

[REDACTED]  
16 December 2022

Mr John Stimson  
Presiding member  
Planning System Implementation Review  
GPO Box 1815  
ADELAIDE SA 5001

Dear Mr Stimson and panel members,

I warmly welcome your independent review of South Australia's planning legislation, including the *Planning, Development and Infrastructure Act 2016* and parts of the Planning and Design Code and the e-planning system.

I write on behalf of six residents who adjoin a proposed development adjacent to their homes in the City Living Zone. The proposal is for four storeys above ground and a basement; three levels are allocated to hold 31 parking places and the upper two floors hold 5 apartments. It has been non-compliant in as many as 10 respects, leading the Adelaide City Council assessment panel twice to reject the development application. On the third submission by the developer, the CAP approved the development.

With regard to governance, when the CAP held its second meeting our ability to respond effectively in our representation was severely limited by having only two business days in which we were able to receive and analyse the amendments and engage with our legal, town planning and traffic analysis advisers.

The third CAP meeting, on 21 November 2022, was held in camera on the grounds — tenuous according to our advice — of enabling the panel to “receive, discuss or consider information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place”, that litigation being between the council and developer. We were unable to put forward a legal opinion on the matter. The effect was to deny us all information about the third application, including the nature of amendments to the design and the reasons for the decision by the panel. Crucially for us, failure then to postpone the meeting and decision until the litigation is resolved (most probably in February) resulted in an approval tainted by not considering all information — of which new details of the water table were foremost. We have been astounded that the decision was made so hurriedly. We simply cannot imagine how so many points of non-compliance that previously led to refusal of the application could have become sufficiently acceptable to justify an immediate, non-appealable approval.

These two lapses in good governance in particular have severely affected our ability to contribute to the assessment process. The outcome of this development application, we believe, is indicative of many that have led to public anger and widespread lack of confidence in how buildings that will shape the City Living Zone are approved. As such, we would hope that you will take our case into account when considering how planning provisions can be made in justice and can be seen to do so.

The attached document provides details of the development application and its processing but does not identify the property involved, which is at 5 Albert Lane, Adelaide; development application DA/564/2020. The local heritage places are 318 and 320 Angas Street.

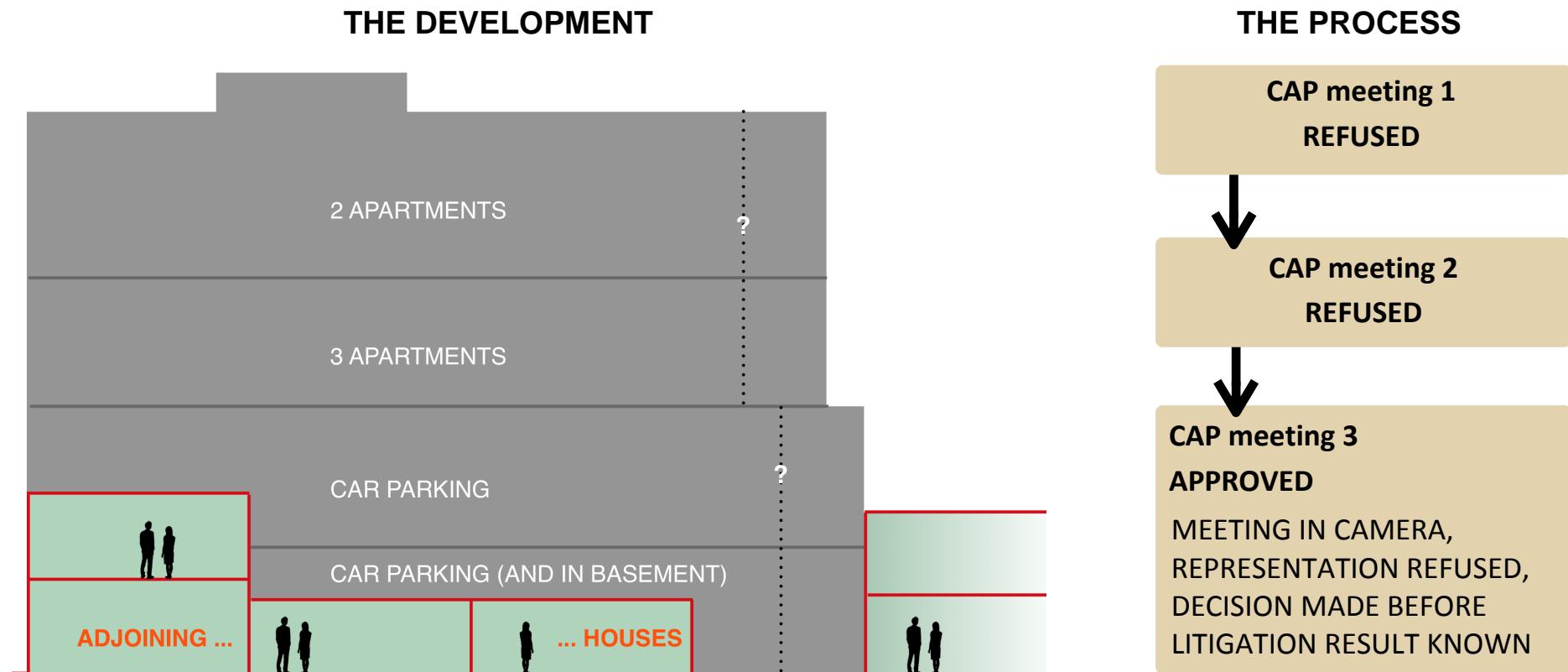
We appreciate your consideration of this matter. My telephone number, in case any further information is needed, is [REDACTED] e-mail [REDACTED]

Yours sincerely,

[REDACTED]  
DANIEL HAINS

# A case study of adversity in the development approval process:

a parking station in the City Living Zone



Submission to the Expert Panel, Planning System Implementation Review

16 December 2022

## Outline

The development application is for a building of five storeys (four above ground) in the City Living Zone. About 30 parking places occupy the basement and two storeys above; the two upper floors contain five apartments.

*Proposed building, non-compliant in ~10 factors, is overbearing in its context. Viewed from the north-west corner, the 2-way lane on the right is 3.5–4 m wide for much of its length; the northern boundary inhibits turning (currently overcome by partly entering the open-air car park).*



The building exhibits some architectural style, quality and flair, but its scale and boundary interfaces are severe for the location. In all, 10 planning policies have been transgressed.

The application was rejected by the council assessment panel on two occasions and approved on the third. We — six owners of adjacent houses — consider the shortcomings in the processes followed by the council have denied natural justice to us. We believe they are of significance to your review.

## Caveat

In this submission, details provided about the development are confined to the original and second applications and council assessment panel hearings, because we **do not have access to any details of the third application or the CAP’s deliberations about it.**

The CAP meeting of 21 November 2022 ruled that the public be excluded and the minutes remain confidential until the matter has been finalised.\* The reasons for the CAP’s decision have also been withheld from the public.

Associated plans have been withheld.

Which details have changed in the third application are therefore not known, although council planning staff informally advised that the building’s height and setbacks had been increased.

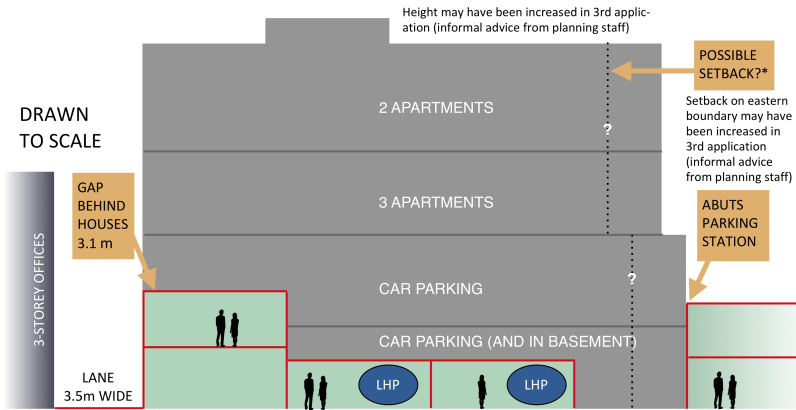
As a consequence, some details provided here will have been superseded.

\* Further information: page 5.

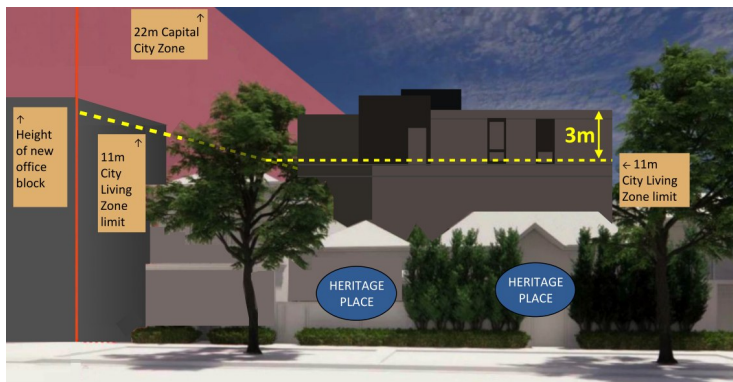
# The proposal

Although the focus of our submission is on council assessment processes, it is necessary to provide an understanding of the development proposal.

## Bulk and height



Scale of building in context of adjoining homes, showing the consequence of having 31 parking spaces and 5 apartments

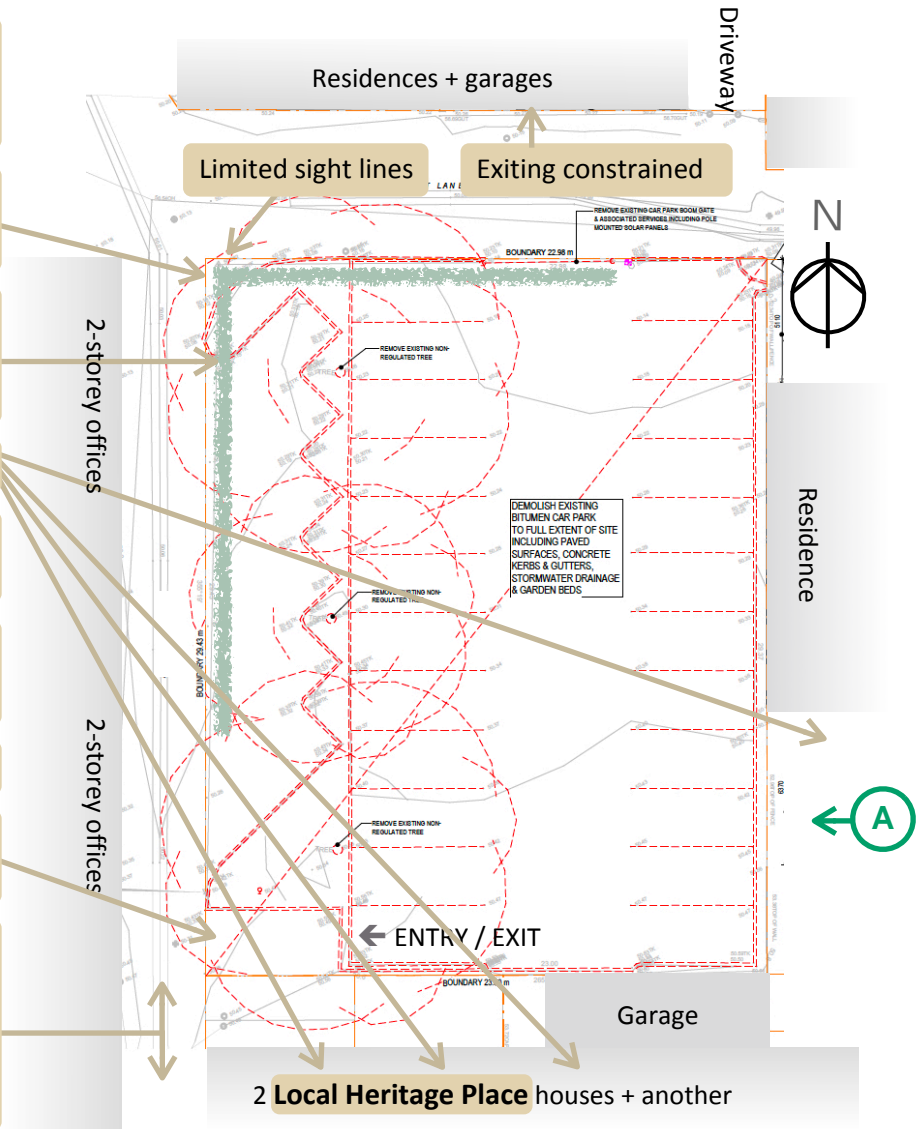


View looking north (from far side of street at 1.67 metres): 50 mm lens = human perspective. Building is not compliant with policy for positioning next to Local Heritage Places.

\* Asterisks indicate factors that we have been told informally may have changed, positively or negatively, in the third application.

## Key points of divergence from planning policies

- Height:** 4 storeys vs 3 storeys City Living Zone limit ( $\cong 14.5m^*$  vs  $11m$ )
- Plot ratio** 1.22 = 52.5% above guidelines\*
- Landscaped strip** under cantilevered wall = 6% of site; prescribed minimum = 20%
- Severe restriction** of sunlight
- Heritage place siting guideline ignored
- 160 parking spaces off lane  $\cong$  320 movements per day
- No footpath provided
- Limited sight lines for entry/exit, day and night
- Two-way lane 3.45–4.0 metres wide, necessitating **reversing** for up to 80 metres, unlike when car park entry was on north boundary

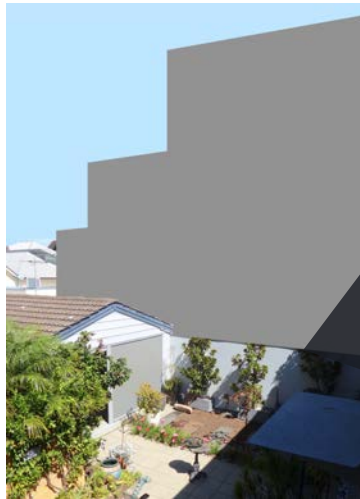




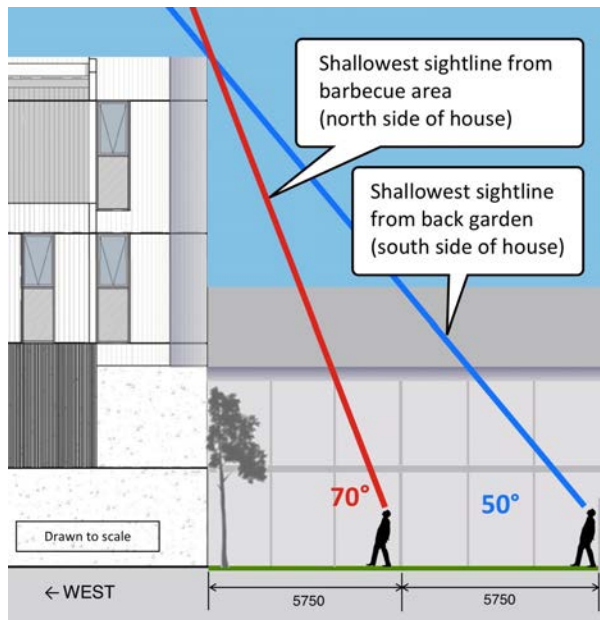
### Shade to east (also severely affects houses to south)



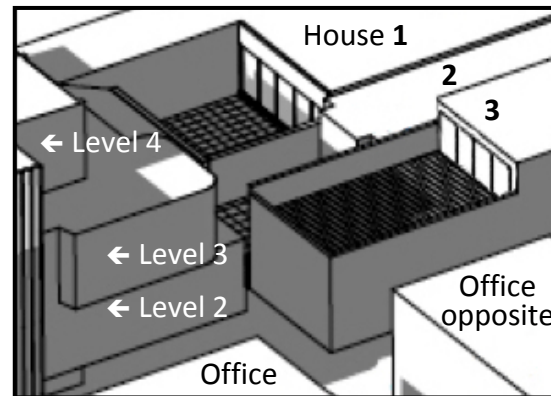
Present 11am view from house to east of building, looking south-west



11am view after construction (drawn to scale)\*



Sky viewing angle -- from east (position A on p. 2)\*



Overshadowing of houses (1, 2 and 3) on southern boundary at time of mid-winter sunlight at noon on 21st June\*

### Congestion in 3.45m wide lane

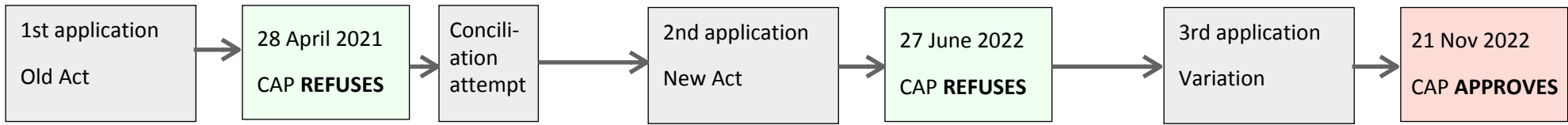


3-axle trucks usually must reverse into Angas Street; many smaller trucks too. The building will impinge on their only turning area, so all trucks will have to reverse.



Frequent Albert Lane one-way problem: a large truck has no alternative to reversing out to Angas Street (behind camera), forcing the cars behind it to do the same. IGA delivery on left. Car park entry, previously on north side, will be on this route.

# Processes: our experience



[ERD Court joinder: see page 5]

## 1st CAP: Grounds for refusal

Does not satisfactorily comply with the plot ratio, height and landscaped open space provisions relevant to the subject land and will consequently have a detrimental impact on the amenity of existing residential development in the locality.

In particular, fails to achieve the provisions of South East Policy Area 31, Desired Character Statement, and Principles of Development Control 2, 3, 5, 6 and 7.

## 2nd CAP: Grounds for refusal

Not seriously at variance with the Planning and Design Code but does not satisfactorily comply with the building height, overshadowing, setbacks, soft landscaping and traffic and access assessment provisions relevant to the subject site and will consequently have a detrimental impact on the amenity of existing residential development in the locality.

Fails to achieve the provisions of City Living Zone PO 2.2 (height), POs 3.3, 3.4, 3.5 (setbacks) and PO 5.1 (access to parking and service areas); Design in Urban Areas PO 13.1 & 13.2 (deep soil space) and PO 22. 1 (soft landscaping); and Interface between Land Uses PO 3.2 (overshadowing).

## 3rd CAP: Grounds for approval

No information made available (plans and documentation withheld, CAP meeting conducted in camera, minutes withheld, reasons for decision not released).

### Process impediments experienced

Difficulties in obtaining information.

Short time for representations at CAP meeting.

**Factual misrepresentation** by developers' agents with no opportunity to rectify.

### Process impediments experienced

**Plans not made available** until 2 business days before CAP meeting, seriously affecting time to consult with experts and prepare presentations.

Short time for representations at CAP meeting.

Further **factual misrepresentation** by developers' agents with no opportunity to rectify.

### Process impediments experienced

**Plans or other details not made available** (planning staff indicated height and setback had increased).

**CAP meeting held in camera.**

**Reasons for approval not disclosed.**

## Adverse elements of the development approval process

Throughout the process, we have acted in good faith. We have been faced, however, with a number of actions demonstrating bad faith if not “gaming” the system, some of which are listed — along with other observed factors — and recommended solutions, as follows:

Adverse actions	Suggested remedies
Delay in making plans available until two working days before the CAP meeting.	Specify and comply with strict minimum time (28 days suggested).
Contradiction at two CAP meetings of unequivocally factual information presented by us, with no right of correction.	Provide for factual correction (≤ 5 minutes orally, or in writing, at meeting before decision is made).
Real or apparent conflicts of interest of CAP members, especially by councillors (directly via a professional role too close to developers or indirectly, wishing to protect their popularity to ensure being re-elected).	No councillor on CAP. Potential conflicts of interest evaluated by a governance committee rather than self-declaration.
Inherent huge imbalance in resources available to developers and representors.	Appoint an independent person familiar with the approval process to advise on preparation of representations.
Various shortcomings in transparency, equity and justice.	Appoint person external to council to monitor integrity and transparency of process.
Irrevocable decision made in camera at CAP meeting without consideration of representation with undue haste	Ensure transparency is paramount in all processes, especially concerning making a decision that need not be immediate.

### ERD Court and joinder

We have applied to join in the Environment, Resources and Development Court case between City of Adelaide and Buik Holdings Pty Ltd. A decision to admit or exclude us will be made in February 2023.

This matter is relevant because of the CAP’s decision to exclude the public from its 22 November 2022 meeting and keep confidential the minutes and reasons for decision “to enable the panel to receive, discuss or consider information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place ....”

We have asked to view the plans for the third development application but after consultation with the developer, who was opposed to release, the council has withheld them.

We note that the CAP’s caution over sub judice did not extend to the development application itself at the same meeting. **Justice has certainly not been seen to be done;** the decision has the appearance of being precipitate, “having it both ways”, with no further action with the council able to be contemplated by us.

## Reasons for continuing dissatisfaction over our case

- 10 (now perhaps 8) points of non-compliance still impel refusal, as in the 1st & 2nd CAP decisions.
- CAP’s confidential, accelerated final decision lacked all transparency.
- Second (modified) plans did not demonstrate material changes; 3rd unknown.
- Developer’s agents were not always truthful.
- “Gaming the process” at its worst in council-sanctioned delay / refusal of access to plans.
- Third CAP meeting held in camera without representations. Approval given immediately, not deferred to Feb when litigation concluded.
- 26 parking places available for non-residents, allowing future commercial exploitation as a 24 hours-a-day public carpark.
- Without major changes resulting from your review, conscientious attempts such as ours to ensure reasonable compliance will continue to be a joke, and expensive (\$100,000+) at that.