

**APPENDIX 33**  
**Zoning Submission**





**Penrice Soda Products Pty Ltd**  
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## The Barossa Council Development Plan

### Better Development Plan General Development Amendment

Submission

to

The Barossa Council

**May 2009**



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## **Summary**

This summary is presented to communicate Penrice's response to the proposed zoning amendments under the Better Development Plan.

Penrice opposes the zoning changes that might permit an increase in residential dwelling density, residential dwelling development closer than existing structures in the proposed new Rural Living zone, a potential increase in dwellings or buildings in the new Primary Production zone and changes to visual amenity criteria under the Mineral extraction zone for the following reasons:

- a. Any additional will increase land use will conflict with the mine operation in relation to visual amenity, dust, noise light spill and traffic management
- b. In developing a new plan Council should implement the EPA "Guidelines for Separation, December 2007" for extractive industry of 500m for dust and 3000m for noise from the nearest residential dwelling within existing zones or any newly created zones.
- c. Penrice's operation as an extractive industry is an important economic contributor to the local economy with valid and approved land use that warrants appropriate protection and consideration
- d. Tightening of visual amenity regulations under the Mineral Extraction zone beyond that proposed under its recently developed Strategic Visual Amenity Plan.
- e. Legal action and subsequent ruling on land (historically) if valid would dismiss the stated reason the zone change to Rural Living of parcel ID D31301 A105.
- f. The planned changes conflict with the PCCG in relation to lessening the impact of mining operation on local residences
- g. The planned changes conflict with the proposed site environmental outcomes and PIRSA lease conditions that will regulate the mine operation with respect to impact on local residences.
- h. The new Primary Production zone will allow additional dwelling or building activity and land use that will conflict with the mine operation

## **Background**

The Penrice mine site (covering Private Mine 86 & 120, Mineral Lease 6233 and Miscellaneous Purposes Licenses 75 & 118) is currently zoned Extractive Industry.

The Barossa Council (Council) proposes zone changes under The Barossa Council Development Plan (TBDP) incorporating the Better Development Plan (BDP) and a Development Plan Amendment (DPA).

Penrice has recently come under heavy scrutiny with local residents and a community group in relation to visual amenity, dust, noise, light spill, traffic movements and drag out. Proximity to the mine operation by residential dwelling is a critical factor in its impact.

Council has corresponded with Penrice on 3<sup>rd</sup> March 2009 to notify of the planned rezoning north of Angaston under the TBDP for a parcel of land (ID **D31301 A105**) near Rodda Drive and Salem Road that is in close proximity to the mine operation from Rural (Moculta) to Rural Living zoning.

In a full review of the proposed changes they also include rezoning of the mine site to a Mineral Extraction zone and changes to allow additional dwellings in the new Primary Production zone.

Penrice makes the following submission to these planning proposals including general comment in relation to the recommended separation distance of residential dwelling development in current approved zones near its site.

Penrice will present this submission at the public hearing on 10<sup>th</sup> June 2009.

A Penrice representative attended The Barossa Council information session in Cockatoo Valley/Sandy Creek on 30<sup>th</sup> March 2009.

## **1. Rezoning of Rural (Moculta) to Rural Living**

### *1a. Better Development Plan Change*

The plan proposes to change the parcel of land ID **D310301 A105** from Rural (Moculta) to Rural Living zone.

According to the information provided, the proposed change is seen as necessary as the previous changes made in this location (North of Angaston) did not involve adequate investigations or direct consultation with the land owner at that time. The amendment made also did not facilitate a legally approved land division and therefore impinged on the future development rights of the subject land. Given this, in the interests of natural justice, Council proposes to restore the zone boundary close to its original location.

### *1b. Penrice Response*

In further correspondence on this matter with Council (20<sup>th</sup> March 2009 and 17<sup>th</sup> April 2009) it is indicated by Council that despite the proposed change there will not be any housing development closer than any existing residential dwelling. Council omits to clarify that there will be any increase in dwelling or building (residential or otherwise) density as a result of the rezoning.

Extractive Industry, particularly of operations that have been in continuous use for a substantial period (the Penrice mine is nearing 60 years of operation) must operate within an approved and acceptable environmental footprint and must not be impacted by increasing encroachment by residential dwellings or increase in housing or building density.

Can Council categorically state that there will never be any new dwelling or building closer than the current residential dwellings or an increase in dwelling density as a result of the proposed changes. If this is can be given, why change the zoning?

We refer Council to the EPA "**Guideline for the Separation Distances, December 2007**" that specifies a minimum separation distance, for both noise and air quality purposes for Extractive Industries. Thus, the guideline recommends for air quality a separation distance of **500m** and for noise a separation distance of **3000m**. The above separation distances (excluding surface and terrain factors) are considered sufficient to reduce off site impacts to an acceptable level, however it does not mean that no impacts will occur if the separation distances are applied. Council should implement these guidelines un the BDP.

We also refer Council to a legal action brought by a nearby resident some 20 years ago. The legal determination was that any housing under development that would be substantially developed within a short time frame (completed) would be allowed but any land not so used would maintain its Rural zone classification and could not be built upon in the future.

We therefore understand that the zoning was legally binding being endorsed by a Court of Law and given that the legal action was made after appropriate consultation with the then land owner, the stated reasons for the proposed rezoning are not valid.

Any increase in dwelling or building activity will be in conflict with the mine operation and may further restrict its activity and therefore its positive economic impact of use of local services and employment on the community.

On the above basis Penrice opposes any changes.

## **2. Rezoning from Extractive Industry to Mineral Extraction**

### *2a. Better Development Plan Change*

The Penrice Mine's current **Extractive Industry** zone is proposed to become the **Mineral Extraction** zone. This essentially appears to be a straight conversion; however, there are additional details that tighten regulation of visual amenity.

Two additions are PDC 5 and PDC 6 which specify:

- 5        *Areas designated or set aside for stock piles should be of low profile when viewed from public roadways or residential areas.*
6.       *Screen planting (using locally indigenous plant species where possible) or mounding should be established along public road frontages and within the mineral extractive area to screen mining operations, buildings and plant from public view.*

### *2b. Penrice Response*

#### **PDC 5**

- This implies that any stock piles are placed on low-lying areas or below the surrounding ground level.
- This clause is somewhat ambiguous as it is referring to the profile of the location rather than the stockpile, which would be of more relevance to the visual impact
- The siting and topography of the Penrice mine may influence site selection if seeking approval in future for any stockpiles.
- This may change the current Strategic Visual Amenity Plan (SVAP) developed by Penrice and further discussion with Council is required to ensure any proposed change does not conflict with the current plans.

#### **PDC 6**

- This is consistent with our SVAP and current practice
- Penrice requests active involvement from Council in the facilitation of mounding that will use waste overburden and tree planting on public road frontages.

In addition, there are potential visual amenity implications through various zoning amendments that permit additional dwellings on land surrounding the mine.

Additional dwellings around the mine create the potential for further land use conflicts including issues of visual amenity under these proposed changes.

Unless further dialogue with Council can clarify the impact of the proposed change, Penrice opposes the new zoning.

### **3. Rezoning from Rural Moculta to Primary Production**

#### ***3a. Better Development Plan Change***

The proposal is the change the current Rural (Moculta) to Primary Production zone. Pages 13 – 17 and table 1 (page 16) indicate different policy options for minimum lot size required to construct a dwelling. Essentially, the DPA will allow additional dwellings in "rural" zones.

#### ***3b. Penrice Response***

This proposal will increase land use conflicts with the mine operation and is opposed.

### **4. Residential Dwelling Development within Current Zoning**

As a result of this review Penrice also takes the opportunity to comment on new residential dwelling development in the area.

Penrice notes that new residential dwellings replacing prior dwellings are being erected in close proximity to the mine in Penrice and immediately adjacent to the gazetted B-double route and approved transport route from the quarry to Sturt Highway.

Penrice request that any new residential building take into account its close proximity to the mine operation and that a "Land Management Order" or a similar instrument be placed on these new dwellings to ensure that occupants are not unknowingly impacted by mine operations.

In addition, Penrice requests that potential new residential dwellings have construction guidelines placed on them to ensure the mine operation and/or traffic noise does not become an issue after occupation or a change in ownership.

Penrice is of the view that the EPA "Guidelines for Separation, December 2007" as mentioned above be strictly adhered to.

### **5. Penrice Community Consultative Group (PCCG) Objectives**

As a member of the PCCG, Council is acutely aware of the current feeling of the community with regard to the impact of the Penrice Angaston quarry on local residents and the adjoining communities.

Re-zoning land to allow further encroachment or increase residential dwelling or building density is clearly at odds to the objectives and well voiced views of the PCCG members.

Penrice contests that the proposed re-zoning will be materially obstructive to the objectives of the PCCG and contradictory to the expressed views of the community.

## **6. PIRSA Environmental Outcomes and Lease Conditions**

Penrice as a mining operation with mixed leases is required by PIRSA to operate to environmental outcomes/objectives and specific lease conditions.

Re-zoning land to allow further encroachment or increase residential or other dwelling density will also be at odds to the objectives and lease conditions placed on Penrice by PIRSA.

Penrice contests that the proposed re-zoning will be materially obstructive its ability to meet its environmental outcomes and lease conditions.

-End of Submission-