Sue Giles
[redacted]
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Dear Sir/Madam,

I write this letter as a submission to Expert Panel on the Planning System and Implementation Review.

I am a qualified economist and urban planner and have been employed in the planning profession for over 45 years, the majority with the SA state Government and more recently in local government. I am currently a member of a Council Assessment Panel and a Regional Assessment Panel.

I have read the various Discission Papers and The State Planning Commission report on Protecting Heritage and Character in the P&D Code. All documents were very helpful in explaining the context of the Review, the Panel's and Commission's current thinking, and the matters in which the Review Panel is focussing in this Review.

As an introduction to my comments, I would like to express a viewpoint that informs my submission. I support many of the goals of the PDI Act and of the Code, including increased consistency of policy, greater transparency, and improved efficiency of processing development applications. I am not yet convinced that the e-system necessarily contributes to achieving these goals, but I suspect that horse has bolted.

An important introductory point I wish to make relates to the fact that much of the planning system affects residential areas. A residence is a person's or a family's HOME. It provides one of the most basic of human needs: that of SHELTER: not only physical shelter but also the emotional shelter that comes from security. It creates a basis of our society. Humans need security and are often threatened by impending change, whether that threat/ fear is rational or not. Development proposals often threaten people's security making them feel threatened. In a caring society, this fact should be considered in creating a planning system that sets out processes and rights.

Secondly, I observe that a planning system is not in place to serve only developers (whether small or large scale). It is not about just $$$ and development rights. A planning system's role should be to ensure a balanced outcome socially, environmentally and economically. It necessarily affects individuals and families and their lifestyles, which they have chosen consciously to undertake within a particular residence, a particular character of suburb and a particular community context. These decisions are not taken lightly by individuals, are often taken with the intention to remaining in a locality for almost a full adult lifetime. These decisions are not easy to change, especially in the Australian context where housing and transfer costs are very high.

Public Notification

For the above reasons I argue strongly that **existing landowners and occupiers should be given much higher status in our planning system than the DPI Act and the associated P&D Code currently provide.**

I have a recent personal example: we have lived in an Established Neighbourhood Zone with a Character Overlay for over 40 years. Our neighbour proposed to build a 3m high white shed along the entire length of our northern boundary. (He admitted to being surprised that he could

build right on the boundary, but the shed building company encouraged him to do so.) We were afforded public notification and put in a lengthy submission. The outcome has been satisfactory (off the boundary, darker colour, and lower height), but Council staff encouraged him to withdraw and split his application and then approved each part separately without informing us. While the outcome has been satisfactory, we felt very disenfranchised that our opportunity to appear before a panel and argue our case had been removed. This is an example where our emotional relationship to the planning system was undermined and disrespected by Council. We were frustrated that the planning authority considered the needs of the neighbour more important and relevant than ours. Interestingly our neighbour undertaking the development observed that the design outcomes were so much better because of the submissions received by representors! Win win.

It was very instructive after decades of involvement with the planning system to experience it from a representor's perspective. It is important to be aware that representors are usually experiencing the planning system for the first time. They should be respected and afforded as much assistance as possible. In my view the needs and wishes of an existing occupier / landowner should be AT LEAST as highly valued as a new person wanting to achieve their goals. There should not be a sense of being imposed upon and the rights of existing investors should be at least equal to those of new developers. The PDI Act and Code has made some improvements to public notification, but **it is my view that neighbours should be informed of proposed nearby developments in a much wider range of situations, not just boundary developments of when certain numerical requirements are exceeded.**

In my view neighbours should be notified about ANY and ALL development on their boundaries. It is just <u>not reasonable</u> to take over someone's property by developing (and therefore changing) their boundary. Everyone should have a right to comment. Usually, concerns can be addressed with a compromise outcome leaving both parties satisfied with the results. Importantly better design outcomes are often much improved through consultation, often benefiting the wider community.

Why are a developer's rights greater than a neighbour's, who may have lived in the locality for decades?

A wide range of dwelling types and new non-residential land uses and variations in minimum standards in some Zones, do not require notification. How can the government be confident that there will not be unacceptable impacts from non-residential and land divisions in residential areas? By excluding so many classes of development from notification local people are disenfranchised in the very areas that they have invested their money and personal and social capital.

There are so many benefits that flow from notification. Yes, it takes resources and a little time, but it is respectful to all affected by a development. The planning system is not here only for those who wish to develop, nor for those who wish only to profit financially from development. It should aim to facilitate high standards of development, minimize negative impacts and to contribute to better quality of life and economic benefit for all citizens. Often people have invested heavily in their residential properties, only to have their efforts undermined by development proposals that are ill thought through. Consultation can assist. I support an approach that works in favour of more consultation rather than less.

In addition, more 'sensitive' zones including Historic and Character Area overlays would benefit from higher levels of public notification for certain developments.

Why does non-residential development trigger notification in the Housing Diversity Zone but not in the General Neighbourhood and other residential Zones?

In summary, public notification enables local knowledge and contextual input by locals, with attention drawn to specific and inherent potential impacts. This can add valuable review and

improvement to design outcomes.

Land Division proposals should also be notified to neighbours within a certain distance of the development site. I am not sure whether land division application require a sign on the site?

I recommend non-residential development be performance assessed and publicly notified in all residential zones.

Appeals

Importantly there are very limited **rights of appeal** by third parties. In my view this is a real shortcoming in the current system. It is not appropriate that a developer can appeal against decisions (whether refusal or imposition of conditions), yet representors have no right of appeal. **All representors should have appeal rights**, and the ERD court should be resourced adequately so that appeals are held in a timely way. I understand the approach that the current system envisages improved and increased consultation in setting and determining planning policy, with a reduced ability for third parties to then challenge decisions made against that policy once it has been set and determined. However, in my view this is not working effectively, and the processes and resources have not been developed for the community to be adequately educated, informed, and engaged about this approach and about how it affects them. And with a multi-thousand-page Code in place and the necessary formalities involved in describing a code amendment, it is not possible to achieve genuine consultation and community input - social justice is not achieved.

Increased public notification is a good thing but to truly ensure representors are not disenfranchised, it is necessary to provide opportunity to appeal against planning authority's decisions.

I also think it is fair, and polite for representors to be given the opportunity to see changes that a developer proposes to a development proposal, and secondly that there be notification of development applications that relate to a previously notified DA. For example, when a primary DA is amended by removing a verandah or deck to avoid an unreasonable impact on neighbours' views, a subsequent DA to develop that verandah / deck should be publicly notified. Otherwise, it seems to me that the developer has more of a 'fair go' than the representor.

I am concerned about the concept mentioned in the Discussion Papers about a new appeal review arrangement. I urge the Panel to be wary of changes that direct more decision making into the hands of the legal profession rather than the planning profession, whose members have been trained to make balanced assessments that reflect social, economic and environmental values.

Private Certification

We have seen many recent examples of how the privatisation of former public services and infrastructure have led to increased costs to the community and poorer tangible outcomes (e.g. power networks or the demise of public housing authorities contributing to crises in both areas). **The important public role of assessing development proposals should remain in the public hand**; there are too many temptations and risks associated with allowing the profit motive to potentially influence decisions that affect streetscape, urban tree canopy and people's lives.

Deemed Consent

It is my view that the Deemed Consent concept puts unreasonable and unnecessary pressure on the planning authorities, and importantly potentially limits the ability for authorities and panels to negotiate improved 'win-win' outcomes. It seems to be another example of the developer's needs

being weighted more heavily than those of the representor and the society, represented by the planning authority.

Heritage and Character

I am pleased to note that may of the former **contributory items** which were within Historic Conservation areas have been included in the new Code and are described as Representative Buildings. My concern is that demolition control has been weakened in relation to these items by introducing more policies that a potential developer can use to argue for demolition. Much of Adelaide's reputation, and much of its envied lifestyle reflects the past retention of historic and character dwellings and their location on large allotments suitable for raising children and conducive to a productive domestic economy.

It is my strong view that **demolition controls should also apply to representative buildings in Character Areas / overlays** (which mostly apply to Established Neighbourhood Zones). The loss of established dwellings, especially those constructed before the 1930s would irreparably undermine the value of these areas.

Areas that are covered by an Historic or Character Area overlay require extra sensitivity to ensure that any new development, including dwelling additions, maintain, enhance and do not detrimentally affect the valued character of the area I therefore recommend that dwelling additions should not be 'deemed to satisfy' in Residential zones if the site/ area is covered by an Historic or Character Area overlay.

I am concerned that there is a move to remove assessment decision related to heritage places and historic character from the planning profession to heritage experts. These decisions should remain with the planning profession, whose members have been trained to make balanced assessments that reflect heritage, character, and conservation values in the light of social, economic and environmental contexts.

Also, it is important that policy in the Historic or Character overlay areas addresses not only the front elevation and streetscape effects of development. For example: side elevations, roof form, spatial setting of the dwelling and allotment are all relevant. Amenity is not just about how something appears from the street.

In addition, modern lifestyle and house design has meant that the rear of dwellings is where most activity takes place. In this context side and rear setbacks and the relationship between neighbouring dwellings affects the amenity enjoyed by households.

I also note that many of these areas have heavily treed allotments. **I argue that stronger tree protection policies should apply in these character areas.** My experience is that often new residents are attracted to an area for its 'leafy green' character, and then promptly lop large trees. This has occurred in our area this week: an Irish Strawberry that was large and old when we moved into the neighbourhood 41 years ago was removed by residents of two months standing.

Infill

I am particularly concerned about the policies that apply to 'infill' developments. Smaller permitted lot sizes are leading to a plethora of subdivisions, including within established areas. Reduced front setbacks, already undermined by the dispensation allowing porticos, verandas and decks to be developed IN FRONT of that setback line are leading to much 'tighter' development, loss of open space, loss of tree canopy. Together with reduced side and rear setbacks, they are turning the city into a heat bank.

In addition, there are no incentives to amalgamate lots, build at higher density and create larger areas of public or shared open space. A recent example is on Sturt Road Brighton where a very large allotment was sold, many trees removed, and an unimaginative subdivision has ensued.

It is readily possible to achieve urban consolidation, and the benefits it brings, by undertaking developments on larger scale and with large open treed areas around buildings. It is very difficult to achieve it well on a piecemeal, lot by lot, basis; the latter tends to lead to buildings being crammed onto too small allotments and to poor design.

My concerns include:

- The consequences of urban infill redevelopment with reduced allotment sizes that have driven demolition of non-heritage listed homes in established suburbs surrounding Adelaide City, resulting in loss of residential amenity, crowded and congested roads, loss of on-street parking, access for rubbish collection trucks and road safety.
- The lack of shading, articulation, cross ventilation and contextual respect for existing residential character by new infill housing.
- The consequent loss of suburban amenity through larger buildings on smaller development sites through the destruction of vegetation and trees when demolition of existing buildings leaves bare sites.
- Excessive hard surfaces resulting in greater stormwater loading into existing stormwater infrastructure.
- The loss of mature trees on private land.
- Policy wording that is vague and does not provide any degree of certainty about the intention of the provision.
- The flexibility afforded by performance assessed developments leaves room for wide interpretations of how the policies are to apply.
- The increase land values (already at world high levels) and the loss of affordability for people wanting to purchase a suburban property surrounded by some quality private open space.
- The increased allowable site coverage (roofed area) from 50% to 60% of the site area and reduced minimum private open space from 20% to as little as 8%. This will produce a bare, un-vegetated hot urban environment – the exact opposite of what cities need from both environmental and amenity perspectives.
- The increased allowable width of carports from 30% of the frontage of the site to 50%. This will see carports/garages dominate the streetscape.

Southern Boundary development / Access to sunlight

I welcome the Code policies that give greater protection to properties located to the south of a development, by requiring greater setbacks of second storey development from southern lot boundaries in residential areas. The impact of development immediately to the north will be increasingly important on smaller allotments. No development on or close to a neighbour's northern boundary should be designated as complying. It should be subject to a site visit to assess its merit including its impact on the neighbour' property. Current provisions that allow sheds etc to be built to 3.2m high right on a neighbour's boundary, for considerable length (often the entire length of the back yard) should be amended.

The current provisions that refer to access of 3 hours of sunlight in living areas is grossly inadequate. For example, we designed our rear living areas and associated outdoor living area to receive winter sunlight all day. Our lifestyle revolves around this design, and our amenity would be significantly reduced of that were to be taken away by a development to our north. This is no small matter as it contributes to thermal comfort and to general wellbeing. **I understand the Government is seeking to assess policy against wellbeing criteria; I hope access to northern winter light will be taken into account when reviewing Code policies.**

Assessment process

I am concerned about the confusion that seems have been created by the assessment process which has removed minima (e.g. setbacks) and maxima (e.g. heights) and instead refers to 'Deemed to Satisfy' Provisions. If a DA does not satisfy these numerical provisions, a performance assessment is applied. However, the DTS numbers are often argued to be a minimum 'right'. It seems to me that a right to develop within those envelopes has been forgone by the developer and they should no longer have direct relevance in the assessment process. The relationship between DTS, DPO and performance assessment should be clarified.

It is also important from a natural justice viewpoint for 'numerical' standards to be closely adhered to. The planning system, by conferring development opportunities on land, determines the value of that land. For example, it is unfair if one developer adheres to maximum height requirements and yet a neighbouring developer is allowed to build to, say, a higher number of storeys.

It appears that there has been too much of a bias in favour of the development industry at the expense of the environment, our character, our heritage, and the rights of existing citizens.

Land Division

It is important that policies for land division are consistent with those for other forms of development. This will eliminate the use of 'back door' arrangements where the cart is put before the horse by applying for land use prior to land division, in order to achieve approval of development that would not have been consistent with the relevant land division policy (and vice versa). It can make decision making very complex. I have not examined whether there are such inconsistencies in the Code; rather I am observing an important principle.

As expressed earlier in this submission, land division proposals should also be notified.

Code expression

An element of the Code that I find most challenging and annoying, and therefore time consuming, is the way headings and subheadings are not logically set out. The layout might suit computer analysis, but it is not suited to the human brain. The code becomes almost inaccessible. Headings should be larger and bolder than sub-headings. There should be consistency in regard to whether headings are centralised on the page or justified to the left. This matter is easy to fix but I emphasise that there have been many times when I have been confused about which policies are located under which headings. Naturally this problem is exacerbated in such a huge document. The layout makes it hard to see the wood for the trees.

The naming conventions for zones does not make it clear what uses are to be the dominant uses in an area. Terms like Suburban and Neighbourhood are very broad and confusing and do not give anyone, including developers, clarity.

No explanation or justification has been given to the new activity zones to replace centre zones; it seems that the concept of a centres hierarchy is essentially lost. This does not give strategic guidance to where investment (both public and private) should be focussed. Has there been an explanation to the public about this new approach?

It is unclear why 'Desired Character Statements' are no longer included in the Code. They have been an extremely useful development assessment tool, and often assist assessment of a development is 'finely balanced' in terms of satisfying the objectives and principles of a zone. Councils have prepared Desired Character Statements, under guidance from the State

government. They are a huge loss in the new system. I recommend Desired Character Statements be reinstated for spatial areas.

I note that there are many new 'Neighbourhood' zones. This name sends confusing messages. It is used mainly for formerly residential zones, but the purpose of these zones is unclear without Desired Character Statements.

I am concerned that by allowing commercial developments up to 100m2 to be deemed to satisfy, in many Neighbourhood Zones means there will be very little assessment for such proposals, (in areas that have been exclusively residential for decades). These enterprises can have operating hours until 9pm.

The Code includes too many 'motherhood' statements such as The Desired Outcome DO1 under the heading 'Design in Urban Areas'. These are strategic goals and do not serve a useful purpose. They really have no place in a development assessment document.

Residential Zones

I think I am correct to say that there are 5 residential zones in which the same list of envisaged uses will apply. The 12 uses now include the new uses of offices and shops which are not currently supported in most Residential Zones. They were not supported in the Holdfast Bay Residential Zone, even in the medium density policy area. Offices and Shops were generally non-complying, with some specified exceptions. The effect of these policies will need to be carefully monitored, especially in relation to neighbourhood amenity.

Applications for a non-residential use in residential zones should be performance assessed.

Suburban Neighbourhood Zone

In addition to relevant comments above, it is my view that the allowable operation hours of commercial development are not reasonable in such a residential zone. For this reason they should be limited, and rather than being 'deemed to satisfy' they should be subject to performance based assessment.

Tree Canopy and Regulated and Significant Trees.

It is essential that we retain our large and old trees in our urban, and rural areas. The policies protecting regulated trees should be very strong (as per restricted development). It should not be made easy to make exceptions. If the policy is clear, it gives clarity and certainty to all.

It is well known and documented that South Australia has BY FAR the weakest tree protection policies in Australia. We use fewer triggers, and those that do apply, such as girth and canopy are much less likely to protect trees from removal than those in interstate jurisdictions.

Permeability

With increasing infill, especially in the Inner urban areas where large allotments and associated large gardens have been the norm, there has been a great loss of permeable land space. I support the concept of 'soft landscaping' areas within developments. This may assist to increase the amount and proportion of land that remains permeable (thus reducing stormwater runoff and reducing hard hot reflective surfaces). Without paving being defined as 'development' it has been difficult to control the amount of permeable surface in housing areas. Some councils have policies seeking, say, 20% permeability, but with pressure to provide less and less private open space at the development stage, and then the inclination of residents to pave areas, permeability has suffered loss.

The reduced private open space requirements will have an negaitve impact on the amount of land available for water to permeate.

I support the introduction of policies that require paving to be permeable.

Private Open Space

I note the reduced requirements for Private Open Space (sometimes confusingly referred to as Outdoor Open Space) in the Code. Private Open Space is important to the mental and physical health of individuals, especially children and older people. It also assists to create space between developments and residences.

Assessment Case Law

At a recent training session, it was advised that recent case law demonstrated that it is important for the whole of the Code to be taken into account when assessing a development. This brings into question the idea that applications should be assessed only against those elements identified by 'the computer'. I trust the Panel will take this advice into account**.**

In conclusion

I acknowledge that there may be some repetition in my submission, for which I apologise.

I appreciate the concept of a review by the Expert Panel and encourage the government to continue to review the Act and the Code, and in particular the strategic, amenity and environmental impact of its assessment policies and procedures.

I strongly support increasing the rights of appeal available to representors.

The government should also undertake a comprehensive review of the impacts of infill development, and loss of tree canopy to inform evidence-based policy.

Thank you very much for the opportunity to comment.

Your Sincerely

Sue Giles
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