



Mr Michael Lennon
Chair, State Planning Commission
Via email: DPTI.PlanningEngagement@sa.gov.au

Dear Mr Lennon,

Submission – Draft Planning and Design Code, Phase 3

The Australian Institute of Architects - SA Chapter has undertaken a review of the Draft Planning and Design Code – Phase Three focusing on the heritage provisions. The Institute represents over 700 members, including architects who provide specialist heritage design, advisory and policy services. The Institute is pleased to have the opportunity to provide this response, which is informed by these experts within the heritage field.

In the review of the Draft Planning and Design Code (the Code) the following issues have been identified:

1. The current Development Plan includes Historic Conservation Zones with Desired Character Statements for the various Policy Areas that define important matters including minimum allotment sizes, minimum street frontages, the description of the historic era that applies, materials to be used in new buildings or additions, the scale of the built form, fencing styles, and roof pitches.

These are replaced in the Code with Historic Area Overlays and Historic Area Statements respectively. The Historic Area Statements, which were released on 22nd December, contain only broad statements of the character and characteristics of the area. In the publicised draft form, they are generally inadequate and poorly worded. They do not currently include a level of detail required to provide applicants with a clear understanding of the parameters for compliant development, or planners the ability to make consistent and defensible assessment decisions. This lack of local policy control is of great concern and will not support improved design outcomes or community confidence.

2. The proforma structure Historic Area Statements do express and define, through the itemisation of eras, architectural themes, roof forms, materials and other parameters, a definition of places and buildings that make a positive contribution to character. The risk is in the statements being too broad and omitting aspects and eras of character that are of importance to an Historic Area Overlay, including twentieth century architecture. Until comprehensive historic Area Statements which have gained broad community support through a robust community engagement process conducted in accordance with the PDI Act Community Engagement Charter, are developed, the proposal to remove the current Contributory Items from the Code leaves these properties highly vulnerable to unsympathetic development and demolition. This will diminish the built form character that results from the current protection of these places.
3. Contributory Items are clearly identified within the current Development Plan. These places make up the collective character and streetscape of the Historic Conservation Zones in which



they are located. They are currently subject to strong demolition control. We note that similar terminology, policy framework and schedules for Contributory Items exist interstate (in Victoria and NSW) and that these systems provide a clear framework within which to work.

Respect for built heritage and character, its role in shaping community identity and the opportunities it provides for innovative, quality design are stated objectives in State Planning Policy 3: Adaptive Reuse and State Planning Policy 7: Cultural Heritage. However, the draft Code does not schedule Contributory Items and significantly reduces demolition controls for these places.

Under the new Code each application for demolition will need to consider the historic contribution of the building on a case-by-case basis (via an Historic Area Impact Assessment prepared by a consultant) without the ability to refer to an existing schedule. This will add costs and uncertainty to the process. We believe that this is contrary to the stated objectives of the PDI Act, namely, to provide certainty, clarity and confidence in the planning system.

4. New demolition tests appear in the draft Historic Area Overlay that are weaker than currently exists in some Development Plans. For example, in the new Code parts of a building can be demolished if they do not contribute to the historic character of the streetscape and there is significant emphasis on the visibility of front elevations from the street. This provides opportunity for an applicant to argue that if a building is obscured from the street by landscape, fencing or other structures, it does not contribute to the streetscape and therefore could be demolished.

This emphasis on street presence and front elevations also devalues the significance and value of buildings as three-dimensional structures. Building elements that contribute to the character of an area include depth, height, proportions, composition and architectural elements such as chimneys. There are often deeply within a building and need to be considered in addition to the street façade to fully appreciate the value of that building and its contribution to the character of the area.

In addition, the draft Code also provides for demolition of heritage places on the grounds that it is not economically viable to repair or restore the building. This is also open to manipulation, with owners deliberately allowing buildings of historic character to deteriorate until they can gain demolition permission. There is nothing in the Act or other legislation that the Institute is aware of that prevents this from occurring.

It is a concern that these provisions in the Code will be exploited and making current Contributory Items a target for redevelopment. The result will be erosion of the established heritage character of areas subject to Historic Area Overlays. This will be contrary to the intent of the PDI Act in relation to preservation and reinforcement of character, contextually responsive development and adaptive reuse.

5. The draft Code has 55 Zones and 58 Overlays. The development permitted in different Zones and Overlays varies greatly and it is reasonable to expect that there will be conflicting provisions between adjacent areas subject to different Zones and Overlays. For example, greater site coverage and height is permitted on school sites and on arterial roads. However, these sites may also be within or contribute to the heritage character of the 'spatial location'.



This is particularly likely in older, character areas where development patterns tend to be more varied within a relatively compact area.

The Institute is concerned that in these cases the draft Code provides insufficient detail to determine the hierarchies of policies and will consequently be unable to provide certainty or consistency in assessment. It is certainly very difficult to understand or have confidence in how these hierarchies will be determined until the ePlanning system is able to be reviewed. This lack of clarity will result in decisions that severely impact on adjacent amenity of existing Historic Conservation Zone. This can already be observed with the City of Adelaide, where intensive development is now permitted in close proximity to heritage places and within areas of heritage character.

RECOMMENDATIONS

1. The Institute recommends that the existing planning provisions relating to heritage including Contributory Items are maintained during a transition period. This transition period should be of a suitable duration to enable the Code to be fully developed and permit a thorough and transparent transfer of the intent and detail of the Desired Character Statements to the new Historic Area Statements. Time and resources should also be committed to assessment and transfer of existing Contributory Items to an equivalent system within the Code.

While we understand that there has been concern over the statutory basis of Contributory Items, legal opinion prepared by Mr Gavin Laydon of Norman Waterhouse Lawyers dated 29 November 2019 supports incorporation of Contributory Items into the Code. The report states that they are 'policy tools or expressions of policy' and as such can have status in the Code. Advice regarding the process for achieving this is included in the report provided by the Norwood Payneham St Peters Council to the State Planning Commission.

2. Time and resources are committed to a community engagement process, as per the Community Engagement Charter, to consult, develop, review and sign off on Historic Area Statements and to undertake assessment of existing Contributory Items.

The Institute is aware that some Councils have taken the opportunity offered by DPTI, to review their lists of Contributory Places and undertake assessments using Section 23(4) Criteria and therefore transition to become Local Heritage Places. Where this has occurred, approximately 25 % of Contributory Places easily satisfy the Criteria for a Local Heritage Place. A further 20% lie in the grey area between character and heritage, and may also satisfy the Criteria if sufficient resources were available to undertake a robust assessment including a thorough site assessment and further historical research. The risk is therefore not just a loss of character items but a further loss of local heritage as a result of not having Contributory Places identified.

Architects who are engaged as heritage advisors within local councils have observed that the community has developed a high level of positive acceptance for the existing system, including Contributory Items, over time. This contrasts with the enquiries that some heritage advisors have received expressing concern about the proposed changes and frustration at the lack of information.



A best practice engagement strategy would address these issues and support the intent of the PDI Act, which is to develop community acceptance and ownership through consultation. This will provide confidence that the PDI Act will deliver well-founded and consistent decisions, including the protection of heritage and character.

CONCLUSION

The Government's Planning and Design Code has been released prematurely and requires time for further development to ensure that it is fit for purpose and will deliver the stated benefits. This has been acknowledged in the Commission's Update Report, which identifies a significant number of amendments.

It has also been released for consultation prior to key elements, such as the ePlanning system and the Local Design Review system being available for review. Other elements, such as the Historic Area Statements, were released late and clearly require further development.

The result is that it is not currently possible to fully understand the draft Code or to have confidence that it will meet the stated objectives of the PDI Act in relation to heritage and character. This has resulted in significant concern within the architectural profession and the wider community.

The intended simplification and unification of the current planning system has merit and benefit, provided there is greater opportunity for careful transition and equitable discussion. The decision to delay the implementation date to enable further development of the Code and associated systems is strongly supported by the Institute. We believe that this extension in the implementation date should also allow time for additional review and consultation, and that consideration of the provisions relating to heritage and character should be prioritised within this process.

Maintaining the provisions for heritage with the current Development Plan until such time as new provisions within the Planning and Design Code have been fully developed and reviewed is strongly recommended in order to address the concerns raised in this response. Furthermore, it will demonstrate the Commission's commitment to statements made regarding ongoing, best practice protection of the State's heritage

A handwritten signature in black ink, appearing to read 'Tony Giannone', with a long, sweeping horizontal stroke extending to the right.

Tony Giannone
SA Chapter President

Heritage Focus Group:

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Australian Institute of Architects – SA Chapter