

Submission to Expert Panel on review of the State Planning, Development and Infrastructure Act, the Planning, Development & Infrastructure Act, Planning & Design Code Reform, the e-planning system and the Plan SA website - Carol D. Bailey, [REDACTED]

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The Expert Panel, [DTI.PlanningReview@sa.gov.au](mailto:DTI.PlanningReview@sa.gov.au) GPO Box 1815, Adelaide SA 5001.

Dear Panel Members,

Thank you for the opportunity to make this submission, noting that it is difficult to write yet again after making a number of submissions since the changes to the planning system in South Australia began and trusting that this time the voices of those who have consistently pointed out the problems with our planning system will be heard and urgent changes will be made to save our fast vanishing trees and heritage. My home area, and indeed our family personally, has been deeply impacted by planning changes and the plain fact that there was no detailed Structure Plan around the rezoning of Mount Barker – it was simply achieved by a Consortium of Developers which by-passed the Mount Barker District Council and went directly to State Government with their ‘plan’ for rezoning and a significant donation to the Party in power at the time. The rezoning of 1300ha of prime farm land to the east and south of Mount Barker has destroyed the opportunity for our communities to grow and buy their food locally for the next century, destroyed thousands of jobs in agriculture and horticulture, put remaining farm business at risk (only one large animal Veterinarian remains in the Mount Barker District and servicing and maintenance of farm equipment is limited and no longer available locally).

### **Background**

It all began with the “30 Year Plan for Greater Adelaide, 2009” which signalled significant growth for Mount Barker and a number of other areas. However this original 30 Year Plan had some excellent tenets, among them

- 1) No more alienation of prime farm land for housing development (it would be protected)
- 2) No more encouraging rapid population growth where there was no local employment
- 3) No growth which would greatly increase the use of motor vehicles, especially with regard to increasing commuter traffic on the South-East Freeway which already had problems at peak periods with heavy vehicles and risks related to the heavy vehicles and steep descent from Crafers.

However in 2010 the State Government (working at the behest of a consortium of developers, many of whom had already acquired land east and south of Mount Barker) rezoned 1300ha of prime farm land by virtue of Ministerial DPA. Land was also rezoned in Nairne and Littlehampton, but by far the biggest area was in a crescent east and south of Mount Barker. At the time, on the day of Gazettal 16/12/2010 (strangely 12 years ago today) then Premier Mike Rann issued a press release to the effect that “\$400M to be rolled out for infrastructure for Mount Barker” – but not a dollar ever came. This left a Council which had never before been in debt with no option but to find ways and means of raising funds for the required infrastructure – because none of this had been accounted for and the MDPA only hinted at the number of new schools which might be required and other vague references to provision of services and facilities for the projected new population. This was a tremendous shock to the newly elected Council of November, 2010-2014, which was staring down the barrel of enormous

expenditure required for a new SE Freeway Exit, major roads, minor roads within estates, a connector road through the 1300ha, land for future schools, recreation and sport – apart from achieving delivery of power, water, sewer to what was then open unserviced farm lands.

In 2011, with subdivision occurring on multiple fronts and the acquisition of land surpassing all government forecasts (the State Govt. had chosen 'low' as the most likely growth scenario, but at all subsequent stages population growth exceeded the highest ranked expectation) Council made two decisions to protect the rural character of the area and provide sensible fire escape routes since the entire area is designated "high bushfire risk" by SES. The Council unanimously voted to retain several roads (Martins Road, Sims Road and Fidler Lane) as unsealed, secondary roads which would be used by walkers, cycle and horse riders but would also be available for evacuation in event of bushfire. Council also unanimously voted to stop removal of all the topsoil from allotments, on the basis that it is the base of the 'web of life', Nature's food chain and without it loss of birdlife and biodiversity would follow. While good intentions were very clear, because a former Planning Minister, Mr. John Rau conveniently crossed out "high bushfire risk" and replaced it with "medium risk" there was no need for 'fire protection' and the developers have subsumed these roads by and large into their developments, leaving barely a walking trail and Sims Road and Martins Road are currently completely closed off to public access. How could this happen?

Needless to say, when the Liberal Government gave the developers their "no minimum size allotment" deal – there was simply no place for the topsoil, no room for a tree or even a bush, so all the topsoil is once again being carted off in (now closed) tandem trailers down to city landscape suppliers who are willing buyers.

By 2012 Council was applying for all and any funding grants for anything from the much needed new SE Freeway ramps to assessing how sewerage demands and waste water treatment demands would be met, apart from the on-going requirement for basic infrastructure and roads. With no other options available Council was forced to apply levies to the MDPA lands to assist, long term, with provision of funds for required infrastructure. The developers prepared for war, since this would impact their profit margin and make the allotments more expensive. In 2014 the Labor Government was returned and somewhere between there and a switch to Liberal Government in 3/2018 a special deal was given the Mount Barker developers by way of a "no minimum size allotment" which saw the style of development change radically from urban lots to rows of 'town houses' and indeed lots right down to 110msq. To see this never planned or envisaged density of dwellings up to 8km from Mount Barker CBD has come at a heavy price to the Mount Barker Council and Community. Wildlife is being displaced at an unprecedented rate, pockets of large and small marsupials are now trapped between housing estates under development, the daily carnage of animals killed on roads is appalling and the view is rapidly becoming one of a sea of roofs, dwellings jammed cheek by jowl and loss of the rural character of Mount Barker. Traffic problems abound and because the Council has essentially been disempowered from control of planning and development in its own district, have no alternative but to approve the type of development never envisaged in our own Council Development Plan. Allotments smaller than those to be found in Bowden or Port Adelaide now abound well out of town without regular public transport and other services. We now have growing social alienation, homelessness and demand for all manner of services, along with loss of thousands of trees and habitat which is driving local wildlife extinctions

The rate of population growth has been entirely misjudged by State Government and the untimely arrival of a new Planning Code which requires streamlining and approval of any development application “deemed to satisfy” Code requirements means that the standard of built development in our area has fallen far below community expectations and that formerly approved by Council. Removing Council from development and planning decisions is producing bad outcomes for which neither State Government nor the developer accepts any responsibility. One consequence is that developers are building dwellings to the minimum standard to keep the price low, buyers take up these buildings find that they cannot open their car doors in the ‘minimum size garage’ and the car is parked in the street. As this is repeated streets are already congested and elected members receive complaints that waste trucks and SES vehicles are unable to turn around in the narrow streets. As an elected member for three successive terms on Mount Barker Council (12 years) I have had a front row seat at the decline in living standards in my own area.

As a resident personally impacted (my Mother’s house was included in the MDPA rezoning) the old bungalow on 2.2ha at 172 Harper Road, Mount Barker is now the very last property on the S-East town boundary and has \$188,000 of Council levies which are “a charge on the land” and must at some time be paid towards council services fast approaching over the hill. These levies are applied to my Rates Notice each year and increase every year, with a note to the effect that they are postponed. I have no intention of sub-dividing this long narrow block and can only feel a sense of horror at the type of ghetto such subdivision would produce. It appears this narrow block has been included in the rezoning by the developer (Lanser Corporation) working at the time with Stuart Moseley (then of DPTI and now on the State Planning Commission) to avoid the developer’s lands having to provide the required ‘buffer’ between development and rural land. My deceased Mother’s block now becomes the ‘buffer’ and is thus reduced in value by about 46%. Due to stress and uncertainty over what might trigger required payment of fees the land has never been transferred and still bears my deceased Mother’s name. How was a developer permitted to transfer the obligation to provide a 40m buffer on to an unsuspecting neighbour by virtue of rezoning the house block next door? I attended enough planning meetings to be able to readily identify Mr. Moseley as he drove around with the principal of Lanser Corporation (then our nearest neighbour), Panto Zecevic.

The whole of the rezoning of Mount Barker is a litany of errors from start to finish and it is only now becoming clear to people that the State Government, and not Council, are the villains. At the very same time Gawler suffered similar rezoning and lost a great deal of fertile and productive land from Roseworthy, Concordia and Gawler East where today the loss of thousands of trees is obvious and the opening of a barren clay landscape to an unforgiving, warming climate will be felt by the entire area for another generation to come unless some vegetation can be restored – unlikely at the density of development on-going. So people are beginning to question the higher level of Government’s perpetual obsession with population growth as the economic panacea, when in fact the opposite is true. As we have heard time and again ‘there is not a single problem which could not be more easily solved with a lower population’ – and certainly the impact on environment, water, energy and biodiversity is compounded by population growth.

A study of the MDPA for Mount Barker is very revealing in that (P113) ‘for the purpose of this DPA the average lot size to 600msq has been assumed’; Page 140 ‘areas for retention/minimal clearance of vegetation’; referenced the 30 Year Plan (2009) despite not conforming in any way with it. The population growth is ‘out of control’ compared with the projected growth in the MDPA and projected allotment sizes abandoned from 600msqu to 200msq and less. How is this good planning?

What gives any State Government the right to turn rural communities into tightly packed enclaves of new residents from outside the area who have no understanding or relationship with its character?



View of line of southern boundary along fenceline towards top of hill – Property ‘Longleat’ to far left.



Gate into old residence ‘Longleat’ showing the limit of the new town boundary on eastern edge being the fenceline between residential property ‘Longleat’ and Michael Paech’s rural block.

One can only imagine what dense 'townhouse' style development would look like on this allotment, not to mention the incredible loss of native trees and a garden planted by a botanist a century ago. This property is quite historic, being where Adelaide Hunt Club once based its "Mount Barker Springs" Hunt and was the former home of Dr. Willaston an early pioneer of Mount Barker. What did the Development Code consider here?

So Mount Barker is rapidly becoming known for 'cheap housing', potential future slums, devastating tree loss, future heat sinks, no set back front or rear in numerous allotments, retaining walls of 2m or more where the impact at the bottom of the hill is already obvious in winter and rubbish being dumped on nearby roads and driveways. It is anticipated that home violence will increase and juvenile delinquency due to no new public schools (or even classrooms) yet 6 private schools in the area due to growth and lack of open public space for children to play which is why they frequent local roads.

### **The Council Assessment Panel (CAP) Process**

By changing the name of this Panel from DAP to CAP it implies that Council is in charge of development, when in fact Council has been completely disempowered from control of development and planning in its own District. Ratepayers and the public in general blame council for the bad planning decisions, when State Government is to blame. The name should be returned to DAP since the Panel is independent of Council.

It is very clear from observation of Panel meetings, even without being a Panel member (I had this experience over several different Panels and terms of Council) that the overriding imperative is to approve, not refuse applications and the time imperative has added to the likelihood of poorer type development going through rather than being delayed or refused outright. In most cases the proponent is well aware that refusal at Council Panel level does not mean refusal at higher level and big developers have the strength of lawyers at hand to ensure minimal delays in approval.

It is abundantly clear that the PDC favours development and the rate of both tree destruction (both significant and regulated trees) and loss of heritage bears testament to this fact. The proponents have a front line team of experts to put their case succinctly and making use of detailed, data driven applications to support their case, experts, lawyers and consultants. The lay members of the public seeking only to obtain better planning outcomes for their area are more than on the 'back foot' – they are lost in a sea of legislation and a very complex 'Code'. They are seriously disadvantaged. To say that the whole process advantages the proponent is an understatement at the very least.

### **Public Notification**

All development applications should be publicly notified and be open for public consultation and any member of the public should be able to make a representation. Major development (two or multi-storey) should have a notice posted on site clearly legible from the road (not merely on an A4 sheet).

### **Third Party Appeal Rights**

It is not fair or just that proponents have rights of appeal, but not representors – this needs to change to bring fairness and equity into planning decisions.

## **Death by Iteration**

During my time on DAP and CAP I was astonished to see one or two developers use the system to achieve just what they wanted at the outset by coming back to the Panel, iteration by iteration until they achieved what had been outright refused on Day 1. Since each subsequent iteration only considers what is before it – and not the number of iterations already achieved or any comparison with what was refused at the outset - if the proponent has the will, finance and time I. have seen 17 and 18 iterations to achieve precisely what was refused at the outset because it was at enormous odds with the surrounds. Thus near Verdun an apple store on the roadside eventually became a well known pizza and ale house and Sidewood Winery was able to argue that they would use the old apple orchard to make local cider but instead the trees are gone and a very large indoor/outdoor venue dominates the site with outdoor al fresco dining venues and music from 3 sources/locations in a peaceful amphitheatre of a valley. The local paper reported that “despite local residents opposing this application (iteration 17/18) Council approved it” - which was incorrect since the CAP is independent of Council. No mention was made of the argument put by the single elected member in favour of reducing the music for one third of the time. Any and all ‘iterations’ of a development plan should be required to be compared with the first application and initial decisions.

**The ‘not seriously at variance’** clause has been a loophole for broad changes, including multi storeys on buildings and a ‘2 storey might as well be 5 storeys’ attitude. This is deliberately sloppy and needs to have more rigor and formal guidelines. One only need to drive around the city, suburbs or in Mount Barker to observe that good planning is not at the heart of our planning and development. To come up with a system which requires all 68 Councils (and 4 zones) to put their own well conceived Development Plans in the bin and adopt a sloppy ‘one size fits all’ plan is a recipe for ensuring that all towns in South Australia end up looking much the same, quite possibly like Coober Pedy. Is that in any way desirable?

## **TREE PROTECTION**

In 2011 the ‘Significant and Regulated Tree Protection Act’ was endorsed by State Government and those who saw the implications of this legislation made urgent submissions and gave presentations to the DPAC (as did I). These submissions were all ignored despite it being very clear that no tree, significant or otherwise could be saved under this legislation. Formerly protected trees have been coming down wholesale since this legislation, and now with the 10m rule and developers being permitted to go from boundary to boundary on an allotment, with no set back front or rear, even the established street trees are at risk. Consider a number of pre-settlement trees which have become iconic over generations ‘Paddy and Charlie’ the Norfolk Island Pines at Kingston Park, the pre-settlement Red Gum on Glynburn Road south of Kensington Road and many many more which are part of the historic fabric of Adelaide and South Australia. Some of these trees were host to the first religious service, or Christmas gathering or Christening – and have a place in history.

The four ancient centuries old River Red Gums removed to make way for the Summit Sports Park at Mount Barker could not, in the end even be saved by Council, since under the Planning Code any form of built development is prioritized over trees or heritage, or both. The Proponent maintained that “many tears had been shed, but the trees cannot be saved” despite concerted attempts by elected members to save one within metres of Springs Road. It was argued that the road was an 80 kph road and the tree could be a future safety hazard – this despite elected members foresight that the speed

limit would be lowered in the near future. The tree was destroyed and the speed on Springs Road was changed within just a year to 60kph.

In Wiland Street, near the corner of Wellington Road and Victoria Road, stand two majestic and iconic pre-settlement Mount Barker Bluegums, thought to be over 300 years old. The owner, Mr. Fenlow (formerly of Fenlow Tunnels) tried to place them under a Heritage Order but because no particular protection was afforded these two mighty trees at the time of subdivision of the property, each has ended up on a housing allotment and dependent on the whim of the land owner or developer of each allotment. That they should have been allocated a public nature reserve is obvious – yet their future is beyond precarious. Under the 10m rule, any built development could destroy 300 year old trees.



**HOUSING DEVELOPMENT imposed on Mount Barker by Ministerial DPA against the will of the people and Mount Barker Council.**

The type of development now razing the countryside east and south of Mount Barker was never envisaged by Council’s own development plan which was dedicated to protecting local amenity, lifestyle, wildlife and biodiversity corridors. The State Government has imposed a “Planning Code” without conscience and clearly without consideration for the irreversible environmental damage occurring at landscape scale. This is a direct result of the myopic view taken by the State Code which only examines the sum of information contained in each Development Application rather than the

context and impact on its surrounding environment. Some of the developments are little better than rows of shipping containers without set back front or rear in a concrete and bitumen world. Government is saying 'buy fresh and local' and 'protect and enhance biodiversity' while imposing mandatory legislation which achieves exactly the opposite. Many councils (including Mount Barker) had plans in place for district towns – now the 'one size fits all' rule is rapidly converting the landscape to ghettos of poorly designed, high energy, unsustainable built development which may not last beyond a few decades. Also worthy of mention is that the Waste Water Treatment Plant was designed on a 'reed bed and filtration pond' system but now must be replaced at a cost of between \$50 - \$70M because the population growth is beyond the capacity of the existing WWTP. The population of Mount Barker trebled from 1990s to 40,000 today and is expected to double again before 2050. The SE Freeway is at capacity and gridlocked with even one minor accident, sometimes 3 out of 4 Freeway Ramps from Adelaide Road are gridlocked, which could be disastrous in a bushfire or other emergency. Despite the loss of thousands of rural jobs no alternative employment has been provided in Mount Barker. The Planning Code has worsened, not improved, this situation.



This new subdivision, at the corner of Paech and Potts Roads, near Wistow is more than 8km out of the Mount Barker CBD and was once part of our rural hinterland. 438 trees are to be destroyed for this development and because it meets the 'deemed to satisfy' criteria the DA will not even go to the Assessment Panel. That 'some of the trees are saplings' is not a valid claim, since Ringtail Possums are locally a threatened species, and make their dreys in just such sapling habitat.



On the other side of Paech Road there is a long standing organic produce farm "BIO-PARK" which may well not survive the pressures of medium density housing development in such close proximity.





'Glen Lea' housing development, where all the magnificent Red Gums and Blue Gums, except those in the winter creek line, have already been destroyed and removal of topsoil is underway.



Typical rangeland south west of Wellington Road, adjacent new housing development encroaching towards Wistow from Mount Barker.

Following photos are of development just west of and below Wellington Road on entry to Mount Barker from the east.





'Parkindula' housing development – where original Parkindula Homestead, former home of Bob Rowe and Adelaide Hunt Club has been subsumed by development and housing extends to ridge

lines, failing to preserve the rural character of the area. Developer Barone noted this in his submission to the Mount Barker MDPA and said ridge lines should not be built out but left for trees. It is apparent that those responsible for the planning mayhem in this State do not read the submissions written to inform better development.



Amblemead Development Sims Road and Wellington Road

Many of the housing developments are on steep land so build development is occurring from ridge line to bottom of the hill, regardless of the multiple 'retention walls' required for housing at high density and regardless of the fact that in any normal Mount Barker winter storm water will be shed according to gravity and the fact that no topsoil remains in the majority of new subdivisions to take up the excess water. The vegetation is also gone – thus lost opportunities for cooling, air filtration and returning water to underground aquifers.







New development east of what were once grounds of the Adelaide Polo Club. The water easement was to have been a biodiversity corridor which appears to have been lost to higher priorities.



Development to west of former Polo Grounds showing former Polo Clubroom now used as Community Centre.





Yet another section of the famous “connector road” Heysen Boulevard, which still fails to connect after 12 years of petitioning State Government and developers by Council. This road was supposed to be an arterial road connecting all the housing estates in the 1300ha but State Government (both Labor and Liberal) gave developers permission to create the road as and when their own developments proceeded. The problem is obvious. The lack of escape routes in a bushfire is also obvious and trucks, waste removal trucks and other vehicles are frequently having to be assisted with ingress or egress to narrow cul de sac circuits built to maximise profit, not well being.



This is one side of Fidler Lane (south)



North of Fidler Lane, under tree destruction and housing development. Total clearing appears the rule.



North of Fidler Lane, opposite Con Pillouras long standing Strawberry Farm

That agriculture and horticulture production is now directly adjacent high density and medium density housing estates is bringing its own challenges, from dogs being picked up from driveways by well intending new residents who provide the dog(s) with a treat and then deliver them to the local Veterinarian or pound to higher rates of pilfering, theft from farm sheds and dairy buildings and the dumping of unwanted green waste and bulky goods along the roadsides at the town boundary. Normal farm practices are not compatible with residential housing estates in close proximity and this adds strain and stress to already challenging times for landowners/farmers.

Owners of character buildings and cottages frequently find their heritage listed building compromised by a new multi-storey building behind or alongside their own which destroys the appearance of their own building while they are still required to maintain and adhere to its heritage status. A landowner in Cameron Road requested her building be de-listed for this very reason – so heritage is lost incrementally due to a Planning Code which fails to consider the character setting and local environment.

Thank you for the opportunity to contribute to the Review. I trust this new Expert Panel will see fit to make the changes which are very urgently required. It is noteworthy that very few of the first Expert Panel's recommendations (chaired by Brian Hayes QC) were adopted and the evidence is now to be found State wide that the system is failing our communities on multiple fronts.

Carol Bailey, [REDACTED]