on its behalf, a submission in relation to the latest draft of Phase 3 (Urban Areas) of the Planning and Design Code (the Code) as it affects the subject site.

In summary, we seek that the boundary of the General Neighbourhood Zone (which intersects the subject site) be extended further north into the subject site to align with the ANEF noise contour 30.

1. Background

- 1.1 Tony Marrone Nominees Pty Ltd is part of the Marrone family's group of companies, founded by Tony and Immacolata Marrone. Marrone Fresh Pty Ltd is a South Australian family horticultural business that was established in the early 1990s.
- 1.2 The various elements of Marrone Fresh (which including farming sites, post-harvest and packing sheds and administration) are operated from various properties, including from the subject site. The headquarters of Marrone Fresh is situated at 260 Carclew Road, Penfield Gardens.
- 1.3 The subject site, which is approximately 4.95 hectares in area, is used:
 - primarily as a farming site, with an associated packing shed. However, note that in recent times our client has reduced its usage of this shed. The majority of its packing now occurs at Penfield Gardens;

¹ As contained in CT 5255/338

- residential purposes. There is a dwelling (the residence of Mr and Mrs Marrone) situated in the south-eastern corner of the subject site.

Vehicular access to the subject site, and thus to both the dwelling and the packing shed, is from Beadell Street. Beadell Street is a street that largely serves a residential locality.

- 1.4 The subject site is presently zoned, under the Salisbury Council Development Plan consolidated on 4 April 2019, partly (and mostly) Primary Production and partly Residential.
- 1.5 In or about 2016 the Salisbury Council proposed amendments to the then current zoning pertaining to the subject site and other land. That proposal took the form of a draft Development Plan Amendment titled the "Rural (Aircraft Noise) Direk Industry and Residential DPA" (**the draft DPA**).
- 1.6 Our client had various concerns with the draft DPA and expressed those concerns to the various authorities involved in the DPA process.
- 1.7 Although the draft DPA went on public exhibition, the DPA process was not completed. It is assumed that the DPA process has been abandoned and replaced by the Code process.
- 1.8 Our client no longer regards the subject site as being critical to its horticultural operations as it has limited productive capacity. Further, the surrounding area has been developed such that the locality is now predominantly residential in nature. It considers the highest, best and most suitable use of that land, in the longer term, to be for residential purposes or other forms of neighbourhood type developments including supported aged care or retirement living. More particularly, it considers all of the subject site to up to, from the southern end, the Aircraft Noise Exposure Forecast (**ANEF**) contour with a value of 30 to be suitable for residential development. In particular, it regards that land as being land that will not be adversely affected by aircraft noise.

2. Overview of the Code as it relates to the subject site

- 2.1 At a zoning level the Code places the subject site partly in the Rural Zone and partly in the General Neighbourhood Zone. The area of the subject site previously zoned Primary Production will, under the Code, be in the Rural Zone. The area of the subject site presently (under the Development Plan) in the Residential Zone will generally be placed in the General Neighbourhood Zone under the Code. In other words, the majority of the subject site will be located in the Rural Zone.
- 2.2 It is acknowledged that there has been a small increase to the area of the subject site that is to be located in the General Neighbourhood Zone when compared to the area of the land that is presently, under the Development Plan, placed in the Residential Zone. That is because the previous boundary between the Primary Production Zone and the Residential Zone (as it relates to the subject site) has been realigned such that it runs along the common boundary separating the subject site from the neighbouring land to the south at 16 Beadell Street, Burton² (**neighbouring land**). It should also be noted

² As contained in CT 5087/381

that as a result of that realignment all of the Neighbouring land will, under the Code, be located in the General Neighbourhood Zone, whereas under the current Development Plan the south-eastern half of that land is located within the Residential Zone and the north-western half (where it borders the subject site) is located in the Primary Production Zone.

2.3 The Code provides that the General Neighbourhood Zone is a zone for:

“Low-rise, low and medium-density housing that supports a range of needs and lifestyles located within easy reach of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.”

Development envisaged in the General Neighbourhood Zone includes residential development in the form of “dwellings”.

Insofar as the subject site is concerned a “*detached dwelling*” development is a Deemed to Satisfy kind of development. So too is “*land division*”.

2.4 The Code provides that the Rural Zone has number of Desired Outcomes, viz:

- supporting the economic prosperity of South Australia primarily through the production, processing, storage and distribution of primary produce (and other activities); and
- supporting diversification of existing businesses that promote value-adding such as industry, storage and warehousing activities, the sale and consumption of primary produce, tourist development and accommodation.

2.5 Relevantly, there are a number of Code Overlays that apply to the subject land including the Aircraft Noise Exposure Overlay (and more particularly ANEF 20, 25 and 30) (**the ANE Overlay**).

3. Our client’s comments on the Code

3.1 General

Our client considers the Code, when compared to the existing Development Plan, to be an improvement as regards to the subject land in certain respects. However, it does not go far enough.

The improvements delivered by the Code are as follows:

- it increases (albeit marginally) the area of the subject site available for residential development (i.e., by zoning that portion of the subject site General Neighbourhood); and
- in terms of the potential impact from aircraft noise, the Code provisions contemplate that residential development and land division may take place on a larger area of the subject site (subject to the achievement of certain performance standards). In the case of buildings accommodating “*sensitive receivers*” (which includes any use for

residential purposes or land zoned primarily for residential purposes) such buildings are not to be located within an area having an ANEF value of 25 or more, and in the case of land division (creating additional allotments) such a kind of development should not occur within an area having an ANEF value of 30 or more.

It is submitted that the Code does not go far enough in that it does not re-zone to General Neighbourhood enough of the subject site to General Neighbourhood.

It is considered that the subject site should be re-zoned to General Neighbourhood up to the area having an ANEF value of 30, or at the very least, up to and including the area having an ANEF value of 25.

3.2 Expansion of the General Neighbourhood Zone

The authors of the Code are obviously satisfied that land above land with an ANEF value of 20 is suitable for residential development (including associated land division) and that such land can comfortably co-exist with land being used for horticultural purposes. This much is clear from the proposed re-zoning of the Neighbouring land to General Neighbourhood, i.e. the Neighbouring land is located above land with an ANEF value of 20 and is adjacent to the subject site which, of course, is used for horticultural purposes.

Also, the ANE Overlay indicates that the authors of the Code consider land up to land with an ANEF value of 25 is suitable in principle for residential development, and land up to land having an ANEF value of less than 30 is suitable for land division. It follows, therefore, that that portion of the subject site intersected by the ANEF contour with a value of 25 is suitable for residential development and that area of the subject site up to the ANEF contour with a value of less than 30 is suitable for land division (creating additional allotments). Why therefore, we ask, does not the Code provide for housing/residential development on that area up to but below the ANEF contour with a value of 30 given that land division is contemplated for those areas?

It is also relevant to note that none of the subject land is located in the Environment and Food Production Area.

In the circumstances it is submitted that that portion of the subject site up to and including the area immediately below the ANEF contour with a value of 30 should be zoned General Neighbourhood, with the balance being zoned Rural. Failing that, it is submitted that that portion of the subject site up to the ANEF contour with a value of 25 should be zoned General Neighbourhood, with a balance of the subject site being zoned Rural.

It is also, in the circumstances, submitted that **the ANE Overlay should be amended** so that buildings accommodating sensitive receivers are permitted (subject to the achievement of certain performance standards) on land having an ANEF value of less than 30. In other words, if the division of land (that creates additional allotments) for the purpose of establishing buildings accommodating sensitive receivers is acceptable on land having an ANEF value of less than 30 why should buildings accommodating sensitive

receivers not be contemplated on land having an ANEF value of less than 30?

There is another significant, and sound, town planning reason why more of the subject site should be zoned General Neighbourhood. If the present zoning of the subject site and the Neighbouring land to General Neighbourhood is left as it is, it will **not** allow enough land for an orderly and economic future residential development. The small, and awkwardly shaped additional area re-zoned for residential development (i.e. re-zoned to General Neighbourhood) will make it very difficult to get convenient road access to support additional housing. Also the configuration of additional housing allotments will be unusual. It will result in a compromised residential in-fill development. If, on the other hand, all of the Neighbouring land and all of the subject site up to at the very least that portion of the subject land with an ANEF value of 25 were to be re-zoned to General Neighbourhood it would provide a meaningful area of land to achieve an orderly, economic and attractive housing estate development, with convenient road access and services.

We urge you to carefully consider, and adopt, our submissions on behalf of Tony Marrone Nominees Pty Ltd as they relate to the subject site.

Yours faithfully



Tom Game
BOTTEN LEVINSON

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Encl Plan SA image showing subject site

