

Our ref: JAL/219148

28 February 2020

Mr Michael Lennon  
Chair  
State Planning Commission  
Level 5, 50 Flinders Street  
ADELAIDE SA 5000

By email: [DPTI.PlanningReform@sa.gov.au](mailto:DPTI.PlanningReform@sa.gov.au)

Dear Mr Lennon

**Submission on Draft Planning and Design Code - Phase Three - Corner Portrush Road and Kensington Road Norwood**

This firm acts for Dr Grant Duncan, and a number of companies<sup>1</sup> (of which Dr Duncan is a director) who own and operate land on the corner of Portrush Road and Kensington Road.

Our clients submissions on the draft Planning and Design Code - Phase Three are set out below.

In summary our client respectfully requests that the following land (approximately 10,735m<sup>2</sup>) is included in the Urban Corridor (Main Street) Zone including at least the properties:

1. fronting the western side of Portrush Road between Cyprus St and Kensington Road over approximately 155m (from and including the Robin Hood Hotel at 315 Portrush Road to and including the land at 141 Kensington Road);
2. Fronting Cyprus St from Portrush Road to the west over a distance of approximately 57m;
3. Fronting the northern side of Kensington Road from Donegal Street east to Portrush Road over about 73m (137-141 Kensington Road); and
4. Fronting the eastern side of Donegal Street from Kensington Road (from and including 137 Kensington Road to and including 38 Donegal Street) for a length of approximately 73m.

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<sup>1</sup> Nicalnat No1 Pty Ltd, Nicalnat No 2 Pty Ltd, Nicalnat No 3 Pty Ltd; and Nicalnat No 4 Pty Ltd.

## Details of the relevant land

The land the subject of this submission is owned by several entities (only some of which are associated with our clients) as follows:

### ***Nicalnat Land***

1. The Nicalnat entities' land comprises four significant parcels with a total area of approximately 4720m<sup>2</sup>, being the land comprised in the followings certificates of titles:
  - 1.1 CT6142/946, owned by Nicalnat No. 2 Pty Ltd;
  - 1.2 CT 6142/947, owned by Nicalnat No. 4 Pty Ltd;
  - 1.3 CT 6142/948, owned by Nicalnat No. 1 Pty Ltd; and
  - 1.4 CT 5506/60, owned by Nicalnat No. 3 Pty Ltd.

(collectively referred to as the **Nicalnat Land**).
2. The Nicalnat Land currently lies within the Residential Character (Norwood) Zone, in the Norwood Payneham & St Peters (City) Development Plan.<sup>2</sup>
3. The Nicalnat Land has a frontage to both Portrush Road of approximately 78m, a Primary Arterial Road, and Kensington Road of approximately 45m, a Secondary Arterial Road.<sup>3</sup> It also has a small frontage (approximately 9m) and access to Donegal St in the form of a small office building and entry driveway at 38 Donegal St.
4. The Nicalnat Land is proposed by the Code to be within the Suburban Neighbourhood Zone.
5. Since 1995 our client has used the Nicalnat Land as consulting rooms in the form of an orthodontic clinic. There are 4 main buildings on the land with an approximate floor area of around 1500m<sup>2</sup> which are used as offices and consulting rooms (orthodontic and physiotherapy). In addition the land contains driveways, car parks and garden beds.
6. The large 2-storey bluestone building is a local heritage place. The other (single storey) buildings are an interwar bungalow and several more recent (1950-1980) modest, utilitarian structures of no design or amenity value. The land is generally poorly laid out as a consequence of the sequential acquisition of the properties over time and their re-purposing and consolidation. The land as a whole has clearly not been master-planned in any way.
7. The buildings, driveways and garden beds are generally in a relatively low state of repair and appearance.
8. The Nicalnat Land was formerly used by the Royal District Nursing Service ("RDNS") as offices and the like.
9. The Nicalnat land has not been used for residential purposes for many decades.

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<sup>2</sup> Consolidated 21 March 2019 (**Development Plan**).

<sup>3</sup> Refer Map NPSP/1 (Overlay 1) Part B of the Development Plan.

10. Subject to suitable re-zoning, our client intends to improve the state and condition of the Nicalnat Land as part of a redevelopment. That redevelopment would likely include the demolition of the non-significant buildings and the construction of purpose built structures, car parks, driveways and delivery areas, landscaping and fencing. The redevelopment might involve uses such as consulting rooms, aged care facilities, medical and allied services, a pharmacy outlet, an optometrist, child care and some form of related office facilities and possibly residential development.

#### ***The Berry Land***

11. The land at 137 Kensington Road is comprised in CT 5599/228 and is owned by Ms Jacqueline Berry. This land is approximately 1600m<sup>2</sup> in area (with a frontage to Kensington Rd of about 26m and to Donegal St of about 63m) and contains a detached dwelling. It is subject to a contract for sale to Nicalnat.
12. The Berry Land is within the Residential Character (Norwood) Zone presently and it too is proposed by the Code to be within the Suburban Neighbourhood Zone.

#### ***The RFB Land***

13. The land to the immediate north of the Nicalnat Land, at 317 Portrush Road is comprised in CT 5035/727. It has an area of about 1855m<sup>2</sup> with a frontage to Portrush Rd of approximately 33m and contains a substantial cream brick residential flat building of at least 4 levels and a substantial, steep pitched roof (with the appearance of at least another level) titled under a strata plan of division.
14. To the east (Portrush Rd frontage) and south of the substantial residential tower are large bitumen sealed areas for driveways and car parking. The substantial building is set very close (on its eastern side) to the rear boundaries of the single storey dwellings at 34 and 36 Donegal St and very close (on its northern side) to the car park of the Robin Hood Hotel.
15. The land is owned by Strata Pan No. 2816 Incorporated and the various strata units are individually owned.
16. The RFB land is within the Residential Character (Norwood) Zone presently and it too is proposed by the Code to be within the Suburban Neighbourhood Zone.

#### ***The Robin Hood Land***

17. Further to the north, fronting Portrush Road, but south of Cyprus St are three parcels owned by Snibb Pty Ltd and Hood Nominees Pty Ltd comprised in
  - 17.1 CT 5226/12 (the narrow elongated parcel fronting Cyprus with no direct frontage to Portrush);
  - 17.2 CT 5226/14 (the southerly parcel fronting Portrush); and
  - 17.3 CT 5226/13 (the parcel on the corner of Cyprus and Portrush).
18. These parcels combined have an area of approximately 2560m<sup>2</sup> (with a frontage to Portrush Rd of approximately 45m and to Cyprus St of about 56m) and contain the Robin Hood hotel and car park areas.
19. The Robin Hood Land is presently within the Mixed Use B Zone (forming the southerly extent of that Zone).

20. The Robin Hood Land is proposed in the Code to be within the Business Neighbourhood Zone.
21. Collectively, in this submission the Nicalnat Land, the Berry Land, the RFB land and the Robin Hood Land is referred to for ease of reference as the "**Rezone Land**".
22. A diagram depicting the Rezone Land is contained in **Attachment 1**.

### **Consultation**

23. Our client has consulted with various land owners both comprising the Rezone Land and land near to it.
24. The consultation included engaging Urban Commercial Property Group to -
  - 24.1 door knock properties within the Rezone Land, either side of Donegal St and Cyprus St to make contact, obtain contact details and outline the intent to engage in consultation over the request to include the Rezone Land in the Urban Corridor (Main Street) Zone;
  - 24.2 provide an outline of the Zoning proposed for the land under the Code and the terms of the Urban Corridor (Main Street) Zone to those people who expressed interest;
  - 24.3 meet with those of the local residents and business owners who wished to review and discuss the Code provisions.
25. Ms Berry, Strata Pan No. 2816 Incorporated, Snibb Pty Ltd and Hood Nominees Pty Ltd and of course the Nicalnat companies support inclusion of the Rezone Land in the Urban Corridor (Main Street) Zone.
26. The consultation included owners of land immediately west of the Rezone Land and with owners of land on the western side of Donegal St on the basis that they would potentially be most affected by future development of the Rezone Land if it were rezoned.
27. Mr Emero Barone, the owner of the two storey units situated at 135 Kensington Road and the adjacent dwelling at 39 Donegal St (on the western side of Donegal Street) supports inclusion of the Rezone Land in the Urban Corridor (Main Street) Zone.
28. The other owners consulted have not indicated a position in opposition or support.
29. Given the publicly stated position of the City of Norwood Payneham and St Peters on the Code generally, it was not considered productive to consult with the Council.

### **Existing land uses in the locality**

30. The Nicalnat Land has a long history of use and development for consulting rooms, offices and associated purposes. Those existing use rights are well entrenched.
31. The Berry land and other land immediately to the west and north (fronting Donegal St and further west along Kensington Road) is used for residential purposes. Buildings are generally detached dwellings or group dwellings of one or two stories.
32. Donegal St is a relatively narrow "no through road" with a closure just south of Cyprus St.

33. This southern extent of Donegal St (on its western side) has a number of medium density dwellings including the two storey dwellings at 135 Kensington Rd and 39 Donegal St, "Norwood Apartments" (6 serviced apartments) at 37 Donegal St and the group dwellings at 86 Queen St (the rear of which abuts Donegal St).
34. On the eastern side of Donegal St, the Berry Land (under contract to Nicalnat) extends much of the length of the Nicalnat Land except for the site at 38 Donegal St, which is part of the Nicalnat site.
35. North of 38 Donegal (again, on the eastern side of Donegal) several single storey dwellings (nos. 36 and 34) abut the large apartment complex of 317 Portrush Road. These two dwellings are on relatively small sites of between 510m<sup>2</sup> and 520m<sup>2</sup> in area with limited open space or gardens at front or rear.
36. A pair of semi detached cream brick 2 storey dwellings have been constructed at 26-28 Donegal St, with their modest rear yards sharing a boundary with the car park of the Robin Hood Hotel. These sites are about 250m<sup>2</sup> in area.
37. Two semi detached 2 storey dwellings have recently been constructed on the corner of Donegal St and Cyprus St (still numbered 4 Cyprus St). These dwellings occupy sites of about 265m<sup>2</sup> in area and have almost no front or rear yard area.
38. The RFB land has long been disposed to higher density residential flat building use. The building appears to be of 1970s or 1980's construction in fairly typical bulky cream brick form of that era. It has a very steeply pitched roof with gable ends facing Portrush Road, making this dark tiled structural element very prominent atop the cream brick walls.
39. The Robin Hood Land has been used as a hotel for over a century and has been renovated and redeveloped for that purpose over the last decade. Substantial and well designed renovations have been undertaken to the south and west of the original hotel building as well as improvements to the car park areas on those same western and southern sides of the site.
40. North of the Robin Hood Land, the land fronting Portrush Road to William Street also contains higher density residential development in the form of strata titled units generally in single storey form (at 303 and 305 Portrush Road).
41. The Norwood Garden Centre is located at the junction of Portrush Road and William St.
42. South of Kensington Road within the City of Burnside the land fronting Kensington Road and Portrush Road (no 321 Portrush Road) is a former dwelling converted for use as an office. It is proposed within the Code to be within the Suburban Neighborhood Zone.
43. Slightly further west fronting Kensington Road is the Burnside memorial Hospital proposed in the Code to be within the Community Facilities Zone.
44. South of Kensington Road and east of Portrush Road (on the opposite corner to the south east of the Nicalnat Land) are the large grounds of Loreto College proposed in the Code to be within the Community Facilities Zone.
45. Lastly, east of Portrush Rd and north of Kensington Road are further dwellings also proposed within the Code to be within the Suburban Neighborhood Zone.

### **Suburban Neighbourhood Zone not reflective of existing land uses**

46. The existing use of the Rezone Land and much of the nearby land is not consistent with the policies of the Suburban Neighbourhood Zone. The Suburban Neighbourhood Zone is not appropriate for the Rezone Land for the following reasons.
47. The Desired Outcomes expressed for the Suburban Neighbourhood Zone include "low to very low density housing".
  - 47.1 Out of all parcels in the Rezone Land only the Berry Land presently meets that desire.
  - 47.2 The rest of the land is not used for housing or (in the case of the RFB land) is tall, high-density housing.
  - 47.3 It should be noted that none of the adjoining dwellings on either side of Donegal Street meet this low density desire either.
48. The range of land uses desired and anticipated within the Suburban Neighbourhood Zone (see for example PO 1.1 and DTS 1.1) are not appropriate. While there is limited reference to office and consulting uses, the policy calls for ancillary uses to residential development that preserve a low density residential character which (as described above) does not apply.
49. The scale of office, consulting room and shop uses is very much limited (see for example DTS 1.4 and the reference to a floor area of a 200m<sup>2</sup> and DTS 1.3 which envisages a GLA of 100m<sup>2</sup>. PO 1.4 also only envisages larger scale shops, offices and consulting rooms both on higher order roads and adjacent existing commercial and retail precincts.
50. Existing uses such as consulting rooms and potential future uses such as aged care and health care are not envisaged at an appropriate scale and yet they already exist (in part at least on the Nicalnat Land) at a scale well in excess of that envisaged by this zone (1500m<sup>2</sup> of floor area on the Nicalnat site already).
51. The policies call for site coverage limited to 50% (see PO 3.1 and DTS 3.1) and building height limited to 2 stories.
  - 51.1 Policies such as these are already well exceeded the on the Rezone Land and adjoining land in Donegal Street.
  - 51.2 In particular almost all of the adjoining dwellings on either side of Donegal Street exceed the 50% site coverage by a considerable margin.
52. A site coverage control of this nature would considerably constrain any reasonable redevelopment of the Nicalnat Land rendering its rejuvenation uncommercial and highly unlikely.
53. The RFB land already clearly exceeds the two-storey height limit considerably.

### **Business Neighbourhood Zone not appropriate for Rezone Land**

54. The Business Neighbourhood Zone which is proposed to apply to the Robin Hood Land is likewise inappropriate for the Rezone Land for the following reasons.

55. The desired objective for this zone is low rise medium density with a variety of accommodation and housing coexisting with low impact employment generating uses.
  - 55.1 Clearly the RFB Land could not be described as "low rise".
  - 55.2 DTS/DPF 3.1 anticipates 2 building levels.
56. Similarly the land uses envisaged (see PO 1.1 and DTS 1.1) do not include a hotel. This is despite the fact that the Robin Hood hotel is well entrenched.
57. PO 1.2 calls for small-scale business and commercial land uses. DTS\DPF 1.2 provides guidance by indicating a GLA for a shop, office or consulting room of less than 250 m<sup>2</sup>.
  - 57.1 Clearly the scale of use envisaged is many orders of magnitude less than what already exists on the Nicalnat Land.
  - 57.2 It is well below the GLA that could be reasonably anticipated on a site of this size flanked by two arterial roads.

#### **Urban Corridor (Main Street) Zone contains more appropriate policies**

58. The Urban Corridor (Main Street) Zone is far better suited to the Rezone Land for the following reasons.
59. The Urban Corridor (Main Street) Zone provides an extensive suite of policies for the assessment of uses such as consulting room, Hotel, dwelling, licensed entertainment premises, office, residential flat building, restaurant, shop etc in Table 3 compared to the same table (and therefore the uses contemplated) in the Business Neighbourhood Zone or the Suburban Neighbourhood Zone.
60. DO 1 in the Urban Corridor (Main Street) Zone refers to a range of uses reflective of the underlying uses already on the Rezone Land (hotel, residential flat building, consulting room, office) with opportunity for further development (which is appropriate given the size and location of the sites).
61. DO 2 contains a clear design emphasis on future building form which is particularly relevant to any redevelopment of the Nicalnat Land and RFB Land.
  - 61.1 Performance Objectives 2.1- 2.11 set out extensive policies on design issues providing much better guidance on the future development of the site which is plainly ripe for rejuvenation.
  - 61.2 In short this suite of policies provides better protection for adjoining residential areas and far better policy guidance for this obvious and important strategic site.
62. PO 1.1 and DTS 1.1 list a range of uses that are truly relevant and appropriate to the Rezone Land including apartment, childcare, consulting room, dwelling, Hotel, licensed premises, office, restaurant shop (e.g. pharmacy).
63. PO 1.2 refers to services to both the local community and "surrounding district". This is an important addition in light of the location of the site on two major arterial roads and the size of these sites.
64. DTS 1.2 envisages a GLA of 2000 m<sup>2</sup> for shop, office, consulting and uses. This is far more reflective of the existing scale and the size of these sites.

65. This zone provides mixed use and residential policies to complement consulting room hotel et cetera uses (see for example DTS 1.3, PO 1.4, DTS 1.4, PO 1.5, DTS 1.5 and PI 1.6 etc).
66. This zone has a set of interface height policies that are appropriate to guide future development. Note however that PO 3.1 (page 1933) seems to be incomplete.
67. The land is naturally separated from residential areas by Donegal Street. For the RFB Land and the Robin Hood Land DTS 3.1 (the 45° rule) will provide a better guide (and indeed a far better outcome than current structures on the site) for those dwellings on the eastern side of Donegal Street that directly abut the Rezone Land.
68. PO 4.1 speaks to "significant development sites" and has direct application particularly to the Berry and Nicalnat Land but to the Rezone Land as a whole.
  - 68.1 The area of these parcels and the extent of extensive frontages to Kensington and Portrush Road are clearly applicable to a this policy.
  - 68.2 PO 4.2 also provides ideal guidance to the redevelopment of this area.
69. With four roads providing access to the Rezone Land including two arterial roads, the Urban Corridor (Main Street) Zone PO 5.1 and 5.2 (in addition to the Major Urban Transport Routes Overlay, Traffic Generating Development Overlay and Urban Transport Routes Overlay) all provide appropriate policy guidance to the way in which future development will interact with the transport network.
70. The Heritage Overlays also properly guide development of and around the local heritage building on the Nicalnat Land.
71. The location of this land, within close proximity to the district centre on The Parade Norwood and being adjacent to bus routes, makes it suitable to increased dwelling densities.
72. Such zoning will enable the development of a different form of housing, increasing the population, and resultant visitation to the Parade centre. Appropriate non-residential uses can also be facilitated on the land given the long term use of the land.

#### **Present and proposed zoning not reflective of arterial roads**

73. To the east and south, the Nicalnat Land is bounded by Kensington and Portrush Road. These Primary and Secondary Arterial Roads are significant arterial roads and are a predominant feature of the locality.<sup>4</sup> Portrush Road has an estimated daily traffic volume of 37,200 while Kensington Road has an estimated traffic volume of 21,400. Both are major roads. Public transport is available on both roads.
74. The Rezone Land provides a prime opportunity for rejuvenation of this prominent agglomeration of land.
  - 74.1 Access for residents, workers, patients and customers can be readily provided by the 4 roads around the Rezone Land.

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<sup>4</sup> See *Morrow & Anor v City of Mitcham* (1997) SAERDC 366, where the Court found that Cross Road, "constitutes a significant non-residential use within the locality" that "detracts from both the residential character and amenity of the locality."

74.2 Public Transport on Portrush and Kensington Roads and the proximity to the Parade make this an accessible location suited to inclusion in the Urban Corridor (Main Street) Zone.

75. If required as part of future development, there is also opportunity to widen Donegal Street on the eastern side.

**Broader strategic benefit of inclusion in Urban Corridor Zone**

76. The Rezone Land is a large parcel, prominently located at the junction of two arterial roads. It provides an opportunity for a range of uses to provide services to the district. It also presents an opportunity to increase residential densities in a complimentary fashion to the existing and potential uses.

77. The Nicalnat Land already contains consulting rooms providing physiotherapy and orthodontic services. The site is in need of rejuvenation. It presents an ideal opportunity for a range of services such as health care, aged care, office, child care, supported accommodation and the like.

78. There is plainly a need in the locality and the wider district for such services which are complimentary to both an aging population and the emergence of younger families.

79. Such a range of services will also provide skilled employment opportunities for the region.

80. The Rezone Land (and the Nicalnat Land alone) present a large land holding. The Berry Land directly adjacent is subject to an option agreement, subject to suitable rezoning. If the Rezone Land is not included in the Urban Corridor Zone then there is a prospect that the opportunity to rejuvenate these sites will be lost for some time.

81. The Rezone Land is patently ripe for rejuvenation. The policy of the Suburban Neighbourhood Zone cannot provide appropriate guidance for that remodeling as it does not provide for the existing uses.

82. Rezoning to Urban Corridor (Main Street) Zone will catalyze that renovation and redevelopment and provide a far more appropriate suite of policy guidance.

For these reasons we urge the Commission to consider the inclusion of the Rezone Land in the Urban Corridor (Main Street) Zone. We request the opportunity to appear before the Commission to speak to these submissions and to address any questions.

Yours faithfully



**James Levinson**  
**BOTTEN LEVINSON**

Mob: [REDACTED]

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Encl. As described above

# Attachment 1

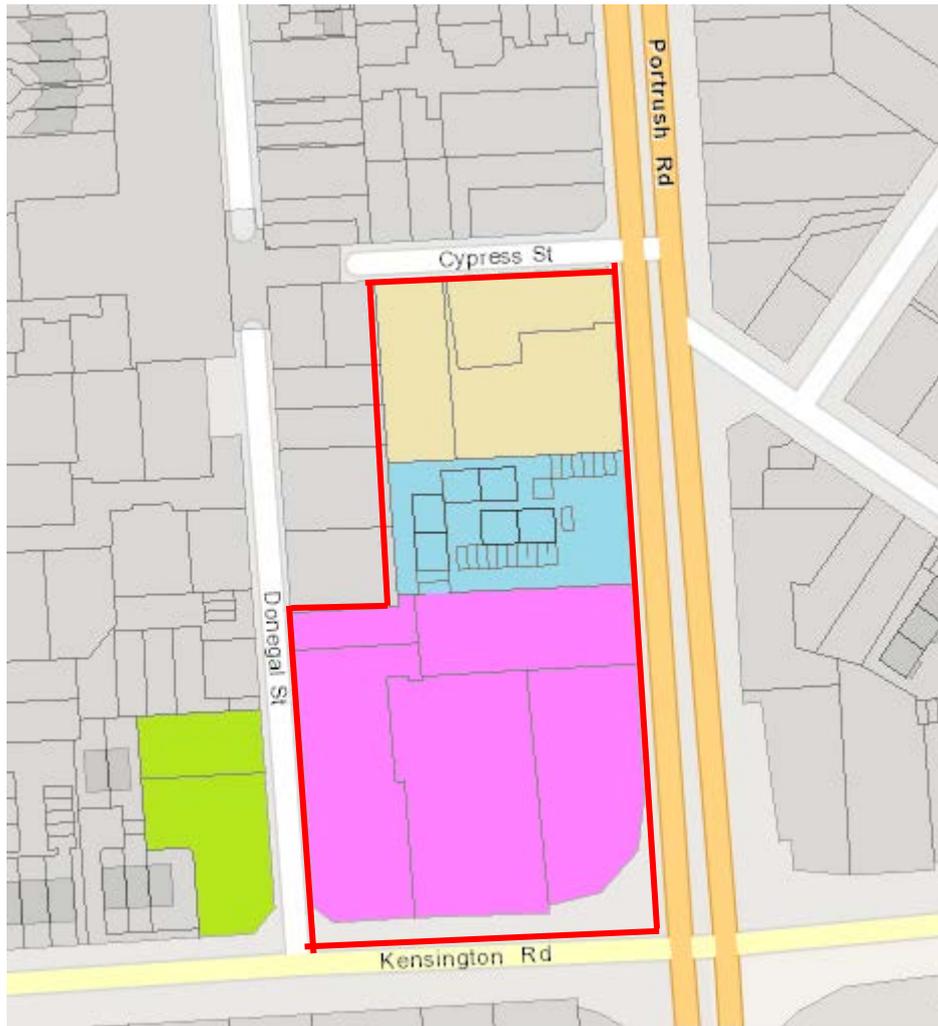


Figure 1

