

PROFESSOR IDA J LLEWELLYN-SMITH

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15 December 2022

Mr John Stimson, Presiding Member
Ms Kate Hart
Ms Lisa Teburea
Mr Andrew Keegan
Expert Panel
GPO Box 1815
Adelaide SA 5001

Dear Members of the Expert Panel,

One of Labor's campaign promises during the March 2022 State election was to "commission an implementation review of the Planning, Development and Infrastructure Act and the Planning and Design Code" [1]. In my community, the Southeast Corner of Adelaide, inappropriate developments that harmed the heritage character and residential amenity of our area were a significant campaign issue. Labor's commitment to review South Australia's state-wide planning process to make it more equitable and democratic was a major factor in Labor's gaining the Seat of Adelaide from the Liberal Party. Hence, it is reassuring that the Malinauskas Government has instituted this review of the Planning, Development and Infrastructure Act ("the Act") and the Planning and Design Code ("the Code") during its first year in office.

As Labor's campaign policy document *Planning for SA*, states, "Good planning and urban development is a tightrope walk between growth and liveability. While we need to continue to grow, we must not compromise on the liveability of our city." My submission to the Expert Panel is based on my experience earlier this year in organizing opposition to a development application for an 11-storey residential apartment building at 200-206 East Terrace. This experience demonstrated to me that the current planning legislation and the processes used to implement it have flaws that, if left uncorrected, could seriously compromise the liveability of the City of Adelaide in both the short and the long term.

My submission begins with a description of how the development application for 200-206 East Terrace progressed through South Australia's planning system and my interactions with the system (Section A). Then, I outline the flaws in the system that became apparent to me while that application was being assessed and make suggestions about changes that would, in my opinion, improve the quality of outcomes of the SA's development assessment process (Section B).

A. PROCESSING OF THE DEVELOPMENT APPLICATION FOR 200-206 EAST TERRACE

In 2014, Global Intertrade Pty Ltd lodged a development application (# 020/0009/14A) for an 8-storey residential flat development at 200-206 East Terrace. The application was approved by the Development Assessment Commission on 26 June, 2014. Development approvals require substantial progress on the project within 2 years. When no work had been done on the site by mid-2016, residents assumed that the approval lapsed. However, that assumption was incorrect. Without the knowledge of the local community, Global Intertrade's 2014 approval was still valid through 2022, i.e. 8 years after the original DAC approval, because Global Intertrade had been paying an annual fee to keep the approval current.



Figure 1. Architectural drawing of the proposed 11-storey apartment building at 200-206 East Terrace From page 25 “Architectural Plans, Part 1” by Aplin, Cook, Gardner, DA21041204 submitted by Global Intertrade to Plan SA on 2021-12-23.

On December 23, 2021, Global Intertrade lodged Application #21041204, a new application for an 11-storey apartment building at 200-206 East Terrace (Figure 1), through the PlanSA Planning Portal.

The required small sign announcing the development application was posted on the development site next to the footpath. Residents and businesses within 60 meters of the boundary of the development site received written notifications about the development. One couple residing in Springhill Lodge, directly behind the development site, did not receive a written notification.

Because I live 3 blocks away from East Terrace, no one directly notified me about the development application for 200-206 East Terrace. Instead, I learned about it through a post on the ABC News website [2]. The lack of notification to the wider community about the proposed 11-storey development prompted a neighbour across the street and me to take immediate action.

Over the next 2 weeks, my neighbour and I distributed several flyers to residences in the Southeast Corner of Adelaide:

- The first flyer described the apartment building proposed in Application #21041204 and suggested that concerned residents contact their State and local politicians to express their opposition to this inappropriate and over-sized development.
- A second flyer publicized a Street Corner Meeting on February 8 organized by then Member for Adelaide Rachel Sanderson and attended by the Minister for Planning Josh Teague. The Street Corner Meeting attracted 143 people, 142 of whom were there to express their opposition to 11-storey development at 200-206 East Terrace.
- The last flyer encouraged residents to make representations about Application #21041204 through the PlanSA Portal during the 3-week public consultation process, which closed on 11 February. Application

Application #21041204 attracted 105 personal representations that were submitted either through the Plan SA Portal, by email or by hand-delivery. In the day or 2 before the consultation period closed, emailed and hand-delivery were necessary because the PlanSA Portal refused to accept online submissions. This problem with submitting through the Portal was sufficiently frustrating that a number of residents abandoned trying to submit their representations.

The State Commission Assessment Panel (SCAP) was originally supposed to discuss Application #21041204 at its meeting on March 9, 2022. Such a large number of personal representations meant that PlanSA’s needed more time to work out a recommendation and the meeting was postponed to March 23. Thirty-three of the 105 representors asked to speak to Application #21041204 at the SCAP meeting, expecting the meeting to be held in public. However, the Attorney General’s Department insisted that SCAP meet via Zoom on March 23 even though COVID restrictions on the number of people at indoor events were lifted at midnight on March 11 [3]. Because the meeting was held on Zoom not in public, only of 15 of the original 33 representors spoke at the SCAP meeting.

The 15 representors had a wide range of professional experience including an architect, a lawyer, a soil scientist with expertise in the water table, a full-time medical researcher, consultant planner with a long career in local government planning and a former City Planner and City Manager for the City of Adelaide. Their presentations revealed the faulty information, misrepresentations and omissions in the documentation accompanying Application #21041204. Residents in adjoining buildings showed that the developer and consultants had downplayed the impact of the 11-storey building on them. A number of representors questioned Heritage SA's contention that the development would not do serious structural damage to 2 adjacent buildings on the State Heritage List. Although the Senior Planner in charge of the application had recommended approval, SCAP decided to refuse the application.

Once Application #21041204 was refused, there was an expectation that Global Intertrade would appeal the refusal in the Environment, Resources and Development (ERD) Court. Obtaining information about an appeal through PlanSA was not possible because staff were not allowed to advise representors if an appeal had been lodged. A week after the refusal, a search enquiry for a fee was submitted to the ERD Court Administration to discover if an appeal had been lodged. It had not. The ERD Court did not have an automatic system of notification about appeal so several subsequent independent searches, each for a fee, were required to discover that SCAP and the developers had had 2 compulsory conferences about Application #21041204. It not been possible to discover the outcome of the second



Figure. Architectural drawing of the apartment building that I believe to have been approved by the ERD Court on September 02, 2022 after two compulsory conferences between Global Intertrade and SCAP. Downloaded from Intergrade <https://urps.com.au/development-that-catalyses/> on 2022-11-27.

compulsory conference through the ERD Court Administration despite considerable email correspondence with them.

In mid-November, interested stakeholders finally discovered by chance the final outcome of the ERD Court appeal process in relation to Application #21041204. A resident whose property adjoins the development site at 200-206 East Terrace found an Order from the ERD Court on the SA Planning Portal. The order states that (see Attachment 1). The plans for the variation were not available on the Porta. However, an internet search revealed Figure 2 at left on the website of URPS, the planning consultants employed by Global Intertrade for the development.

B. PROBLEMS REVEALED BY THE DEVELOPMENT APPROVAL PROCESS FOR 200-206 EAST TERRACE AND POSSIBLE SOLUTIONS

1. Transparency and accountability

- *Only adjacent residents are directly notified when development applications are lodged.*

At present, the Act requires notification of a development (1) by a written communication to residents/businesses located within 60 metres of the boundary of the development site and (2) by a small sign on the development

site. This minimal requirement means residents are often unaware of developments that could significantly impact them and their area.

Solution: Notify relevant stakeholders (e.g., adjacent residents, other residents in the relevant area, local residents' groups, officials elected by the area) when development applications are lodged

- *Not even adjacent residents are notified when there are significant advances in the development assessment process (for example, an extension of an existing development approval or appeal of the refusal of a development application to the ERD Court).*

Under the current system, there is no requirement to notify interested stakeholders when development approvals are extended past their original expiration date without further review or when refusals of development application are appealed to the ERD Court. As discussed above, both scenarios occurred in relation to the development application at 200-206 East Terrace. As a result, interested parties and organizations were kept completely in the dark about key parts of the development assessment process in relation to this site.

Solution: Notify relevant stakeholders when there are significant advances in the development assessment process.

- *When a refusal of a development application is appealed to the ERD Court, the outcomes of Court-mandated processes are difficult to obtain.*

In relation to the appeal of SCAP's refusal of Global Intertrade's application for 200-206 East Terrace, PlanSA refused to notify residents if an appeal had been lodged. Furthermore, the ERD Court obfuscated about what happened in the second compulsory conference and has yet to provide information about its outcome.

Solution: Ensure that the outcomes of all processes mandated by the ERD Court in relation to a refused application become publicly available within a reasonable timeframe.

- *Documentation relating to development applications are not available throughout the development assessment process.*

Currently, original plans and reports for a development application that has been submitted to PlanSA are only available through the PlanSA Portal during the 3 weeks of public consultation. When this process ends, all documents lodged by the developer are hidden permanently from public view.

At present, when a development is modified after a refusal by SCAP or a CAP, documents for the revised development are never made publicly available. There have been two recent examples in relation to developments in the Southeast Corner of the City. (1) AS discussed above, SCAP approved a modified development for 200-206 East Terrace after two compulsory conferences under the auspices of the Environment, Resources and Development (ERD) Court. The plans for the modified development have never been publicly released. (2) A modified development for 5 Albert Lane was approved by Adelaide City Council's CAP, which refuses to provide concerned stakeholders with the details of the approval or the plans of the modified project.

Solution: Through the PlanSA portal, increase availability of documentation relating to development applications throughout the development assessment process.

2. Extensions and Variations

- *There is no limit to the number of extensions that developer can obtain for an approval by paying a fee*

The 2014 approval for an 8-storey development at 200-206 East Terrace was still valid until the mid-2022.

Solution: Set a limit on the number of 2-year extensions granted to a development approval

- *Substantial variation to an development application does not automatically trigger the requirement for a new development application.*

The ERD Court Order allows Global Intertrade to substantially redesign its East Terrace development under the same development application number, even though the redesigned building will have 9 storeys rather than 11 and a significantly altered façade. There may be other major alterations but these cannot be identified without the plans, which are not publicly available.

Solution: Require submission of a new development application when there is any significant variation on a development application (for example, the redesign of a development after a refusal by SCAP or a CAP)

- *Although demolition and building have not yet begun at 200-206 East Terrace, there are concerns that variations will occur during the construction phase, as has happened at other development sites in South Ward.*

For example, the ventilation towers in the front courtyard of Davaar House at the corner of Hutt Street and South Terrace were built without approval. Although the towers did not comply with the approval, the builder was not compelled to remove them.

Solution: During the construction phase, do not allow variations that change the design or increase building height or mass.

Solution: Ensure that building compliance processes are robust so that variations to a development do not occur during the building process without the knowledge of the relevant Council.

3. Zones and Overlays

- *The requirements of Zones and Overlays in the Planning and Design Code are not rigorously applied.*

The requirements of several Overlays were breached by the proposed development at 200-206 East Terrace, for example the Affordable Housing Overlay.

Global Intertrade was granted a waiver on an affordable housing component in the development at 200-206 East Terrace. The reason for the waiver request was that this development was “upmarket” and buyers would turn away from a development with an affordable housing component. In a number of developments in the Southeast Corner, planning provisions specified in Zones and Overlays have been ignored or downplayed. The waiver was granted.

Solution: Mandate that developments comply with the provisions under Zones and Overlays in the Code.

Solution: Only grant exemptions from Zone and Overlay provisions under exceptional circumstances.

4. Heritage buildings

- *Historic buildings/homes are inadequately protected.*

The designation of Historic Areas / Character Areas are the primary means of protecting heritage streetscapes. There are currently no designated Historic Areas / Character Areas within the City of Adelaide. Areas within the City certainly deserve this type of protection, including some of the residential streets in the Southeast Corner of the City and in North Adelaide.

Inadequate protection of built heritage in the City could seriously impact the future of, Bragg House and Springhill Lodge, two State Heritage-listed buildings adjacent to 200-206 East Terrace. In Application #21041204, flawed conclusions based on water tables established during the drought allowed Global Intertrade to argue that a 2-story underground carpark at their East Terrace site would not significantly affect water tables. Disrupting the current higher water tables could cause significant cracking to these two significant heritage building, as occurred to heritage homes on Carrington Street after the construction of a 6-storey apartment building at 215 East Terrace.

Solution: In the City of Adelaide, designate areas containing many historic buildings/homes as Historic Areas / Character Areas.

Solution: With relevant bodies (e.g., Heritage SA), ensure that the list of State Heritage-listed buildings includes all heritage items that should be preserved.

Solution: Re-establish lists of Local Heritage items and ensure that items on these local lists are considered for protection during the development approval process.

Solution: Protect heritage and character streetscapes as proposed by the State Planning Commission.

Solution: Ensure that there are adequate resources in PlanSA to assist the Council to prepare Code Amendments that preserve Historic Areas / Character Areas and streetscapes.

5. Third Party Appeal Rights

- *Stakeholders negatively impacted by developments have no recourse once the development has been approved.*

Third party appeal rights were part of SA's planning system until they were abolished by the current Act and Code abolished them. Withdrawal of third party appeal rights sends the clear message that the Act and Code think that development takes priority over people.

Solution: Re-establish the right for negatively-impacted stakeholders to appeal development approvals through the Environment, Resources and Development Court.

6. Catalyst Sites

- *Catalyst Sites have no height limits so the proposed development is significantly higher than the surrounding streetscape.*

With the exceptions of the Public Schools Club and the Christian Brothers College Early Learning Centre, this section of East Terrace is residential. On the east side, East Terrace is mostly lined with 2- to 6-storey apartment buildings; on the west side are the Park Lands. In the view of most residents, the eastern side of this section of East Terrace should **not** be converted to high-rise apartment living that is priced exclusively for wealthy individuals so that East Terrace becomes Adelaide's version of Central Park West.

Solution: Abolish Catalyst Sites on East Terrace between South Terrace and Wakefield Street. Instead, establish height limits for this area.

7. Adelaide City Plan

- *Many of the problems discussed above result from the lack of a coherent plan for the City of Adelaide*

Solution: Develop a Plan for the City of Adelaide after extensive community consultation. Review the Plan every 5 years.

Solution: Prepare detailed “Desired Future Character Statements” for every precinct of the City.

Solution: Ensure that the Plan includes Guidelines for Traffic Management within the City.

Solution: Ensure that the core principles of the Plan and its Traffic Management Guidelines are considered in the assessment of any development application within the City.

C. OTHER SUGGESTIONS FOR IMPROVEMENT IN DEVELOPMENT ASSESSMENT

8. Demolition Controls

- *Building are demolished before a replacement development has been approved and development sites remain vacant for year.*
- *An example is*

Solution: Grant demolition approval only after there is approval for a replacement development and building consent for the site.

9. Park Lands

- *The State Government regularly designated sections of the Government Park Lands for development*

Two recent examples are the site for the new Women’s and Children’s Hospital and an area that will be used for the extension of Adelaide Botanic High School.

Solution: Legislate to stop the alienation of the Park Lands.

Solution: Advocate for World Heritage listing of the Park Lands.

10. Trees, particularly regulated and significant trees

Solution: Ensure that the protection of tree cover is a prime consideration when assessing development applications.

Solution: Allow / Encourage wider use of tree protection orders.

Solution: Curtail the use of the Urban Tree Canopy Off-set Scheme that will allow developers to decrease the existing tree canopy now in exchange for a canopy that will not be mature for decades.

I thank the Panle for this opportunity to express my views on the the Act, The Code and SA’s Planning processes.

Yours sincerely,

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University of Adelaide

REFERENCES

- [1]
- [2] “Proposed 11-storey apartment block in Adelaide’s East End too ‘enormous’ for the area”, ABC Radio Adelaide, <https://www.abc.net.au/news/2022-02-01/residents-to-oppose-11-storey-apartment-in-east-adelaide-/100795072#:~:text=1%20%2F%206-.Proposed%2011%2Dstorey%20apartment%20block%20in%20Adelaide's%20East%20End%20too,for%20the%20area%2C%20residents%20say&text=Residents%20believe%20an%2011%2Dstorey,too%20big%20for%20the%20area>. Posted and updated 1 February 2022.
- [3] “COVID restrictions to be eased as SA records 2,590 new cases and four COVID-linked deaths”. ABC New, <https://www.abc.net.au/news/2022-03-10/sa-records-2590-new-covid-cases-and-four-deaths/100897980>. Posted Thu 10 Mar 2022, updated Fri 11 Mar 2022.