

Expert Panel on Planning Reform

Heritage and Character in the Planning and Design Code

Report to the Minister for Planning

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December 2019

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1 BACKGROUND

In December 2014 the Expert Panel on Planning Reform delivered a report that has provided a foundation for planning reform in South Australia. The State Planning Commission, a body established by the *Planning, Development and Infrastructure Act 2016* (the PDI Act) is tasked with implementing a State-wide Planning and Design Code by July 2020.

On 18 November 2019 the Minister for Planning requested the advice of the Expert Panel on a specific aspect of the Panel's 2014 recommendations, namely to:

- provide additional clarity on the nature and intent of the Panel's original heritage reform recommendations, especially those relating to contributory items; and
- review the heritage and character policies proposed by the State Planning Commission for the draft Planning and Design Code.

The Minister requested the Panel's advice on these two issues by 20 December 2019 to assist his consideration of Phases 2 and 3 of the Planning and Design Code that are subject to consultation processes. It should be noted that original Panel member Ms Simone Fogarty recused herself from the reconvened Panel due to a perceived conflict of interest.

2 PANEL'S 2014 REPORT

The Panel's vision for the planning system was expressed in the 2014 report as follows:

*“For South Australia to have an **effective, efficient and enabling** planning system that:
is simple, transparent, easy to understand and user-oriented
is outcome-focussed, evidence-driven and open to innovation
provides streamlined processes for investment at any scale
is responsive to changing circumstances and priorities
places a premium on professionalism and integrity.”¹*

This vision still guides the Panel's approach to the planning system.

Matters of heritage and its treatment in the planning system were the subject of a series of recommendations from the Panel as Reform 8: “Place heritage on renewed foundations”.

The Panel recommended the following:

- Heritage laws should be consolidated into one integrated statute.
- Terminology for heritage should be reviewed and updated as part of this new statute.
- There should be an integrated statutory body, replacing existing multiple heritage bodies. It should include links to the state's cultural institutions.
- The new body should administer a single integrated register of heritage sites, including state and local listings, and have the power to add special landscapes and historic markers to the register.
- Legislation should provide for a heritage code of practice to outline how listed properties should be described, maintained and adapted.
- The legislation should allow accredited heritage professionals (similar to private certifiers) to provide advice and sign-off on changes to listed properties that are consistent with the code of practice.
- Existing heritage listings should be audited to accurately describe their heritage attributes.
- Financing of heritage should be placed on a stable, long-term footing, with discounts on property-related taxes and a heritage lottery providing the basis for heritage grants.

The Panel notes that since the delivery of the 2014 report, the Government published a response and ultimately draft legislation was presented to Parliament, resulting in the PDI Act. The legislation does not necessarily encapsulate all of the Panel's recommendations.

¹ South Australia's Expert Panel on Planning Reform, *The Planning System We Want*, December 2014

In April 2019, the Parliament's Environment, Resources and Development Committee (ERDC), released its Inquiry into Heritage Reform Report. The Chairman of the Panel, Mr Brian Hayes QC and member Mr Theo Maras AM gave evidence to the Inquiry.

The Inquiry's recommendations are set out in Appendix 1.

Those recommendations are generally consistent with the Panel's views expressed in its Report.

3 HERITAGE AND CHARACTER IN THE PLANNING AND DESIGN CODE

3.1 PLANNING AND DESIGN CODE STRUCTURE

The Panel understands that the new Planning and Design Code is comprised of layers of planning policy, the (non-spatial) General Development Policies, together with:

- Overlays
- Zones
- Subzones.

Overlays are the most specific layer of planning policy applying to a site. State Heritage Places and State Heritage Areas find their policy in the Code in the State Heritage Places Overlay and State Heritage Areas Overlay respectively.

Policy for Local Heritage Places sits in a new Local Heritage Places Overlay.

3.2 CONTRIBUTORY ITEMS

Contributory Items are not named as such in the Code. Where Contributory Items are listed in a current Historic Conservation Zone in a Development Plan, they will as a matter of fact, but not specifically, as contributory items, be included in an Historic Area Overlay. Demolition controls apply in the Historic Area Overlay. A proposal to demolish a building or structure will be assessed against a single set of criteria:

“Buildings and structures that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:

- (a) the front elevation of the building has been substantially altered and cannot be reasonably, economically restored in a manner consistent with the building’s original style; or*
- (b) the building façade does not contribute to the historic character of the streetscape; or*
- (c) the structural integrity or condition of the building is beyond economic repair.”²*

As a result of feedback on these Overlays earlier in 2019 the Commission has released for consultation draft ‘Historic Area Statements’. The intention of these statements is to replace Desired Character Statements in existing Development Plans. The current statements for consultation are based on existing policy content and are able to evolve over time. The Panel is advised that there is no substantive policy change wrought by the proposed Overlays, but rather a transition of existing policies into the new structure.

² Historic Area Overlay, page 1483 Planning and Design Code (Phase 2 consultation version)

4 PANEL'S ADVICE

4.1 INTEGRATION

The cornerstone of the Panel's recommendations five years ago was to integrate the treatment of Heritage matters into a consolidated system that clarifies the use of the term "heritage" and creates a single integrated register, based on a scale of importance, that is easily understood and administered.

This recommendation has not been taken up, and notwithstanding the State Planning Commission's attempt to achieve greater consistency of treatment in its adaptation of existing plans and processes, the proposed system will continue to be multi-headed, with a separate State Heritage system administered through the Minister for Environment and the South Australian Heritage Council; and a planning system administered through the Minister for Planning and the State Planning Commission.

While the question of new legislation for State Heritage has now passed, the Panel continues to seek greater integration of heritage matters and recommends that responsibility for State Heritage is transferred from the Minister for Environment to the Minister for Planning and the State Planning Commission; and that the South Australian Heritage Council is integrated into the system for the designation of State Heritage Places and Areas. This will both provide for greater integration of the heritage designation and control systems; and will provide greater expertise within the Planning Minister's department to assist this work.

4.2 CONTRIBUTORY ITEMS

In its original report, the Panel made the point that "the confusion between heritage and character must be addressed. The rise of various quasi-heritage terms, such as "contributory items" and "historic conservation zones", shows how these issues may be confused...."

The Panel was, and still is, of the view that the inclusion of some items, be they a group of buildings or a single building, in a Development Plan as a contributory item, was entirely misplaced and gave rise to unjustifiable expectations of heritage conservation. Whilst some of these items may or may not have had heritage value, there was nothing in the way of evidence to justify their inclusion.

That is not to say that such items do not have features that make them a valuable contributor to the historic or other character of the area in which they are situated, or that, on a proper consideration of their heritage value, they should not be so listed.

If they had been included as a result of detailed consideration of their heritage value, such consideration has never found expression in the Development Plan relating to them, nor has any evidence-based justification for them been evident in their inclusion.

Furthermore, there was no legislative basis to justify their inclusion.

In addition:

- there is no consistency across local government areas as to the criteria that have been applied to determine such items, and very often little or no research to support that definition;

- such designation, where it has an impact on properties that extend beyond the controls that would have been in effect in the absence of that designation will impact property values and ownership rights without the usual processes of representation that would be available to property owners; and
- there may be confusion as to whether the designated items are contributing to local heritage or to the ambience of a local streetscape.

Our recommendation above to better integrate the treatment of heritage matters will assist with this concern, but the Panel is supportive of the Commission’s proposal not to separately include existing “contributory items” into the new system.

4.3 HERITAGE AND CHARACTER POLICIES

The Panel is not in a position to review the policies proposed by the Commission and has restricted itself to a review of the framework for policies proposed.

The Panel notes that the Historic and Character Statements, which reflect policy, are adequate and sufficient to ensure that the historic character will be enhanced within those areas. These statements are currently being reviewed to strengthen the policies. The inclusion of what were previously contributory items in the Historic and Character Overlays, albeit not specifically as contributory items, should now ensure that the whole area maintains the desired character, historic or otherwise.

In that context, the Panel:

1. Agrees with the treatment of Local Heritage Places, subject to an assurance that owners of designated properties are able to initiate a process to review that listing, and that there is appropriate community consultation should such a process be initiated.
2. Agrees with the treatment of Contributory Items, recognising that Planning Authorities can always go through a process to elevate such Items into the list of Local Heritage Places by applying the relevant criteria and consultation to such a designation.
3. Agrees with the proposed treatment of Local Heritage Areas and Local Heritage Places (given the complexity of conducting a detailed review of that designation at this stage), subject to the requirement that these designations be audited and validated within the next three years.
4. Recommends that the term “heritage” be restricted to matters that have been properly assessed against relevant criteria to avoid its confusion with general treatment of local amenity and character issues.

The Panel met on four occasions and in the course of its deliberations, it met with the Chairman of the South Australian Heritage Council in relation to State Heritage only. Because of the limited Terms of Reference and the time constraint, the Panel has not had the opportunity to consult generally. Accordingly, the views here expressed have not had the benefit of testing through community consultation.

The Panel expresses its appreciation to Ms Amanda Harfield who provided administrative support to the Panel.

Dated December 2019

5 APPENDIX 1

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE'S RECOMMENDATIONS

The Committee recommends that:

1. State government commences a state-wide, collaborative and strategic approach to heritage reform through development of a staged process; commencing in 2019 and reporting to the Houses with a plan on how a staged approach might work in early 2020;
 - a. Any reforms that are adopted must result in:
 - i. The protection and future management of heritage and historic places and areas that are important to people (including initially transferring all items that are registered on existing heritage and planning databases to the Planning and Design Code);
 - ii. Simple, efficient and responsive processes for the nomination, assessment and listing of local and state heritage places and state heritage areas, which arise from a single piece of 'heritage' legislation, in accordance with the authority of one 'heritage' Minister (including the provision of interim protection during the nomination and assessment stages);
 - iii. Nominations of local heritage places or areas being initiated by local councils, property owners, state heritage bodies or non-government organisations. The ability to nominate places or areas for heritage listing should be widely advertised;
 - iv. New heritage legislation operating in an aligned and streamlined manner with planning and development legislation allowing timeliness and cost efficiencies in processing applications for development of heritage places and areas;
 - v. Consistency, transparency and accountability in decisions that are made relating to heritage listing from a single, expert, independent decision maker (or body of decision makers), with transparent and accountable Ministerial oversight of decisions;
 - vi. Certainty in outcomes with respect to heritage listings, development and planning;
 - vii. Better clarity and consistency of heritage terminology used across planning and heritage, including that criteria for local and state heritage are aligned with differences in respect of thresholds against which heritage is assessed; and
 - viii. Better community involvement in the decisions that affect them; facilitated by earlier consultation with community, as well as the provision of interim protection for local and state heritage during the nomination and assessment phases;

- b. That the model for assessment, listing and management of state and local heritage that is proposed by government takes into consideration the expectations of the community, as raised by this report, and also the reforms that are already in process as part of the broader state planning reforms; and
 - c. That state agencies and local government work on inter-agency instruments to streamline processes for nomination, listing, assessment and regulation of compliance as part of the staged approach for the implementation of reforms;
 2. A state-wide, strategic approach to identifying heritage of local and state significance, involving the community and interested stakeholders, be appropriately funded by state government, developed and commenced in the year 2020;
 3. An audit or review be undertaken of local and state heritage places and contributory items to commence in the year 2020, with the aim of working collaboratively with community and local government, on:
 - a. Providing information on the heritage values of currently listed places to be captured into a publicly-searchable database;
 - b. Assessing places listed prior to 1993 that may require re-attributing from state to local significance (providing this does not reduce their heritage protection);
 - c. Reviewing protected local items and zones or areas that were transferred to the Planning and Design Code against new local heritage criteria;
 - d. Reviewing, against new local heritage criteria, places that were recommended for inclusion as local heritage places in development plans, but weren't; and
 - e. That such projects be appropriately funded by state government;
 4. A suitable long term funding base (that incentivises management for heritage and disincentivises deliberate neglect of heritage) for the management of heritage be identified by state government, in collaboration with local government and other stakeholders, and secured, in recognition of the value that heritage provides to the community, and to reduce the financial burden on owners maintaining and managing heritage properties; and
 5. Sub-sections 67 (4) & (5) of the Planning Development and Infrastructure Act 2016 should be repealed in order to ensure that planning policy is determined by proper planning principles through broad community consultation, rather than through a selective vote of property owners.