

10.2. Code Amendment - Precinct 202 - Consultation Feedback Report

Committee: Ordinary Council Meeting

Meeting Date: 28 January 2024

Report Author: Graham Pathuis

RECOMMENDATION

1. That Council receives and notes the submissions received regarding the *Precinct 202 Code Amendment*, and adopts the responses by Designated Entity as provided in Section 4.3 of the draft Engagement Report as attached to this Council Report.
2. That Council provides instructions to the Department of Housing and Urban Development requesting the removal of Lot 41 DP70183 CT Volume 5957 Folio 531 (the police station and courthouse land) from the *Precinct 202 Code Amendment* Affected Area.
3. That, following completion of the 'closing the loop' component of the draft Engagement Report, Council authorise the Chief Executive Officer to finalise the Engagement Report by:
 - a. completing sections 7 and 8 of the Engagement Report; and
 - b. lodging the completed Engagement Report with the Department of Housing and Urban Development for assessment and publication on the SA Planning Portal; and
 - c. distributing the completed Engagement Report to Council Members; and
 - d. publishing the completed Engagement Report on Council's website and advising all consultation participants.

PURPOSE

The purpose of this report is to present the engagement findings related to the recent public consultation for Precinct 202 Code Amendment.

BACKGROUND

At the Ordinary Council Meeting held Monday, 23 October 2023, Council resolved the following:

OC3812023

Moved: Cr Marilyn Henderson

Seconded: Cr Angela Schiller

That, pursuant to section 73(2)(b)(iv) of the Planning, Development and Infrastructure Act 2016, Council authorise the Chief Executive Officer to seek approval from the Minister for Planning to initiate a proposal for a Code Amendment to rezone land comprising the following allotments, and as identified in Attachment A of this report, from Business Neighbourhood Zone to Community Facilities Zone under the South Australia Planning and Design Code.

Property Address	Lot Number	DP	CT Ref	CT Volume	CT Folio
42 Armstrong Road, Victor Harbor SA 5211	Lot 2	D78035	CT6020738	6020	738
11-13 Ewen Terrace, Victor Harbor SA 5211	Lot 201	D127921	CT6264792	6264	792
42A Armstrong Road, Victor Harbor SA 5211	Lot 202	D127921	CT6264793	6264	793
15 George Main Road, Victor Harbor SA 5211	Lot 21	D28956	CT5379672	5379	672
17 George Main Road, Victor Harbor SA 5211	Lot 41	D70183	CT5957531	5957	531
19 George Main Road, Victor Harbor SA 5211	Lot 102	D81439	CT6078678	6078	678

CARRIED UNANIMOUSLY

Subsequently, the documentation for the proposal to initiate the Code Amendment was prepared and lodged through the SA Planning Portal. Initiation for the Code Amendment was approved by the Minister on 24 July 2024 and published on the SA Planning Portal.

At the Ordinary Council Meeting held Monday, 22 July 2024, Council resolved the following:

OC2452024

Moved: Cr Marilyn Henderson

Seconded: Cr Angela Schiller

That, pursuant to section 73(2)(b)(iv) of the Planning, Development and Infrastructure Act 2016, Council authorise the Chief Executive Officer to prepare the draft Code Amendment and Engagement Plan, as per the state-mandated templates, and release it for community consultation.

CARRIED

Subsequently, the draft Code Amendment was prepared. An Engagement Plan was also prepared in accordance with the Community Engagement Charter for the purpose of public consultation.

COMMENTARY

Utilising the SA Planning Portal, public consultation on the Precinct 202 Code Amendment commenced on 8 November 2024 and concluded on 6 December 2024.

The Engagement Plan and process for the Precinct 202 Code Amendment was designed to satisfy statutory requirements under Section 73(6) of the *Planning, Development and Infrastructure Act 2016* and comply with the Community Engagement Charter. Administered through the SA Planning Portal, it provided for direct engagement with affected property owners as key stakeholders, was provided on Council's 'Your Say' website and the PlanSA Portal, included a community drop-in session, and was promoted through social media, Civic Centre foyer displays, and the local newspapers.

At the close of the consultation period, a total of 19 submissions were received. The submissions have been reviewed and collated into an Engagement Report (provided under separate cover). The report includes response considerations for each of the submissions and recommendations for amendment to the draft Precinct 202 Code Amendment where relevant.

Summary

Many of the submissions were more focused on objection to the model for development, delivery and ongoing management of a Sports and Recreation Facility and related uses that Council is investigating for lot 202, whilst these concerns and objections are acknowledged, the intent of the proposed Code Amendment is to provide for a zone that enables the type of land uses anticipated for the precinct. It isn't a control mechanism to determine how (commercially) or by whom such uses might be developed or managed. This would be in the hands of the various land owners through other processes.

Government agency submissions were received from the Environmental Protection Authority (EPA), Department of Environment and Water (DEW), and Department of Infrastructure and Transport (DIT). While much of the focus of these submissions were on aspects of site development more relevant to development application and assessment, the following requests/suggestions were made that have a bearing on the Code Amendment:

- DEW encourages Council to consider entering into a Heritage Agreement over a portion of the land that is identified as a Significant Environmental Benefit (SEB) Area

under SEB Area 2001_2094. This would in turn able a State Significant Native Vegetation Areas Overlay to apply in the Planning and Design Code. The suggestion would be in keeping with Council's desire (as detailed in the proposed Code Amendment) to preserve and enhance the ecological values of the site. Given the more expansive footprint of the SEB beyond the Affected Area, it is considered appropriate to explore a Heritage Agreement and overlay process more holistically and seeking any changes through a process separate to this Code Amendment.

- DIT requests that the Concept Plan also identify the proposed access points on Ewen Terrace and Armstrong Road, along with also notating the potential for upgrade of the George Main/Ewen Terrace junction. Such notations are more specifically related to the Sports and Recreation Centre site. Therefore, it is considered that these are appropriate inclusions for the site development Concept Plan rather than the Code Amendment Concept Plan.

A landowner submission was received on behalf of Plenary Justice (SA) Pty Ltd objecting to the Code Amendment, particularly insofar as the proposal impacted their land within the Affected Area. The extensive submission posits that the Code Amendment is fundamentally flawed in that it has erred with respect to government ownership of the police station and courthouse site, resulting in an assumption as to land use interests that the owners may have. The submission clarifies that the land in question is, in fact, privately owned by Plenary Justice as a commercial entity and that its interest in development potential (and therefore zoning) for the site don't necessarily align with that for government or council owned land with the Affected Area. The submission also claims that the Engagement Plan does not comply with the Community Engagement Charter and hasn't afforded them with a level of engagement relative to their key stakeholder status.

While the error in land ownership and subsequent land use interest assumption is acknowledged and regretful, it is considered that the error does not render the proposal documentation fundamentally flawed, nor the Engagement Plan non-compliant.

Notwithstanding the difference in opinion and rationale to a number of aspects of the Plenary Justice submission, the submission notes that the objection would be alleviated by the removal of the Plenary Justice land from the Affected Area. Such exclusion, while not particularly tidy in an orderly land-use zoning sense (theoretically), would make no material difference to the more immediate land use objectives for the precinct and would not diminish the practical ability for these to be achieved. Neither would it derogate from any further development potential that Plenary Justice may have under the current zone. Therefore, amendment of the Affected Area to exclude the Plenary Justice land - that being Lot 41 DP70183 CT Volume 5957 Folio 531 - is recommended as a pragmatic resolution to the objection.

Next Steps

Upon Council's consideration and resolutions associated with this Council report, the following next steps will occur in progressing the Code Amendment with respect to the post-consultation phase:

1. Closing the loop with community and stakeholders as per the engagement approach detailed in the Engagement Plan. This will include providing responses to participants

in the engagement process to inform them of Council's consideration of their submission and Council's decision.

2. Surveying participants in the engagement process in accordance with the Engagement Plan for the purpose of measuring the success of the engagement activities and determining opportunities for improvement.
3. Inclusion of the results of the engagement process survey and conclusions into the Engagement Report to finalise the document.
4. Lodgement (by Council as the Designated Entity) of the finalised Engagement Report to the Department of Housing and Urban Development (DHUD) and any instructions as to further amendments to the proposed Code Amendment.

Following these steps the Department amends draft Code Policy (zoning in this case) and relevant mapping, and provides final draft Code Amendment to Council for verification. Council will then relodge with DHUD the Draft Code Amendment accompanied by the final Engagement Report for assessment, following which the process shifts into approval phase.

RISK ASSESSMENT

The following risks have been assessed in line with Council's Risk Management Framework and Policy:

Legal and Compliance – To enable Council to develop the a recreation facility on the subject land, the land use zone needs to be compatible with the proposed use. Rezoning of the land to Community Facilities will support the uses anticipated for the site. The ultimate decision for a Code Amendment to this effect rests with the Minister for Planning. This risk is assessed as *medium*.

Legal and Compliance - There are judicial review risks associated with compliance with statutory obligations and subsequent processes. These can be mitigated through the preparation of documentation and the following of process in accordance with legislative requirements. This risk is assessed as *low*.

Reputation – Continuation of the process of Code Amendment as soon as possible will assist in mitigating delays in providing a new recreation facility for the community. This risk is assessed as *medium*.

REFERENCES

City of Victor Harbor Community Plan 2030

Aspiration 1 – We are a caring, connected and active community

- Strategy – Provide a variety of open space and recreation opportunities
- Priority – Support the growth of local and regional sporting clubs and facilities

Other references used:

Planning, Development and Infrastructure Act 2016

- Section 73 - Preparation and amendment

BUDGET IMPLICATIONS

Excluding endorsed budgeted resources there are no budget implications in the preparation the Precinct 202 Code Amendment - Engagement Report.

No additional funds are required.

CONSULTATION

Chief Executive Officer - Victoria MacKirdy

Director of Environment and Infrastructure - Jodi Roberts

Strategy and Engagement Business Partner - Michelle James

ATTACHMENTS

Attachment Under Separate Cover - Engagement Summary - Precinct 202 Code Amendment