

28 February 2020

REF No.: 00882-007

The Chair  
State Planning Commission

**Attention:** Mr Michael Lennon

By Email: [DPTI.PlanningReformSubmissions@sa.gov.au](mailto:DPTI.PlanningReformSubmissions@sa.gov.au)

Dear Mr Lennon,

**Re: Submission - Draft Planning & Design Code (Phase 3 Urban Areas)**

We write on behalf of our client, Chero2 Pty Ltd, that is developing the 'Blackwood Park' residential estate at Craighburn Farm, which has been subject of staged development over the past two (2) decades.

While a large portion of the site has already been developed, the land development is not yet fully complete, and we anticipate there will be ongoing residential development, both in terms of land division and dwelling construction in the short-medium term.

The site is the whole of the suburb of Craighburn Farm. The site is currently located within the **Residential (Craighburn) Zone** of the Mitcham (City) Development Plan (consolidated 20 February 2018). Portions of the site are also captured within several Policy Areas of the Zone, namely Policy Area 1 (Residential), Policy Area 2 (Residential Deferred) and Policy Area E (Minda Core Activity Enclave).

Under the Planning and Design Code ('the Code'), the site is proposed to be zoned within the **General Neighbourhood Zone**. The site is not captured within a specific sub-zone. The site is also captured within the following Overlays:

- Airport Building Heights (Regulated) – all structures over 30 metres;
- Hazards (Bushfire Protection Area) – Medium Risk;
- Local Heritage Place Overlay (part of land);
- Native Vegetation;
- Prescribed Wells Area;
- Regulated Trees;
- Sloping Land (portions of land); and
- Water Resources Overlay (portions of land).

The Technical and Numeric Variations identify that the maximum building height is 9 metres/2 building levels; minimum lot size in the order of 300m<sup>2</sup> (detached dwelling) and 200m<sup>2</sup> (row-dwelling); and minimum frontages in the order of 9 metres (detached dwelling) and 7 metres (row-dwelling) (as identified within the Planning and Design Code Consultation Map Viewer).

Having reviewed the planning ordinance, proposed to apply under the Code, we note the following concerns:

- 1) There are more onerous and extensive public notification triggers (when compared to the existing policy framework), particularly where residential development fails to achieve specified design criteria (including site areas, building height, setbacks, and incorporation of design features).
- 2) Outbuildings (other than a garage) trigger public notification where the performance assessment pathway applies.
- 3) 'Typical forms' of residential development are excluded from Accepted Development/Deemed to Satisfy Criteria due to Overlays which have been applied across the site.
- 4) Minimum lot sizes have increased for Group Dwellings (240m<sup>2</sup> to 300m<sup>2</sup>) and Residential Flat Buildings (200m<sup>2</sup> to 300m<sup>2</sup>) when compared to the existing policy framework.
- 5) Setting a maximum building level of 2 levels would preclude many typical forms of residential development already applied across the site, where 3 levels have been appropriately adopted – often in response to sloping terrain - by using undercroft garaging or similar, whilst still maintaining a maximum building height of 9 metres above natural surface.
- 6) We are also concerned about any confusion whereby existing forms of residential development within the Estate are unable to be replicated under the new Code.
- 7) The presence of a Bushfire – Medium Risk Overlay means that a Deemed-to-Satisfy pathway of assessment for residential dwellings is no longer available. This would cause all new residential developments to be unnecessarily, subject to a Performance Assessment pathway, despite the requirements for residential dwellings for medium bushfire risk areas being well defined and documented in the Ministers Code and no referrals required to the Country Fire Service (CFS).
- 8) The new Code undermining existing development Encumbrances/Covenants and/or causing confusion in this regard.

We are concerned the above policy framework will result in more onerous procedural requirements for occupants (and future occupants) seeking to undertake residential development in the Estate, even in situations where there will be minimal (if any) external impacts associated with the development and there will be frustration/confusion for new residential dwelling applicants that are unable to gain approval for a dwelling that is similar to others previously approved in the Estate.

### Developer Encumbrances / Covenants

This Estate is subject to detailed urban design guidelines, produced by the developer, resulting in high quality housing. All purchasers are aware of these requirements and the resulting standard of housing for them and their neighbours.

Many developers (particularly in larger greenfield/infill projects) and Renewal SA will often use Urban Design Guidelines in conjunction with covenants/encumbrances registered on titles to ensure the character and vision for a development is maintained, as well as giving greater confidence to homeowners about the quality of housing and how it interacts with neighbouring homes and surrounds. Unlike a Development Plan (or the Code) that needs to be flexible to cover a broad range of planning policies and issues across South Australia, developer Urban Design Guidelines/Encumbrances are often at a much higher level of detail as the developer is willing to invest in the management and oversight of the process to ensure a specific/unique vision is obtained for the specific location/project.

Encumbrances/Urban Design Guidelines may cover a range of items, subject to the vision and characteristics of each individual development, including:

- Building time limits;
- Sustainability measures (above and beyond statutory requirements);
- Building envelopes/setbacks/heights;
- Retaining walls/landscaping/fencing;
- Building Form, materials and colours; and
- Other specific items of importance to the overall vision and delivery of the development.

Sometimes there are issues whereby a homeowner is in breach of the Encumbrance, requiring cessation of work or rectification due to:

- » Undertaking works that do not require development approval (e.g. fencing/retaining walls/outbuildings) but are in breach of the requirements.
- » Granting of Development Approval by the Relevant Authority, yet Encumbrance Approval has not been given (and possibly would not be given).
- » Developers bypassing the Encumbrance Approval process (intentional or ignorant), forcing land developers to take legal action (at the cost of the homeowner).

With the introduction of the new E-planning portal, there is potential for these breaches to occur more often. To help prevent this, the State Planning Commission may consider a mechanism to highlight those areas that are covered by an Encumbrance / Urban Design Guidelines (or similar) to ensure the Encumbrance Manager is notified and Encumbrance Approval is granted prior to issue of Development Approval.

## Proposed Amendments to the Planning and Design Code

- Public notification ‘triggers’ associated with ‘residential development’ in the General Neighbourhood Zone should be reviewed and amended, and notification should only be required where there is strong likelihood of an external amenity impact beyond the boundaries of the subject site.
- Minimum lots sizes for Group Dwellings and Residential Flat Buildings should be reduced to 240m<sup>2</sup> and 200m<sup>2</sup> respectively to reflect the existing policy framework which applies to the site.
- Deemed to Satisfy (DTS) pathways for residential development, listed within the General Neighbourhood Zone (and Greenfield Suburban Neighbourhood Zone) should be reviewed and amended to ensure they are not diluted by the imposition of onerous Overlay restrictions (e.g. Sloping Land or Bushfire – Medium Risk), which would unreasonably restrict simple and expected classes of development from following the DTS assessment pathway.
- Consideration be given to highlight the presence of developer-imposed Encumbrances / Covenants in master-planned residential estates on the E-planning Portal.

We thank the State Planning Commission for the opportunity to make this submission. We would welcome the opportunity to meet with the Commission to discuss and further explain our position in relation to the matters identified above.

Yours Sincerely



**Chris Carrey**  
Planning Consultant