

# **There will always be ‘winners’ and ‘losers’: Understanding perceptions of procedural justice in a contested planning landscape**

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**Abstract:** Planning decisions often involve a range of stakeholders, each committed to ensuring their needs are recognised by other stakeholder groups. Considering this, questions of what is ‘ethical’ or the ‘best’ process for a decision is debated considerably within academic literature. These debates can be explored through the concept of ‘justice’ or what is fair in decision-making processes. Ultimately, the interpretation of ‘justice’ is very subjective and contestation between affected parties is probable, if not inevitable. This paper investigates the understanding and value of justice, specifically ‘procedural justice’ and its’ practical application within planning decisions. Procedural justice relates to the processes and administrative procedures relating to obtaining fair planning decisions. Presenting a case study of South Australia’s Mount Barker Development Plan Amendment rezoning process in 2010, this paper teases out how stakeholders view ‘procedural justice’ within this highly contentious planning decision. This concept relates to and questions processes undertaken during major planning decisions, raising questions regarding ethical behaviour, politics and potential conflicts of interest. The case study of Mount Barker is an apt case study for exploring how issues of justice interrelate with a range of broader planning and sociological concepts. These include governance, politics and power. The findings demonstrate that justice is viewed in a variety of ways and that individuals stakeholders have differing and often conflicting visions for planning decisions, such as Mount Barker. This essentially sees justice as an ‘abstract noun’, or a seemingly elusive quality in an applied discipline.

## **Introduction**

The planning profession is a political quagmire: a complex nexus of conflicting ideals, visions and practices. At the centre of these complexities lie people, each with their own beliefs and values as to what constitutes a ‘good’ or ‘fair’ decision. When a substantial planning decision occurs, such as a major redevelopment or a loss of a heritage building, a range of individuals will most certainly be affected. A whole gamut of potential stakeholders, such as decision makers, special interest groups and developers may also be involved. Considering this complex web, this paper explores the highly subjective and often volatile nature of procedural justice within planning decisions. In particular, this paper focuses upon the highly contentious Mount Barker Development Plan Amendment (DPA) process, which was approved in December 2010. The affected peri-urban area of Mount Barker and the surrounding townships of Nairne and Littlehampton are located approximately 20 minutes southeast of Adelaide, South Australia. The area was subject to the rezoning of approximately 1300 hectares of agricultural land, to that of residential and industrial land. The gazettal of the DPA in December 2010, was a dramatic crescendo in what had been a long and at times, tense process in recent South Australian planning history. It ultimately involved a wide range of concerned stakeholders; generated widespread, national media attention and culminated in an official investigation into conflict of interest by the South Australian Ombudsman. The Mount Barker DPA was also utilised as case study in the recent 2014 South Australian Planning Reforms, serving as an example of questioning the role of public consultation in planning processes.

What made the Mount Barker DPA so contentious were the perceived relationships and hidden agendas between parties. Throughout the DPA journey, a range of individuals and groups became involved in the process; all with differing and sometimes conflicting stories as to what actually occurred. As part of continuing PhD research, a range of affected stakeholders were interviewed between 2013 and 2014 about their experiences with the Mount Barker DPA process. These interviews explored respondents’ perceptions of what was fair, and how these decisions affected their perceptions of planning. This paper presents an analysis of the concept of ‘justice’ and how it is understood by interviewees within this process. These include questions concerning what is justice, what makes the planning process ‘just’, who should be involved in these steps and finally, why should/shouldn’t these people be involved.

## **Understanding the relationship between justice, planning and stakeholders**

### ***What is justice?***

The concept of justice broadly constitutes an idealisation of what is 'fair' for either an individual or a broader collective within society. This can, and does include debates regarding the allocation and distribution of goods and services within society (distributive justice), fair administrative processes (Krehbiel and Cropanzano, 2000) and broader debates concerning what constitutes what is 'just' or 'fair' (Campbell, 2006, McKay *et al.*, 2012). Fairness then, encompasses 'everyone get(ting) what they deserve' (King and Murphy, 2012).

Research in justice has seen a movement from analysing the outcome of decisions (distributive justice) towards understanding the perceptions of processes undertaken within these decisions (procedural justice) (Gross, 2007, King and Murphy, 2012, Gross, 2014). In regards to planning, justice is an important concern, as the discipline fundamentally deals with what is 'good' (Campbell, 2006). More broadly, recent planning paradigms (such as communicative and collaborative planning) seemingly relate to trends associated with justice (Healey, 2012). For example, this includes the need for a more inclusive role of individuals and groups within the planning process and an increasing open dialogue or communication with stakeholders. Because of its apparent popularity within academic discussion and general discourse, understanding and constantly reassessing and redefining the role of 'justice' is a vital question. This includes even questioning if the concept is indeed still relevant and valued in modern day planning in its current form.

### ***What is procedural justice?***

Procedural justice, or procedural fairness, constitutes the 'judgement of process' by concerned stakeholders (Krehbiel and Cropanzano, 2000). Planning research in the area has focused upon and incorporated a range of varying themes, such as politics and power nuances (Hillier, 2009), discussions of fairness (Stein and Harper, 2005, Campbell and Marshall, 2006, McKay *et al.*, 2012) and trust and accountability (Lukasiewicz *et al.*, 2013). More recently, Catherine Gross (2007, 2014) has explored procedural fairness in relation to environmental planning and natural resource management. Gross' work has recognised the importance of governance, specifically scales of governance, in water management and understandings of fairness.

Another factor evident within the literature is that perceived justice and subsequently injustice, is 'laden with emotion' (Krehbiel and Cropanzano 2000 p. 339). Krehbiel and Cropanzano state that 'the magnitude of these feelings, the dynamics of the justice/emotion relationship are not fully understood' (2000, p.340). Although a variety of work has been undertaken in psychology about emotion and justice (Skitka, 2002, Skitka, 2003), work in planning also highlights this dilemma. Fundamentally, for example, literature relating to procedural justice highlights a variety of factors that need to be considered. These include issues of fairness, communication, transparency – which are central to communication and trust and respect.

Thus, if there is a perceived sense of 'unfairness' or 'injustice' in regards to a decision, there will most likely be a heightened sense of emotion evidenced by concerned stakeholders (King and Murphy, 2012). This is highlighted in literature relating to NIMBYism (Not In My Backyard) and BANANAs (Build Absolutely Nothing Near Anything) – common concepts in the planning development vernacular (Feldman and Turner, 2010, Davison *et al.*, 2012, King and Murphy, 2012). Cass and Walker (2009) argue a strong connection to place raises issues related to NIMBYism, while Feldman and Turner (2010) highlight the ethical dilemmas posed by the concept. This raises questions about who should be involved in decisions, and why. Even so, recent academic literature is seeking to re-define the acronym 'NIMBY', with many academics now calling for NIMBYism to be removed/reviewed within academic literature (Mcclymont and O'hare, 2008). This relates to the fact that there is recognition that NIMBYism is not necessarily a negative trait and in fact, not fair for the labelled individuals (Haggett, 2010, Feldman and Turner, 2014).

### **Methodology**

Broader phenomenological elements have been applied for this research. This is because phenomenology emphasises the integration of emotions and values; recognition of the individual or 'self'

within the broader environment, the value of self-reflection (reflexivity) in research and the allowance for the incorporation of multiple worldviews. As demonstrated within the theoretical discussion above, all of these elements can be considered valuable for supporting research concerning justice.

### ***The Mount Barker Development Plan Amendment Process***

The township of Mount Barker and the surrounding townships of Littlehampton and Nairne, encapsulate the case study area for this research. It is located about twenty minutes south –east of Adelaide, in the Adelaide Hills/Mount Lofty Region. The case study area, known for its heritage and natural beauty, is a predominately low density residential and agricultural-zoned landscape. The local government area is the District Council of Mount Barker. In December 2010, the State Ministerial ‘Mount Barker Urban Growth Development Plan Amendment’ (DPA) was approved and incorporated into the District Council of Mount Barker’s Development Plan. In South Australia, a DPA that is initiated by the State Government must be adhered to by the local government authority. This State Government initiated DPA saw the rezoning of approximately 1200 hectares of land as a Residential Neighbourhood Zone, as well as some other areas for Light Industry and Medium Residential from mainly agricultural land (Parnell, 2012).

The reaction to the Mount Barker rezoning, on the surface, appeared generally negative, with local media sources citing poor planning practice and insufficient public consultation (see for example Kemp, 2012). 541 submissions were received relating to the DPA, with only ‘twenty positive responses’ about the proposed land use rezoning (Kemp, 2012). Documents obtained under the *Freedom of Information Act 1991*, by Greens’ Senator of the Legislative Council, Mark Parnell, also indicated that a prominent Adelaide planning consultancy had been engaged separately to act on behalf of both the State Government and a consortium of private developers (who owned the land around Mount Barker) for assessing the viability of future growth zones in the Greater Adelaide region, including the Mount Barker area. Two separate reports were created. The State Minister of Planning at the time, Paul Holloway, argued in Parliament that there was ‘no conflict of interest’ (Parnell, 2012).

### **Methods**

For the purpose of this research, semi-structured interviews were conducted between 2013 and 2014. In total, 19 people were interviewed who were, or had been in some way, intimately involved in the Mount Barker Development Plan Amendment process in 2010. This included 11 individual interviews, 2 interviews involving 2 people and 1 group interview (involving 4 people). As the broader research is concerned with the understanding and construction of ‘justice’ in contested planning decisions, participants were asked a series of questions based around the following themes: 1) the Mount Barker DPA process; 2) Justice and 3) Planning. For the purpose of this paper, only the theme of ‘justice’ was focused upon. Participants were encouraged to provide anecdotal and other evidence that they felt supported their stories. This technique was employed as it encouraged the lived experiences and emotion of each participant to be voiced. Supporting material, including policy documents; Hansard and media releases were utilised to supplement and clarify events mentioned by the interviewees.

Whilst the links between distributive justice and procedural justice are strong (Gross, 2007, King and Murphy, 2012) the primary concern of this paper is to draw upon the role and perceptions of procedural justice within the Mount Barker DPA decision. Thus, each transcript was analysed considering the following questions:

- What is justice?
- What makes the planning process ‘just’?
- Who should be involved in these steps?
- Why should/shouldn’t these people be involved?

It is *extremely* important to recognise, that as per ethical requirements, identifying information of the participants has been removed. This includes the names, occupation titles and professional roles. Therefore, in the presentation of the results for this paper, participants can, and have only been identified as ‘interviewees’.

## Results

### ***What is justice?***

The responses from the interviewees highlighted that justice is a contentious concern, not only for the Mount Barker Ministerial Development Plan Amendment, but for planning decisions in general. A broad content analysis of all fourteen transcripts indicates the key words, or concepts, cited by interviewees, which relate to their varied definitions of justice. Interviewees indicated that justice – both broadly, and within planning practice can be interpreted and manifested in a variety of forms. Table 1 provides these terms and some of the key words, from the interviews, which give a broader understanding of the concept:

**Table 1 - General terminology/concepts relating to justice identified by interviewees**

<b>Components of justice</b>	<b>Definition/Key words</b>
Fairness	<ul style="list-style-type: none"> <li>• Within the 'law'. Legal</li> </ul>
Input	<ul style="list-style-type: none"> <li>• Not tokenistic</li> <li>• Providing an opportunity to be 'part of the process'</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• A clear process to achieve an end result</li> </ul>
Trust	<ul style="list-style-type: none"> <li>• Respect for all parties involved by each party.</li> </ul>

The idea that justice was interchangeable with or incorporated elements of 'fairness' was a common theme in most interviewees' definitions of justice. For example, one interviewee noted that justice *'is about...a process and outcome whereby people are treated fairly and equitabl(y).'* Another example argued that *'justice is fairness for all concerned... without harming innocent parties... Justice for Mount Barker would be to put a stop to the MDPA. Reverse it.'*

Other responses by individuals demonstrate 'justice' as an ideological concept or goal. This included more generalised statements about how justice can act or appear to serve a greater purpose. Said one interviewee: *'everybody believes that they're listened to. That they get a fair say. ..We have a society where there's a representative democracy. Everybody's entitled to their say and point of view'*. That there are a variety of interpretations of 'justice', means that the concept cannot be treated as a 'given' part of the process of planning (nor as a means of judging its outcomes). Rather, it is necessary to understand the different interpretations of the concept, and the implications that the existence of different perspectives by key participants in planning processes can have on the way those processes and outcomes are viewed.

### ***What makes the planning process 'just'?***

This question applies specifically to procedural justice, and recognises that justice can be defined as an act or series of actions. For many interviewees, it was apparent that they did assume that a series of particular steps of actions can make a process 'just' or 'more just'. One interviewee noted that *'the most important thing for justice (was that) everybody has an opportunity to have their input, ... all of the issues are weighed up, and you try to achieve the best balance that you can, before you then make decisions.'* In this sense, justice is seen to be the incorporation of specific actions or series of tangible processes that can be repeated.

When confronted with questions about justice and planning, the emphasis upon 'having a voice' or 'being heard' was an important element among interviewees. One interviewee stressed the importance to people (the public) to have the 'opportunity' *'to be heard, understood, listened to, debated...and comment.'* *'The outcome...'*, the interviewee argued *'...can be seen to be something that is real, and can be touched and tangible...rather than something that is seen as being tokenistic and just generally false.'* A strong criticism of the 'tokenistic' element of input was apparent for various interviewees when discussing the Mount Barker decision.

One interviewee argued that 'justice' is a 'process' and in its current form is *'a little bit too fluid.'* They added that the process *'needs to be made a little more solid. And have a clear outcome.....I want the direction to be clear from the beginning.'* This statement implied that justice stems from a stable and predictable process. Some interviewees ultimately implied that the result of planning decisions (including

the Mount Barker decision) may have seemed ameliorated had the process been more clear or transparent.

### ***Who should be involved in these steps?***

For most interviewees, describing the attributes of justice in planning led to an inevitable discussion of the range of stakeholders involved in the planning process. In regards to Mount Barker, these definitions depended upon their roles, responsibilities and especially, stakeholders' accessibility to information regarding the process. Seeing flaws in the way justice was 'enacted' in the DPA process, various interviewees offered advice or potential solutions to improve the planning system. This ranged from only considering who should be involved, to also reflecting on how much these individuals (or groups) should be involved. One interviewee, for example, stressed the importance of 'the whole story', noting that various parties lacked certain information to understand, and thus appreciate, the entire DPA process; this being a criticism of those who felt that the outcome was 'unjust'. Furthermore, some interviewees noted that the planning system in its current state made it difficult to fully grasp the entirety of a planning decision, and it was therefore inevitable that people would become confused about the decision-making process. This was especially evident regarding the rights and position of affected stakeholders within local government planning processes. For example, one interviewee provided an example of this confusion, claiming that if there is a '*development application to build on the block next door, suddenly they (the public) get affected and get involved. Until that happens, I think a lot of people don't really appreciate the planning system*'. However, this interviewee also recognised that '*one of the challenges is to better engage those people.*'

Many interviewees noted the problem or difficulty in engaging with other stakeholders, with some calling for a stronger movement or emphasis towards 'educating' people (such as the general public) about the planning system and the role of planning within society. Certainly, this need for more effective public consultation was also stressed in the recent State Planning Reforms reports prepared for South Australia. One interviewee (of the current research), for example, indicated that educating individuals and simplifying the system would create a more robust and effective system, stating that: '*nothing is simple and until they simplify things, so people can understand things and are educated... there will always be this total confusion. It's always Council's fault.*' The frustrations of having to deal with stakeholders who may not or may not understand the planning process, seems to lead to an unenviable position of how you make people feel 'fairly' and appropriately engaged with a situation that they may not fully understand. This may be because of time, money, or other constraints. Furthermore, the comment regarding 'the Council's fault' highlighted that within the process some people are 'silo-ed' into particular roles, whether or not this is 'fair'. Within the South Australian planning system, displeasure about decisions made around residential areas are always first and foremost expressed to the local government authority.

### ***Why should/shouldn't these people be involved?***

The quantity of stakeholders involved in the Mount Barker DPA process indicates an intrinsic difficulty that many major planning decisions encounter: why include a variety of stakeholders? And who should make up such a group? Many interviewees implied that within the DPA process stakeholders could be 'silo-ed' or divided into groups. Interviewees discussed why these groups should be involved in planning decisions, in the process tying such involvement to the 'fairness' of the process. One interviewee argued, for example, that four major parties should be involved in the local government planning process, and this should have been applied to the Mount Barker DPA. These are: the landowners, the community, the State Government and the local Council. The relationship between these parties, the interviewee argued, should be '*equitable*' with '*open dialogue*'. This would help facilitate a '*smoother transition plan*' from planning to implementation. Unfortunately, in the case of Mount Barker, this process was apparently not followed. Noted the interviewee bluntly: '*there's really no such thing as a free lunch, in respect of trying to shortcut planning processes.*' By apparently shortcutting the consultation process, it appeared that the State Government and the Council had ended up with a much larger political problem.

Another theme, relating to stakeholder involvement, concerned the role of the public in 'just' planning decisions. Some comments by interviewees were more generalised, stipulating that the public should be involved at varying stages of the planning process, as is part of their democratic right. However, some interviewees felt that various members of the public, such as residents, use planning decisions as vehicles for their own political agendas. This can be perceived as detrimental to the planning process and final decision. One interviewee, for example, suggested that in regards to the Mount Barker decision, '*some*

*community groups (were) not happy at all. Because they either don't want change, or they don't want it happening in their area, or for whatever reasons.'*

## Discussion

Justice is seen as a fundamental right for many individuals within many contemporary societies. It is seen as a means to coexist fairly; a way for people to express their opinions relatively equally. Procedural justice, as stressed within the literature, is about 'voice' (Gross, 2007, King and Murphy, 2012, Gross, 2014). This includes, but is not limited to, the opportunity to express one's voice openly and (seemingly) impartially. However, as demonstrated by previous work in the area, these opportunities can often be perceived as flawed, thus giving rise to the perception of injustice (Hillier, 2009). These perceptions of justice are evident within the case study of Mount Barker. Here, various stakeholders felt that the process behind the implementation of the DPA had not been 'just', as there was a lack of transparency to the process. This meant that not all elements of the process were discernible to stakeholders. There was also confusion by some stakeholders as to the structure of the State-initiated DPA process, compared to the more rigid structure of changes to a local government-enacted DPA. There was also little, or rather tokenistic, involvement allowed for some stakeholders (particularly local residents) and too much involvement by other stakeholders.

As a discipline that directly concerns the health and livelihoods of people, planning will always be faced with questions concerning justice. The case study of the Mount Barker Ministerial Development Plan Amendment process demonstrates this issue well. The mystery shrouding the particulars of this case, including the parties involved and exacerbated by heightened media interest, resulted in a legal and political quagmire. The analysis of interviews conducted for this research confirmed such concerns regarding justice. Unfortunately, because of ethical requirements, the occupational titles, nor the professional roles of the participants could not explicitly stated within this research paper. However, the case study still demonstrated the confusion surrounding the planning system within South Australia. This confusion was linked, by many interviewees, to a lack of procedural transparency. Furthermore, it often became a comment on the flaws of planning practice more generally.

Although it is engrained within societal vernacular, justice is still a complex term to define. Within this research, the intricacies of the term are demonstrated by the range of keywords attributed to it by interviewees. As an abstract noun, the complexities surrounding such a multifaceted concept require a greater understanding of cultural and societal knowledge and norms. This was demonstrated in the interviews with frequent use of comparisons to previous planning experiences and examples as alternatives to the actions and outcomes of the Mount Barker decision. Even though interviewees were only asked to comment on the Mount Barker case, they inevitably drew links to prior planning decisions, creating a historical context for the actions that happened, and to situate their response within. For each interviewee this varied depending on their understanding of the planning process, this particular process, and their opinion about the outcome.

As an abstract noun, or defining a quality or idea rather than a concrete object, justice also enables discussion of the social context in which it occurs. In this case, the strongest emotions are concerned with the right or opportunity of stakeholders to raise concerns over a/any planning decision. Perceptions of procedural justice are often driven by emotional reactions to planning processes and their outcomes. In many ways, interviewees are correct in their assertion that planners have a responsibility to raise a broader awareness, and perhaps critique, of the planning process. Thus in doing so, planning processes become more transparent and 'fair'. The results from this case study indicate the need to continually reassess the nature of governance within planning. The recent South Australian Planning Reforms highlight mechanisms and opportunities for 'bettering' the planning system. However, the lingering emotion evident from decisions, such as Mount Barker, mean that there is still work needed in clarifying planning's role within society.

Similarly, the critique of various stakeholders within the planning process is socially and culturally contextualised. While some interviewees pushed for the greater inclusion of a variety of stakeholders, others erred on the side of caution. This 'us' versus 'them' mentality recurs throughout the myriad of literature on NIMBY-ism. For example, Feldman and Turner (2010, p. 253) notes that 'it looks like the people making the NIMBY claims are being partial, selfish, self-centered and egotistical—the NIMBY

claimant is looking out only for his or her own private interests, without regard for the good of the larger community'. Importantly, Feldman and Turner (2014), also emphasise that NIMBY-ism should not necessarily carry a negative connotation. Although the authors claim that 'opponents who live close by are indeed more likely to protest'... they then stress that 'proximity to the site does not influence attitude' (towards a decision) (2014, p.253). Within the Mount Barker case, this is highlighted by the overriding confusion about the details of the process, which leave tainted perceptions of justice for many parties. Because of the spatial footprint of the DPA, including residential, light industrial and agricultural land, cultural attitudes and emotional attachments to place also meant that concerned stakeholders (and reactions) were not necessarily restricted to the geographical boundaries of the rezoning. In some sense, members of the public who protested were 'doomed' to be seen as NIMBYs whether they lived close to the rezoned areas or not. This lingered in the interviews, where some stakeholders' called for greater 'education' of the public about the planning process, perhaps so that they do not make further protests about what others felt had been carried out appropriately or in a just manner.

## Conclusion

As a term utilised by many disciplines and embedded within a web of meanings, justice is not easily extracted and simplified. However, its role as a foundational ideal for planning processes means that some mutual understanding needs to be established. Here, the complexities of 'justice' manifest as there are always a range of people involved, each with varying agendas. This is especially relevant for exploring understandings of 'procedural justice'. Procedural justice relates to the administration of processes relating to a particular decision or outcome. The case study of the Mount Barker Development Plan Amendment process highlighted the ambiguities and differing views evident in defining justice. For the purpose of this paper, interviews with individuals representing various stakeholders (involved in the DPA process) were analysed, and considered under four questions. These were: what is justice, what makes the planning process 'just', who should be involved in these steps, and why should/shouldn't these people be involved. The results of the analysis highlight that the processes involved and the outcomes that eventuated influenced stakeholders' perceptions of justice. Furthermore, many interviewees were acutely aware of the division among the varying stakeholders and their intentions. With this awareness, was also the knowledge that not enough was done to reconcile differences, creating a source of contention among some stakeholders. If planning is really to achieve a sense of 'fairness' and a deep engagement with 'justice', then it needs to actively seek transparency in difficult planning decisions and to work hard to mediate the discordances between stakeholders.

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