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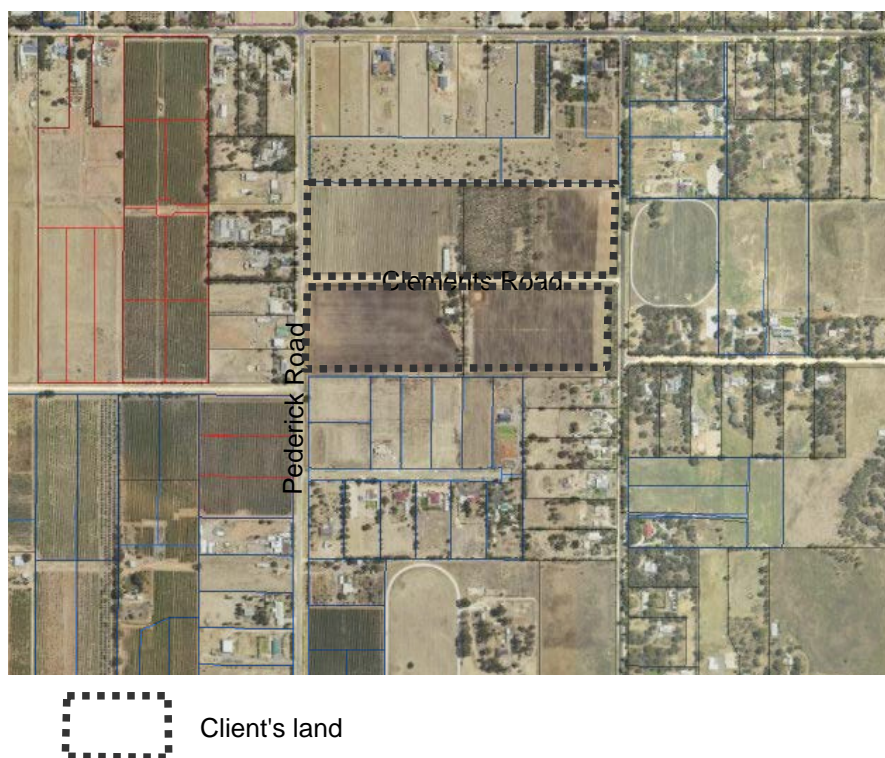
John Stimson  
Presiding Member, Planning System Implementation Review  
Expert Panel, GPO Box 1815, Adelaide SA 5001

Dear Presiding Member and Expert Panel

**RE: ENVIRONMENT AND FOOD PRODUCTION AREAS (EFPA) IN RURAL LIVING  
AREAS – A RECIPE FOR DISORDERLY DEVELOPMENT**

Thank you for the opportunity to comment on a planning reform issue important to a significant number of property owners in the Rural Living Zone within the Greater Adelaide region.

I write on behalf of [REDACTED] (my client) who owns several allotments on Clements Road, Lewiston (see Figure 1 below). His land is in the Rural Living Zone and the Animal Husbandry Subzone, and among other things, the Environment and Food Production Area (EFPA) Overlay.



**Figure 1: Client's land**

Though there was recently a 'review' of the boundaries of the EFPA, the provisions of the 2016 legislation resulted in very limiting terms of reference. Numerous submissions by or on behalf of affected landowners were disqualified on grounds that the changes proposed were not 'trivial in nature' and did not 'address a recognised anomaly' as per section 7(3)(b) of the Planning Development and Infrastructure Act 2016 (PDI Act).

The trivial pathway was based on the findings in the Stage 1 Review Report as per the Commission's Statement of Position concluding as follows:

*"It is the Commission's position that there is an adequate provision of land in Greater Adelaide to accommodate housing and employment growth over the next 15 years.*

*Therefore the review will follow the Gate B pathway which leads on to Gate D and sets the scope of the review as Test 3 only – the consideration of variations of the boundary that are trivial in nature and will address a recognised anomaly.*

*This position is based on the Commission's assessment of the requirements under the Act, outlined in the Three Point Test and the evidence base presented in the EFPA Review Report appended to this Position Statement."*

Therein lies the problem, the universalization of a finding in relation to land supply that generalizes the matter to all contexts of planning. This has generated an oversimplified view of the problem of land supply and has enabled the Commission to follow a very simple methodology to a complex and multifaceted problem with a narrow purview. This focus on the trivial, rather than context-sensitive, dynamic, integrated planning is considered a systemic and structural problem rather than the fault of the Commission.

A brief telephone call to a local real estate agent based in Two Wells was rather telling as follows:

*The allotments in the Rural Living area of Lewiston Two Wells are snapped up very quickly. The market is very strong with a very real demand for 1ha allotments. There are not many currently available, but more are expected to come on the market soon.*  
(Neil Bowden Pers Comm)

That the matters of concern to my client, and other owners in the Rural Living Zone, fell outside of the purview of the State Planning Commission (SPC) is a reflection of the very narrow, rigid construction of relevant parts of the legal and statutory framework. This is at odds, we contend, with good zoning practice established over many decades, with notions of flexible, dynamic policy instruments and performance-based assessment as recommended by the Expert Panel on Planning Reform in advice to the State Government prior to introduction of the PDI Act. It is also hard to reconcile with the approach adopted by the SPC in a recent Code Amendment – the *Miscellaneous Technical Enhancement Code Amendment* – in reducing lists of restricted development to allow more local, performance-based assessment having regard to level of risk to State priorities.

The EFPA is governed by a set of rules that take it outside of the normal planning modes, hinders dynamic policy review, and effectively constrains the SPC's considerations to high-level analysis of metropolitan urban land supply, plus boundary anomalies of a 'trivial' nature. This means the recent review was forced to disregard issues concerning rural living areas that are themselves, anomalies or non-conformities within the EFPA. The legislated

EFPA clumsily bundled areas for horticulture and primary production with areas zoned for rural living at the cost of values associated with good planning principles for rural living areas. From a practical policy perspective, there is no issue with the prohibition of land division for residential development in the EFPA in Rural and Rural Horticulture Zones if this is part of a coherent suite of policy actions *“to ensure vital agricultural lands surrounding metropolitan Adelaide are protected from urban encroachment”* (the purpose of EFPA Overlay stated in the SPC’s Code Amendment).

However, with rare exceptions, there is no such justification for applying the same prohibition in the Rural Living Zone. This effectively acts as a moratorium on land division for rural living purposes in the very zone set up to enable such development in the first place.

Inclusion of parts of the Rural Living Zone in the Environment and Food Producing Area (EFPA) Overlay brings:

- a rigid prohibition on non-caretaker dwelling on new allotments belying the use of the term ‘living’ in the zone name and its desired outcome;
- reversal of the zone intent on primary land use – in conflict with generally-accepted rules of good zoning practice;
- no ability for variation or account to be made for established settlement/subdivision patterns despite such ‘unconformities’ being entrenched and highly likely to persist long-term;
- one rule for some properties and another for others within the same zone without a well-reasoned basis relating to variation in character, land capability, or physical characteristics – and unaccompanied by financial or other compensation or relief for disadvantaged owners;
- blocking of the previously established development pathway to resolving land use conflict at the interface between rural residential and rural activities through land division in Rural Living Zones.

The rationale of the EFPA overlay is not evident where the land is part of an established rural living locality - as at Clements Road, Lewiston - and where land fragmentation and use means the locality is past the point where protecting vital elements of agriculture from urban encroachment is a viable policy goal.

## **BACKGROUND**

Policy failures may result from the over-simplification of issues and lack of regard for negative effects.

In applying prescriptive policy tools, identification and avoidance or reduction of the negative effects can be especially important in the scoping and drafting of policy.

This submission addresses circumstances arising from the introduction of prescriptive controls for Environment and Food Production Areas (EFPAs) covering rural areas of the Adelaide Plains, Alexandrina, Light and Murray Bridge Councils.

It is submitted that the EFPA policies are far more congruent with rural zones with a primary production focus, than with rural living zones.

The EFPA were introduced on 1 April 2017. The grounds cited were to protect primary production or environmental values from urbanization, or closer settlement. The EFPA were accompanied by a moratorium, pursuant to Section 7 of the Planning Development and Infrastructure Act (PDI Act), on residential land division.

Presumably to alleviate some negative impacts, the moratorium did not become effective immediately. It covered rural zones and rural living zones, and had the effects in relation to land division creating 1 or more additional allotments within the EFPA of mandating refusal of any land division proposing to create additional allotments to be used for residential purposes.

In the EFPA, any land division approved will be subject to the condition that the additional allotments will not be used for residential purposes.

Operation of the mandated refusal of residential land division followed a “phase in” period that has now expired. It is understood EFPA property owners were directly informed of the changes. However, there is anecdotal evidence that some landowners were unaware of or misunderstood information affecting their interests as individuals who might seek to divide their land. Others took advantage of the transition period from 1 April 2017 to 31 March 2019 and as a consequence received approval of one or more additional allotments within the EFPA.

In rural living areas, the nature and manner of introduction of the mandatory controls has had mixed effects:

- the 2-year “phase-in” period with an imposed deadline incentivized applications for land division within rural living zoned parts of the EFPA;
- where land-owners did not take up this opportunity, negative side-effects of the policy action can arise, either in terms of individual hardship, or the public good.

For example, since 1 April 2019, when land division applications to create one or more additional allotments for residential development within EFPAs ceased to be permitted, the situations of some landowners will have changed. They may now be in a position where a land division in accordance with the intent of rural living zoning, could remedy financial pressures or help address other adverse personal or family or business circumstances.

This can come about, for example, due to onset of ill health, loss of a partner, or loss of income from vulnerable primary production enterprises in a constrained rural living setting. It is not uncommon for a combination of factors to necessitate an unanticipated change in strategy for a property and its use.

In my client’s case the land was previously used for viticulture and as the China market soured it was no longer viable to maintain the vineyards and were subsequently removed. A better outcome for my client and the community would be to be able to subdivide the land for rural living rather than having the land lay fallow or resulting in an intensification of horticulture in a largely rural residential environment with its concomitant interface problems.

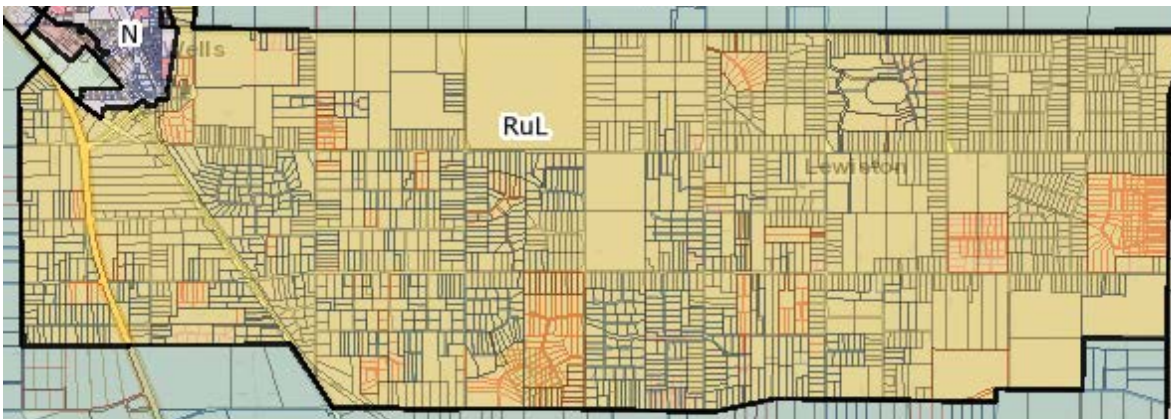
## PLANNING IN A RURAL LANDSCAPE, WITH A PLACE FOR RURAL LIVING

The application of the EFPA in rural and conservation zones of the region of Greater Adelaide has been rationalized as a justifiable outcome balancing agricultural protection, sustainable use of natural resources and the benefits of living in rural surrounds. This presumes though due accommodation of demand for rural living with reasonable and legitimate interests of the predominant users of rural living zones not ignored or over-ridden. The rationalization is thin, if rural living zones are rendered unable to fulfill their full intent and potential.

Section 7 of the PDI Act simplistically makes no distinction between rural zones where primary production is the predominant use and rural living zones intended to accommodate rural living. The rural living zone intent is overturned. The process enabling the land-use intent of a rural living zone to be realized is prohibited – namely, creation of any new allotment with one dwelling per allotment potential (with exception of a caretaker dwelling). As a result, some rural living zones hitherto considered part and parcel of a framework based on an investigative and rational strategic land use planning process, will remain inefficiently under-capacity.

This is demonstrably the case in the Lewiston area – refer Figure 2 below.

It results in some larger parcels being stranded assets and creates unwarranted costs and difficulties for landowners wishing to exit or rationalize their current situation due to lifestyle, health, economic, or business factors.



**Figure 2: Lewiston/Two Wells Rural Living Areas - existing and proposed allotments**

One consequence of anticipated growth of land use contemplated by the zoning not being realized in locations determined as suitable by a rational planning process may be pressure for demand for rural lifestyle properties to be met elsewhere, perhaps in conflict with the objects of the planning process and investigations instrumental in establishing the rural living zones. There may also be an inflationary effect on the price of land.

Other landowners taking advantage of the 'phase in' period in some cases adds to the pressures on, and acts to the disadvantage of, some who did not. A case in point is where a stranded primary production enterprise is hemmed in by rural residential or rural living properties – like Mr. [REDACTED] land at Clements Road in Lewiston. This can have a number of adverse effects:

- primary production activity suppressed or modified to accommodate rural living amenity expectations, affecting the viability of the enterprise; and/or
- agriculture or horticulture protected by existing use rights, able to generate adverse impacts on nearby residential (rural living) use due to noise, dust raised in cultivation, odours, spray drift etc.

Without the EFPA legislation there would be scope for more dynamic and flexible policy review as exists virtually throughout Regional SA and in most of the balance of Greater Adelaide. With the EFPA, policy failure is entrenched unless the legislation or legislated boundaries are changed, which flies in the face of stated aims of planning reform such as a performance-based policy framework.

## CONTRADICTION AND CONFUSING

**“A common maxim in policy circles is: ‘Every complex problem has a simple answer, and it is always wrong’. There is a large body of literature on policy failures which resulted from over-simplifying the issues and ignoring or over-looking the ‘knock-on’ effects of policy actions. So, good policy-making must be subtle, continual and limited in its aspirations.”** (Stewart, Jenny & Ayres, Russell, *The public policy process* in Aulich, C, Halligan, J & Nutley, S, 2001: ‘Australian Handbook of Public Sector Management’, Allen & Unwin)

The EFPAs protecting land around Adelaide from further urban expansion and covering rural areas of the Adelaide Plains, Alexandrina, Light and Murray Bridge Councils, were introduced on 1 April 2017.

The fact that it was considered necessary to have a phase-in period affecting areas that under land-use zoning policies had potential for new rural residential or rural living allotments attests to ‘knock on’ effects of the new EFPA land division policy.

Superimposing a moratorium via Section 7 of the PDI Act created a cryptic internal conflict in policy instruments determining what development is permissible in rural living zoned parts of the EFPA. The reality is zoning is a key reference point in property searches and inquiries about property development potential, while few people will ever read Section 7. A policy framework that in one place advocates rural living and in another bans the process of establishing more rural living is perversely incongruent. It has the potential to mislead, hence harm the interests of buyers, vendors and others involved in land transactions and inquiries acting in good faith.

The construction of the zone and overlay provisions infringes the expected rule that zoning conveys the land use intent not other layers. It requires the reader to find in an obscure location that the EFPA Overlay in the Planning and Design Code provides that any land division must be in accordance with Section 7 of the Planning, Development and Infrastructure Act 2016, negating a key part of the Desired Outcome for the Rural Living Zone (which is stated upfront):

*A spacious and secluded residential lifestyle within semi-rural or semi-natural environments, providing opportunities for a range of low-intensity rural activities and home-based business activities that complement that lifestyle choice.*

The following Rural Living Zone assessment provisions also support residential development in a secluded semi-rural or semi-natural context:

*PO 1.1*

*Residential development with complementary ancillary non-residential uses that do not place additional demands on services and infrastructure, and compatible with a secluded semi-rural or semi-natural residential character.*

*DTS/DPF 1.1*

*Development comprises one or more of the following: (a) Agricultural Buildings (b) Animal Keeping (c) Carport (d) Consulting room (e) Detached dwelling (f) Dwelling addition (g) Farming (h) Horse keeping (i) Kennel (j) Light industry (k) Office (l) Outbuilding (m) Shelter/Stable (n) Shop (o) Verandah.*

*PO 3.1*

*Allotments/sites created for semi-rural residential purposes are consistent with the density expressed in any relevant Minimum Site Area Technical and Numeric Variation or are of suitable size and dimension to contribute to the existing semi-rural pattern of development consistent to the locality and suitable for their intended use.*

An over-arching prohibition embedded in an Act of Parliament, is simply not good policy-making and liable to mislead, especially when it is incongruent with 'living' in an affected zone title, and the Planning and Design Code policy provisions cited above.

## **LACK OF POTENTIAL OTHER THAN RURAL LIVING**

Lewiston and other parts of the southern-most and largest Rural Living Zone in the Adelaide Plains Council area are on the floodplain of the Gawler River, yet have catered for rural living growth beyond the urban fringe over many years. Associated trade-offs with floodplain management would not be possible with a denser urban zoning. Far more costly investment in flood mitigation would be required.

The Rural Living Zone is likely to have diverted ad-hoc development pressures from productive rural-zoned areas, and potential urban growth areas yet to be planned and zoned. The rural living settlement area now largely established is clearly here to stay.

Rather than the EFPA safeguarding the Rural Living Zone from urban expansion or 'leapfrog', the area zoned for rural living presents inherent constraints to urban densities due to flood hazard, and to both agricultural production and denser urbanization because of the degree and extent of land fragmentation. The notion that the EFPA prevented, or will prevent, urban expansion into these well-established Rural Living Zone areas does not match reality. Neither urban expansion at typical green-fields standards and densities, or large-scale primary production, are plausible scenarios given established rural living fabric, and ongoing rural living demand.

In rare cases, rezoning to Rural may be a good option, for instance, large outlier parcels in the Rural Living Zone potentially could be added to an adjoining Rural Zone without creating longer, more problematic interfaces where land-use conflict may arise. However, there are

many more cases (at least in the Adelaide Plains Council area) where inclusion in the EFPA means incremental changes to the settlement pattern established in accord with the Rural Living Zone, within existing zone boundaries, has been unreasonably and unfairly prohibited. This causes not only unwarranted hardship to landowners, but also adverse interface or cross-boundary conflicts due to spray drift etc.

EFPA prohibition on residential land division controls has a highly onerous impact on some arbitrarily defined parcels. It does not promote more compact growth, and stifles the growth of rural living areas that cannot readily be converted to either commercial-scale agriculture or urban typologies.

The flood-prone land at Lewiston, already extensively developed for rural living, presents a formidable logistical challenge for development at densities expected inside an urban growth boundary. There is limited scope for small or intense agricultural enterprises, like the former vineyard on the subject land, in the Rural Living Zone, irrespective of the EFPA.

The planning issues pertaining to this area relate to its legitimate rural living function and do not require inclusion in the EFPA, in its current form. They are appropriately addressed by less prescriptive and performance-based policies and primarily local assessment.

## **CONCLUSIONS**

Limited by narrow terms of reference, the SPC in its recent review of the EFPA was unable to conduct a comprehensive, solutions-oriented review of an egregious deficiency in the EFPA legal and policy framework affecting the EFPA Rural Living Zone.

The outcome is that the intent of zoning that ought to guide orderly land division is contradicted and stymied by an effective moratorium.

The Planning System Implementation Review is an opportunity to review and address the legislation under-pinning the policy failure described herein.

We urge the Panel to make recommendations to restore performance-based on-merit assessment for land division for rural living purposes in the Rural living Zone.

This would help improve the planning system's alignment with recognised best practice for zoning and development policy as reflected in the findings of predecessor SA planning system reviews.

Please do not hesitate to contact me on [REDACTED] or via email at [REDACTED] should you wish to discuss any of the above.

My client would like the opportunity to address the Panel in support of their submission.

Yours faithfully



Henri Mueller

**DIRECTOR – REGIONAL PLANNING DIRECTIONS**